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

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SIGNATURE REQUIREMENTS (ADDENDUM TO DOCUMENT PCT/R/WG/2/7)

Proposals submitted by Australia

1. Document PCT/R/WG/2/7 proposes a range of changes to reduce, or eliminate, the signature requirements under the PCT. IPAustralia supports those changes.

2. IPAustralia notes that in past meetings there have been some concerns expressed in relation to the issue of withdrawals. Those concerns are perhaps well expressed in the comment provided on page 13 of Annex II of document PCT/R/WG/2/7 – namely:

“[COMMENT: Along the lines of what has been suggested in alternative (2) in paragraph 13(ii) of the first session summary, it is proposed that, where the international application is filed by two or more applicants, the signature of one of them is sufficient for a withdrawal under Rule 90*bis*. In the absence of any replacement provision, the effect of this deletion would be to permit one co-applicant to withdraw an international application, etc. without (even contrary to) the agreement of the other co-applicant(s).]”

3. IPAustralia shares concerns about the possibility of one of several joint applicants withdrawing an application contrary to the wishes of the other applicants. However, while a signature requirement is one way to address this issue, we do not believe it to always be an adequate solution. For example, it does not address the situation where signatures are forged.

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Also, a requirement that all applicants sign the withdrawal does not accommodate those situations where one or more of the applicants is reasonably unavailable to sign the withdrawal.

4. IPAustralia considers that the preferable way to treat this issue is the approach adopted in the Patent Law Treaty in (for example) Articles 6(6), 8(4)(c) or 12(4), or Rules 7(4), 15(4) or 16(6). Namely, to provide that the Office with which the withdrawal is filed can ask for evidence that the withdrawal is done with the necessary authority. It may be that in many situations a signature on the withdrawal, together with other surrounding circumstances, is sufficient to satisfy the Office that the withdrawal is a 'proper' withdrawal. But such a provision would allow an Office to ask for evidence where, despite the withdrawal being signed, there are surrounding circumstances that suggest the withdrawal is not a 'proper' withdrawal. It would also allow an Office to effect a withdrawal where the surrounding circumstances give little doubt that the withdrawal is 'proper' despite the withdrawal not being signed.

5. Accordingly, IPAustralia suggests that Rule 90*bis*.5 should be replaced with text like the following, adapted from PLT Rule 16(6):

“An Office may require that evidence be filed with the Office [only] where that Office may reasonably doubt the veracity of the withdrawal.”

6. In addition, problems can arise in the context of recording name changes under Rule 92*bis* where applicants seek to join or remove other applicants without the approval of the applicants of record, or third parties attempt to be joined as an applicant. IPAustralia considers that a similar provision should be provided in Rule 92*bis* to facilitate dealing with these issues.

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

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