

WIPO



PCT/R/WG/8/6

ORIGINAL: English

DATE: April 11, 2006

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

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

Eighth Session
Geneva, May 8 to 12, 2006

PHYSICAL REQUIREMENTS OF THE INTERNATIONAL APPLICATION:
TEXT SIZE REQUIREMENTS; PROCEDURE FOR MAKING CORRECTIONS;
DRAWING REQUIREMENTS

Proposals submitted by the United States of America

1. The current PCT standards relating to text size, the procedure for making corrections, and the requirements for drawings were established in the context of a paper based application filing and processing system and in view of technologies which have advanced significantly in the past 25 years. As technologies have advanced, with respect to both application processing and application subject matter, the need has arisen to reevaluate the current standards set forth in the Regulations with respect to these matters.

TEXT SIZE REQUIREMENTS

2. Currently, PCT Rule 11.9(d)¹ requires that “text matter shall be in characters the capital letters of which are not less than 0.21 cm high”. Such a measurement corresponds to approximately a Times New Roman 9 point font.

¹ References in this document to “Articles” and “Rules” are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT (“the Regulations”), or to such provisions as proposed to be amended or added, as the case may be. References to “national laws”, “the national phase”, etc., include reference to regional laws, the regional phase, etc.

3. In an effort to increase efficiency and decrease processing delays, Offices and Authorities are increasingly transitioning from paper based application processing to electronic processing. Such electronic processing often involves scanning the application papers and converting them from image files to text files through Optical Character Recognition (OCR).
4. The accuracy of an OCR conversion is inversely proportional to the size of the text being scanned, and it has been found that the OCR scans of applications filed using the current minimum text size result in electronic files which contain numerous errors. Such errors in the text files are becoming an increasing source of wasted time and resources on the part of the Offices and Authorities as the files must then be corrected before they can be properly searched, examined, and published.
5. In contrast to scans of applications filed using the current minimum text size, it has been found that scans of applications using a font size having a capital letter height of no less than 0.28 cm (equivalent to approximately a Times New Roman 12 point font) result in an acceptable level of OCR accuracy.
6. Additionally, there are physiological reasons to consider a change to the present text size requirement. Specifically, scientific studies have shown that readability for humans generally only starts at a 9 point font. In other words, a 9 point font is approximately the smallest size that is comfortable for most humans to read (and for many people the studies have shown that even a 9 point font is too small to be comfortably read). Readability improves at 10 point and is better still at an 11 to 12 point range. Readability then begins to fall off sharply above that.
7. Therefore, it is proposed that Rule 11.9(d) be amended to require that text matter shall be in characters the capital letters of which are not less than 0.28 cm high.

PROCEDURE FOR MAKING CORRECTIONS

8. Currently, Rule 26.4 provides that, in situations where it will not adversely affect the clarity and the direct reproducibility of the sheet on which it is to be entered, a correction can be entered by hand directly onto the record copy. This procedure also applies, via *mutatis mutandis* provisions, to corrections to sequence listings under Rule 13^{ter}.1(f) and to the rectification of obvious errors under Rule 91.1(d) (effective 01 April 2007, the rectification of obvious mistakes under Rule 91.2).
9. OCR scanners often have difficulty in recognizing handwritten characters. As a result, similar to the scanning problems encountered when an application having small size text is filed, scans of application papers containing handwritten entries also result in electronic files having numerous errors.
10. Therefore, in an effort to increase the ability of the Offices and Authorities to efficiently process applications electronically, it is proposed to amend the Regulations so as to remove the provision for handwritten entries in the application.

DRAWING REQUIREMENTS

11. Rule 11.13 requires that all drawings be “executed in durable, black, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes without colorings”. Such a requirement was certainly sufficient for most technologies when the Treaty was first drafted.

12. However, as technology has advanced, black and white line drawings have become insufficient in many technologies to adequately disclose the subject matter for which patent protection is being sought, and increasingly applicants require the use of photographs (both in color and in black and white) and color drawings in order to provide an adequate disclosure.

