

WIPO



PCT/R/WG/2/3

ORIGINAL: English

DATE: March 26, 2002

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

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

Second Session

Geneva, April 29 to May 3, 2002

CHANGES RELATED TO THE PATENT LAW TREATY (PLT):

RIGHT OF PRIORITY AND PRIORITY CLAIMS

Document prepared by the International Bureau

BACKGROUND

1. During its first session, held in Geneva from November 12 to 16, 2001, the Working Group discussed proposals to amend the Regulations so as to align the requirements of the Patent Cooperation Treaty (PCT) with regard to priority matters to those of the Patent Law Treaty (PLT) (see document PCT/R/WG/1/5, paragraphs 12 and 13, and Annex III) and proposals to amend Rule 26*bis*.1(a) (see document PCT/R/WG/1/4, paragraph 4).¹ This document² contains revised proposals.

2. As reported in the Summary of the Session prepared by the Chair (document PCT/R/WG/1/9) (“first session summary”):

¹ See WIPO’s Internet site at http://www.wipo.int/pct/en/meetings/reform_wg/index_1.htm.

² This and other working documents for the present session are available on WIPO’s Internet site at http://www.wipo.int/pct/en/meetings/reform_wg/reform_wg2.htm.

“Right of priority and priority claims

“22. Discussions were based on document PCT/R/WG/1/5, and in particular on proposed new Rule 26bis.3, contained in Annex III to that document, which would provide for restoration of the priority right for up to two months beyond the usual 12-month priority period. The comments and concerns expressed by various delegations included the following:

- (i) there was general agreement with the idea of providing for a means of restoration of priority rights, consistently with corresponding provisions of the PLT, during the international phase of the PCT procedure;
- (ii) noting that the administration of those provisions in the national phase would be a matter for ROs [receiving Offices], the importance of a single standard, or at least consistent practice, among the various ROs was emphasized by several delegations;
- (iii) delegations differed in their views as to the appropriate criterion which should apply in the context of the PCT (under Rule 26bis.3(a)(iii)) in cases where the applicant failed to file the international application within the 12-month priority period, noting that the PLT provided for Contracting Parties to choose between two criteria:
 - most delegations favored adopting the more liberal criterion of “unintentional” failure in the context of the PCT;
 - certain delegations favored adopting the more strict criterion of “due care”;
 - certain delegations favored giving ROs a choice as to which of the two criteria to apply, as would be the case for Contracting Parties to the PLT;
- (iv) it was recognized by the Working Group that provision for restoration of the priority right in the international phase implied that the RO’s decision would need to have effect for the purposes of the national phase;
- (v) most delegations believed that the RO’s decision should be binding on DOs [designated Offices] (as under proposed Rule 26bis.3(f)), but certain delegations believed that the RO’s decision should be subject to review by DOs in at least some circumstances, although there was no agreement as to what circumstances should be relevant in this context;
- (vi) it was pointed out that, if the PCT were to require that one particular criterion be applied by all ROs, it would be possible for an Office to have to apply one criterion in its capacity as a PCT RO and the other criterion in its capacity as a national Office processing national applications or as a DO processing international applications entering the national phase;
- (vii) it was recognized that priority dates had two related but distinct effects:

- “procedural” in the sense that certain important time limits under the PCT were calculated by reference to the priority date;
 - “substantive” in the sense that it was at the priority date that it would be determined whether the invention satisfied the requirements of novelty and inventive step (non-obviousness);
- (viii) the recognition in the national phase of an RO’s decision to restore the priority right was more particularly related to the procedural effect; the procedural effect was the dominant consideration in, for example, PCT Article 2(xi) and Rule 26*bis*.2(a);
- (ix) the fact that a considerable number of countries’ national laws did not presently provide for restoration of priority rights, at least according to PLT criteria, suggested that transitional reservations would need to be allowed for if restoration provisions were to be introduced under the PCT.

“23. It was agreed that the International Bureau should prepare a revised proposal which would:

- (i) provide for restoration of the priority right by the RO based on the “unintentional” criterion, but identifying alternatives in the related comments or explanation;
- (ii) make it clear that it was the procedural effect of the priority right, rather than the substantive effect, that should be recognized for the purposes of the national phase.

“Proposal to amend Rule 26bis.1(a) (see document PCT/R/WG/1/4)

“32. The comments and concerns expressed by various delegations included the following:

- (i) while some delegations expressed concern about the current wording of Rule 26*bis*.1(a) being too complex and indicated that an attempt should be made to simplify the calculation of the time limit under that Rule, most delegations supported the approach of the proposal, subject to further clarification, noting that, in any event, opportunity to correct or add a priority claim should be given only prior to publication of the international application concerned;
- (ii) it was felt that the presentation of examples as to how Rule 26*bis*.1 as proposed to be amended would operate would facilitate discussions.

“33. It was agreed that a revised proposal to amend Rule 26*bis*.1, including examples, should be included in revised proposals to be prepared by the International Bureau in the context of PLT-related proposals concerning priority rights and priority claims, taking into account the matters mentioned in paragraph 32, above.”

3. This document contains a redraft of the proposals and comments contained in documents PCT/R/WG/1/5, Annex III, and PCT/R/WG/1/4, paragraph 4, taking into account

the views expressed, and agreements reached, at the first session of the Working Group, as reported in document PCT/R/WG/1/9, paragraphs 22 and 23 and paragraphs 32 and 33 (see above).

4. The Annex³ to this document sets out specific proposals to include, in the PCT Regulations,⁴ provisions relating to the restoration of the right of priority (see Rules 4 as proposed to be amended and proposed new Rule 26bis.3) as well as provisions relating to the possibility, in line with PLT requirements, that priority documents may be available, in the future, from digital libraries (see Rules 17.1 and 66.7 as proposed to be amended). It also includes proposals to amend Rules 26bis.1 and 26bis.2 and to add new Rule 80.8 relating to the possibility for the applicant to correct or add priority claims.

5. The Working Group is invited to consider the proposals contained in the Annex to this document.

[Annex follows]

³ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. Certain provisions that are not proposed to be amended may be included for ease of reference.

⁴ 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. The current texts are available on WIPO’s Internet site at <http://www.wipo.int/eng/pct/texts/index.htm>. References to “national law,” “national applications,” “national Offices,” etc., include reference to regional law, regional applications, regional Offices, etc. The current texts are available on WIPO’s web site at <http://www.wipo.int/pct/eng/texts/index.htm>. References to “PLT Articles” and “PLT Rules” are to those of the Patent Law Treaty (PLT) concluded on June 2, 2000 and the Regulations under the PLT (see document PT/DC/47 on WIPO’s web site at http://www.wipo.int/eng/document/pt_dc/index.htm).

ANNEX

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:

RIGHT OF PRIORITY AND PRIORITY CLAIMS

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Rule 4

The Request (Contents)

4.1 to 4.9 [No change]

4.10 *Priority Claim*

(a) Any declaration referred to in Article 8(1) (“priority claim”) may claim the priority of one or more earlier applications filed either in or for any country party to the Paris Convention for the Protection of Industrial Property or in or for any Member of the World Trade Organization that is not party to that Convention. Any priority claim shall, subject to Rule 26bis.1, be made in the request; it shall consist of a statement to the effect that the priority of an earlier application is claimed and shall indicate:

(i) the date on which the earlier application was filed, [that date](#) being, [subject to Rule 26bis.3](#), a date falling within the period of 12 months preceding the international filing date;

[COMMENT: It is proposed to amend item (i) of paragraph (a) so as to clarify that, where the applicant is submitting a request for restoration of the priority claim, the date on which the earlier application was filed as indicated in the request does not have to be a date falling within the period of 12 months preceding the international filing date.]

(ii) to (v) [No change]

(b) to (d) [No change]

4.11 to 4.18 [No change]

Rule 17

The Priority Document

17.1 Obligation to Submit Copy of Earlier National or International Application

(a) Where the priority of an earlier national or international application is claimed under Article 8, a copy of that earlier application, certified by the authority with which it was filed (“the priority document”), shall, unless [that priority document has](#) already [been](#) filed with the receiving Office together with the international application in which the priority claim is made, and subject to paragraphs (b) [and \(b-bis\)](#), be submitted by the applicant to the International Bureau or to the receiving Office not later than 16 months after the priority date, provided that any copy of the said earlier application which is received by the International Bureau after the expiration of that time limit shall be considered to have been received by that Bureau on the last day of that time limit if it reaches it before the date of international publication of the international application.

[COMMENT: See proposed new paragraph (b-bis), below.]

(b) [No change]

[Rule 17.1, continued]

(b-bis) Where the priority document is, in accordance with the Administrative Instructions, available to the receiving Office or to the International Bureau from a digital library, the applicant may, instead of submitting the priority document:

(i) request the receiving Office to obtain the priority document from such digital library and transmit it to the International Bureau; or

(ii) request the International Bureau to obtain the priority document from such digital library.

Such request shall be made not later than 16 months after the priority date [and may be subjected by the receiving Office or the International Bureau to the payment of a fee].

[COMMENT: See PLT Rule 4(3). The Administrative Instructions will prescribe the conditions that must be satisfied for an earlier application to be considered available to the receiving Office or the International Bureau for the purposes of this paragraph.]

(c) If the requirements of ~~none~~ ~~neither~~ of the ~~three~~ ~~two~~ preceding paragraphs are complied with, any designated ~~Office~~ ~~State~~ may, subject to paragraph (d), disregard the priority claim, provided that no designated Office shall disregard the priority claim before giving the applicant an opportunity to furnish the priority document within a time limit which shall be reasonable under the circumstances.

[Rule 17.1, continued]

(d) No designated Office shall disregard the priority claim under paragraph (c) if the earlier application referred to in paragraph (a) was filed with it in its capacity as national Office or if the priority document is, in accordance with the Administrative Instructions, available to it from a digital library.

[COMMENT: See PLT Rule 4(3). The Administrative Instructions will prescribe the conditions that must be satisfied for an earlier application to be considered available to the designated Office for the purposes of this paragraph.]

17.2 [No change]

Rule 26bis

Correction, ~~or~~ Addition or Restoration of Priority Claim

[COMMENT: Although it was suggested at the first session of the Working Group that the term “priority right” should be used for consistency with PLT Article 13(3), upon further reflection, the term “priority claim” has been retained since what the receiving Office actually does is to decide, with regard to the *priority claim*, to consider it not to have been made (see Rule 26bis.2(b)) or to restore it (under proposed new Rule 26bis.3) (see also Article 8(2)(a), defining the effect of a “priority claim” rather than of the “priority right”). By retaining the term “priority claim”, it would also be put beyond doubt that the effect of a restored priority claim would be the same as that of a “conventional” priority claim without implying any additional “substantive” rights (in the way that the term “priority right” appears to do: see paragraphs 22(vii) and (viii) and 23(ii) in the first session summary).]

26bis.1 Correction or Addition of Priority Claim

(a) The applicant may correct or add a priority claim by a notice submitted to the receiving Office or the International Bureau within a time limit of 16 months from the priority date or, where the correction or addition would cause a change in the priority date, 16 months from the priority date as so changed, whichever 16-month period expires first, ~~provided that such a notice may be submitted until the expiration of four months from the international filing date.~~ The correction of a priority claim may include the addition of any indication referred to in Rule 4.10.

[COMMENT: Is it proposed to amend Rule 26bis.1(a) and to add a new Rule 80.8(b) and (c) (see below) so as to extend the period available to the applicant for the correction or addition of a priority claim prior to international publication of the international application where the applicant mistakenly makes a priority claim which is more than 12 months preceding the international filing date (see the situation referred to by the United States of America in document PCT/R/WG/1/4, paragraph 4, and paragraphs 32 and 33 in the first session summary). Since, under proposed new Rule 80.8(b) and (c), a priority claim which does not comply with Rule 4.10(a)(i) (that is, a priority claim related to an earlier application which has a filing date not falling within the period of 12 months preceding the international filing date) would not be taken into account for the purposes of computing the 16-month time limit under Rule 26bis.1, the applicant would always have 16 months from the corrected priority

[Rule 26bis.1(a), continued]

date to submit a request for correction). The previous “four month from the international filing date” minimum time limit seems to be no longer needed and is thus proposed to be deleted. The following examples illustrate the operation of both Rule 26bis.1 as proposed to be amended and proposed new Rule 80.8(b) and (c):

EXAMPLE 1 (corrected *later* priority date, initial priority date *earlier* than 12 months): international filing date: 1 June 2002; priority date claimed in international application as filed: 2 June 2000; corrected priority date: 2 June 2001; under proposed new Rule 80.8(b), the priority date claimed in the international application as filed is not taken into account for the purposes of computing the 16 months time limit under Rule 26bis.1(a); under Rule 26bis.1(a), the applicant would have 16 months from the corrected priority date (2 June 2001) for submitting a notice of correction, that is, until 2 October 2002; international publication date: 2 December 2002 (based on corrected priority date).

EXAMPLE 2 (corrected *later* priority date, initial priority date *within* 12 months): international filing date: 1 June 2002; priority date claimed in international application as filed: 2 June 2001; corrected priority date: 3 August 2001; under Rule 26bis.1 as proposed to be amended, the applicant would have 16 months from the priority date mistakenly claimed (2 June 2001) for submitting a notice of correction, that is, until 2 October 2002; international publication date: 3 February 2003 (based on corrected priority date).

EXAMPLE 3 (corrected *earlier* priority date; initial priority *earlier* than 12 months): Not possible since already the initial priority date was earlier than 12 months preceding the international filing date.

EXAMPLE 4 (corrected *earlier* date with earlier priority date, initial priority date *within* 12 months): international filing date: 1 June 2002; priority date claimed in international application as filed: 4 September 2001; corrected priority date: 2 June 2001; under Rule 26bis.1 as proposed to be amended, the applicant would have 16 months from the corrected priority date (2 June 2001) for submitting a notice of addition, that is, until 2 October 2002; international publication date: 2 December 2002 (based on corrected priority date).]

EXAMPLE 5 (*added* priority claim, *no initial* priority claim): international filing date: 1 June 2002; priority date claimed in international application as filed: none; added priority claim with priority date: 2 June 2001; under Rule 26bis.1 as proposed to be amended, the applicant would have 16 months from the added priority date (2 June 2001) for submitting a notice of addition, that is, until 2 October 2002; international publication date: 2 December 2002 (based on added priority claim).

EXAMPLE 6 (*added* priority claim with *later* priority date, initial priority claim with *earlier* priority date (i.e., without change of “the” priority date as defined in Article 2(xi)): international filing date: 1 June 2002; priority date claimed in international application as filed: 2 June 2001; added priority claim with priority date: 3 August 2001; time limit for submitting notice of addition: 2 October 2002; international publication date: 2 December 2002 (based on initial priority claim).]

[Rule 26bis.1, continued]

(b) [No change]

(c) ~~[Deleted] Where the correction or addition of a priority claim causes a change in the priority date, any time limit which is computed from the previously applicable priority date and which has not already expired shall be computed from the priority date as so changed.~~

[COMMENT: The content of current Rule 26bis.1(c) is proposed to be moved to proposed new Rule 80.8(a) (see below) so as to deal with all matters relating to time limits computed from the priority date in one place.]

26bis.2 Invitation to Correct Defects in Priority Claims

(a) Where the receiving Office or, if the receiving Office fails to do so, the International Bureau, finds that:

(i) a priority claim does not comply with the requirement of Rule 4.10(a)(i) and a request for restoration of that priority claim under Rule 26bis.3 has not been filed; or

(ii) a priority claim does not comply with the other requirements of Rule 4.10;⁵ or

(iii) ~~that~~ any indication in a priority claim is not the same as the corresponding indication appearing in the priority document;⁵

[Rule 26bis.2(a), continued]

the receiving Office or the International Bureau, as the case may be, shall invite the applicant to correct the priority claim.

[COMMENT: There appears to be no need for an invitation to correct a priority claim where a request for restoration of that priority claim has been filed by the applicant, showing that the applicant, while being aware of the fact that the filing date of the earlier application as indicated in the request does not fall within the 12 months preceding the international filing date, has no intention to correct that priority date but rather wishes to have the priority claim restored under Rule 26bis.3.]

(b) If, ~~in response to an invitation under paragraph (a)~~, the applicant does not, before the expiration of the time limit under Rule 26bis.1(a), submit a notice correcting the priority claim so as to comply with the requirements of Rule 4.10, or does not, [where applicable, before the expiration of the time limit under Rule 26bis.3(a)(ii), submit a request for restoration of the priority claim, that priority claim shall, for the purposes of the procedure under the Treaty, be considered not to have been made and the receiving Office or the International Bureau, as the case may be, shall so declare and shall inform the applicant accordingly, provided that a priority claim shall not be considered not to have been made only because the indication of the number of the earlier application referred to in Rule 4.10(a)(ii) is missing or because an indication in the priority claim is not the same as the corresponding indication appearing in the priority document.

[COMMENT: Paragraph (b) is proposed to be amended so as to clarify that a priority claim cannot be considered not to have been made under Rule 26bis.2(b) where the applicant has filed a request for restoration. Rather, the decision by the receiving Office on whether or not to consider the priority claim not have been made is governed by proposed new Rule 26bis.3(e), below (i.e., the decision to restore the priority claim or to refuse the request for restoration). In this context, it is also proposed to delete the words, “in response to an invitation under paragraph (a),” which appear to be superfluous; whether or not the notice of correction or the request for restoration is received as a result of an invitation would seem irrelevant.]

[Rule 26bis.2, continued]

(c) [no change]

26bis.3 Restoration of Priority Claim

(a) The receiving Office shall, at the request of the applicant and subject to paragraphs (b) and (c), restore a priority claim where the international application has an international filing date which is later than the date on which the priority period referred to in paragraph (b) has expired, if:

[COMMENT: See PLT Article 13(2)]

(i) the international application has been accorded an international filing date which is within a time limit of two months from the date on which the priority period expired; and

[COMMENT: See PLT Article 13(2) and PLT Rule 14(4)(a).]

(ii) the request for restoration of priority claim is submitted to the receiving Office within a time limit of two months from the date on which the priority period expired; and

[COMMENT: See PLT Article 13(2)(ii) and PLT Rule 14(4)(b). Item (ii) of paragraph (a) is proposed to be further amended in response to suggestions at the first session of the Working Group that this provision was ambiguous. On further consideration, it is considered that a request for restoration received by the receiving Office just before the completion of technical preparations (as previously proposed) is too late as it could never be taken into account by the International Bureau for publication.]

[Rule 26bis.3(a), continued]

(iii) the receiving Office finds that the failure to file the international application within the priority period was unintentional.

[COMMENT: See PLT Article 13(2)(iv), which leaves it at the option of each PLT Contracting State to decide whether the Office requires the failure to file the subsequent application to have been “unintentional” or that it “occurred in spite of due care required by the circumstances having been taken”. At the first session of the Working Group on Reform of the PCT it was agreed that, in the context of the PCT, restoration of priority claim should be based on the more liberal requirement that the failure was “unintentional”, as favored by most delegations. However, certain delegations favored adopting the more strict criterion of “due care”. Certain other delegations favored giving receiving Offices the choice as to which of the two criteria to apply, as would be the case for Contracting Parties to the PLT. It was pointed out that, if the PCT were to require that one particular criterion be applied by all receiving Offices, it would be possible for an Office to have to apply one criterion in its capacity as a PCT receiving Office and the other criterion in its capacity as a national Office processing international applications or as a designated Office processing international applications entering the national phase. On the other hand, the importance of a single standard, or at least consistent practice, among offices in their capacity as PCT receiving Offices was emphasized by several delegations. See the first session summary, paragraphs 22(ii), (iii) and (vi) and 23(i).]

(b) The priority period referred to in paragraph (a) shall be 12 months calculated from the priority date.

[COMMENT: See also proposed new Rule 80.8(c), below, which is intended to ensure that a priority period calculated from a priority date outside the 12 month period is not excluded under proposed new Rule 80.8(b), below.]

(c) The request referred to in paragraph (a)(ii) shall:

(i) state the reasons for the failure to comply with the priority period; and

[COMMENT: See PLT Article 13(2)(iii).]

[Rule 26bis.3(c), continued]

(ii) be accompanied, where the international application did not claim the priority of the earlier application, by a notice adding the priority claim so as to comply with the requirements of Rule 4.10.

[COMMENT: See PLT Rule 14(5)(ii).]

(d) The receiving Office:

(i) may require that a fee be paid in respect of a request referred to in paragraph (a)(ii) for restoration of a priority claim;

[COMMENT: See PLT Article 13(4).]

(ii) may require that a declaration or other evidence in support of the statement of reasons referred to in paragraph (c)(i) be filed within a time limit which shall be reasonable under the circumstances;

[COMMENT: See PLT Article 13(5).]

(iii) shall not refuse, totally or in part, a request under paragraph (a)(ii) for restoration of a priority claim without giving the applicant the opportunity to make observations on the intended refusal within a time limit which shall be reasonable under the circumstances.

[COMMENT: See PLT Article 13(6).]

[Rule 26bis.3, continued]

(e) Where the restoration of a priority claim under paragraph (a) causes a change in the priority date, Rule 80.8(a) shall apply *mutatis mutandis*.

[COMMENT: Proposed new paragraph (e) is needed so as to ensure that, for procedural purposes in the international and national phases, where the restoration of a priority claim causes a change in the priority date, any time limit which is computed from the previously applicable priority date and which has not already expired is computed from the priority date as so changed. See the first session summary, paragraphs 22(vii) and 23(ii).]

(f) Where the receiving Office refuses a request for restoration of a priority claim, that priority claim shall, for the purposes of the procedure under the Treaty, be considered not to have been made and the receiving Office or the International Bureau, as the case may be, shall so declare and shall inform the applicant accordingly.

(g) Where the receiving Office has refused a request under paragraph (a)(ii) for restoration of a priority claim, or where such a request is pending at the time of the completion of the technical preparations for international publication, the International Bureau shall, upon request made by the applicant and received by the International Bureau prior to the completion of the technical preparations for international publication, and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, publish, together with the international application, information concerning that request for restoration. A copy of the request under this paragraph shall be included in the communication under Article 20 where a copy of the pamphlet is not used for that communication or where the international application is not published by virtue of Article 64(3).

[Rule 26bis.3(g), continued]

[COMMENT: New paragraph (g) is proposed to be added as a safeguard for the applicant where his request for the restoration of a priority claim has been refused or has not been decided upon by the time the international application is to be published so as to enable him to pursue the matter further, after national phase entry, before the designated Offices concerned; see also Rule 26bis.2(c), which has been used as a model for the wording of new paragraph (g). New Sections in the Administrative Instructions, similar to Sections 314 and 402 in respect of the correction and addition of priority claims, would also be required.]

(h) Where the receiving Office has restored a priority claim under paragraph (a), no designated Office shall disregard that priority claim merely because the international application has an international filing date which is later than the date on which the priority period referred to in Rule 4.10(a)(i) expired unless:

(i) the designated Office finds that a requirement under paragraph (a)(i) or (ii) was not complied with; or

(ii) the designated Office has reasonable doubts that the failure to file the international application within the priority period was unintentional, and subsequently finds that the failure was intentional, in which case the designated Office shall notify the applicant of the reasons for those doubts [and shall give the applicant an opportunity to comment on its finding].

[COMMENT: New paragraph (h) is proposed to be added with a view to striking an equitable balance between the interests of the applicant in not having the reinstatement of a priority claim routinely reviewed by designated Offices and the right of designated Offices to revoke an incorrectly restored priority claim. Designated Offices, during the national phase, would have to respect the decision taken by the receiving Office during the international phase unless they have good reason not to.]

[Rule 26bis.3, continued]

(i) If, on [date], any provision of this Rule is not compatible with the national law applied by the designated Office, that provision shall not apply in respect of that Office for as long as it 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 66

**Procedure Before the
International Preliminary Examining Authority**

66.1 to 66.6 [No change]

66.7 *Copy and Translation of Earlier Application Whose Priority is Claimed ~~Document~~*

(a) If the International Preliminary Examining Authority needs a copy of the earlier application whose priority is claimed in the international application, the International Bureau shall, on request, promptly furnish such copy. If that copy is not furnished to the International Preliminary Examining Authority because the applicant failed to comply with the requirements of Rule 17.1, and if that earlier application was not filed with that Authority in its capacity as a national Office or the priority document is not available to that Authority from a digital library in accordance with the Administrative Instructions, the international preliminary examination report may be established as if the priority had not been claimed.

[COMMENT: See PLT Rule 4(3). The Administrative Instructions will prescribe the conditions that must be satisfied for an earlier application to be considered available to the International Preliminary Examining Authority for the purposes of this paragraph.]

[Rule 66.7, continued]

(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 [and the validity of the priority claim is relevant to the formulation of an opinion under Article 35\(1\)](#), that Authority may 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.

[COMMENT: See PLT Rule 4(4).]

66.8 and 66.9 [No change]

Rule 80

Computation of Time Limits

80.1 to 80.7 [No change]

80.8 Time limits Computed From the Priority Date

(a) Where the correction or addition of a priority claim causes a change in the priority date, any time limit which is computed from the previously applicable priority date and which has not already expired shall be computed from the priority date as so changed.

[COMMENT: See comment on Rule 26bis.1(c), above. It is proposed to move the content of current Rule 26bis.1(c) to proposed new Rule 80.8(a) so as to deal with all matters relating to time limits computed from the priority date in one place.]

(b) For the purposes of computing time limits, if a priority claim does not comply with Rule 4.10(a)(i) because the date on which the earlier application was filed was not a date falling within the 12 months preceding the international filing date, that priority claim shall not, subject to Rule 26bis.3(a), be taken into account for the purposes of determining the priority date.

[COMMENT: See comment on Rule 26bis.1(a) and the examples illustrating different priority scenarios, above. It appears necessary to make this provision “subject to Rule 26bis.3(a)” so as to ensure that a priority claim which does not comply with Rule 4.10(a)(i) that the date on which the earlier application was filed is a date falling within the 12 months preceding the international filing date is taken into account where that priority claim is restored under proposed new Rule 26bis.3(a).]

[Rule 80.8, continued]

(c) Paragraph (b) shall not apply to the computation of the priority period under Rule 26bis.3(b).

[COMMENT: Proposed new paragraph (c) appears to be needed so as to clarify that a priority claim which does not comply with Rule 4.10(a)(i) that the date on which the earlier application was filed is a date falling within the 12 months preceding the international filing date is to be taken into account for the purposes of computing the “priority period” as defined in proposed new Rule 26bis.3(b) (that Rule defines the “priority period as “12 months calculated from the priority date”) although, strictly speaking, the “priority period” does not appear to be a “time limit” in the meaning of proposed new Rule 80.8(b).]

(b) and (c) [no change]

[End of Annex and of document]