13. In fact, while not specifically provided for in the Rules, it has already been recognized that the use of photographs is necessary in certain situations as evidenced by paragraph 174 of Volume I/A of the Applicant’s Guide, which sets forth an informal provision for accepting black and white photographs which is administered by the International Bureau. The paragraph states:

“174. *May a photograph be presented instead of a drawing?* The PCT makes no provision for photographs. Nevertheless, they are allowed where it is impossible to present in a drawing what is to be shown (for instance, crystalline structures). Where, exceptionally, photographs are submitted, they must be black and white, must be on sheets of A4 size, and must respect the minimum margins (see paragraph 148) and admit of direct reproduction. Color photographs are not accepted, nor are color drawings. Photographs are retained by the International Bureau as part of the record copy.”

14. Providing for the filing of photographs and color drawings in international applications would be a simple matter of amending Rule 11.13. However, it is recognized that there are numerous related issues which must first be addressed before any such amendment to Rule 11 is proposed.

15. Some examples of such issues are:

(a) Should Offices, Authorities and the International Bureau be allowed to charge additional fees in applications with photographs and/or color drawings?

(b) Should photographs and/or color drawings be allowed only in those applications where the use of such is the only means for adequate disclosure of the invention? If so, what type of showing should be required and who should make the determination?

(c) What technical requirements (e.g., formats, resolution, color depth, etc.) should be placed on applicants in the filing of, and on Offices and Authorities in the processing of, photographs and/or color drawings?

(d) With respect to photographs in particular, what non-technical requirements should be placed on them (e.g., background/foreground limitations, etc.)?

(e) What constitutes a photograph (e.g., a computer screenshot)?

(f) How should applications filed in Offices not prepared to accept photographs and/or color drawings (if any) be handled?

16. Therefore, it is proposed that a task force be established to examine issues relevant to the acceptance of photographs and color drawings in international applications. The work of the task force will be conducted primarily through the use of the PCT Reform electronic forum. The objective of the task force would be to provide a recommendation at an upcoming meeting of the Working Group as to how to proceed with respect to photographs and color drawings.

17. The Working Group is invited:

(i) to consider the proposals contained in the Annex; and

(ii) to consider the establishment of a task force to provide recommendations with regard to providing for photographs and color drawings.

[Annex follows]

ANNEX

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:²

PHYSICAL REQUIREMENTS OF THE INTERNATIONAL APPLICATION:
TEXT SIZE REQUIREMENTS; PROCEDURE FOR MAKING CORRECTIONS;
DRAWING REQUIREMENTS

TABLE OF CONTENTS

Rule 11	Physical Requirements of the International Application	2
	11.1 to 11.8 [No change]	2
	11.9 <i>Writing of Text Matter</i>	2
	11.10 to 11.14 [No change]	2
Rule 26	Checking by, and Correcting Before, the Receiving Office of Certain Elements of the International Application	3
	26.1 to 26.3 ter [No change]	3
	26.4 <i>Procedure</i>	3
	26.5 and 26.6 [No change]	3

² Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 11

Physical Requirements of the International Application

11.1 to 11.8 [No change]

11.9 *Writing of Text Matter*

(a) to (c) [No change]

(d) All text matter shall be in characters the capital letters of which are not less than 0.28 ~~0.21~~ cm high, and shall be in a dark, indelible color, satisfying the requirements specified in Rule 11.2.

[COMMENT: It is proposed to amend paragraph (d) to Rule 20.8 so as to establish a minimum text size which will allow for acceptable electronic processing of the international application.]

(e) [No change]

11.10 to 11.14 [No change]

Rule 26

Checking by, and Correcting Before, the Receiving Office of Certain Elements of the International Application

26.1 to 26.3~~ter~~ [No change]

26.4 *Procedure*

Any correction offered to the receiving Office ~~may be stated in a letter addressed to that Office if the correction is of such a nature that it can be transferred from the letter to the record copy without adversely affecting the clarity and the direct reproducibility of the sheet on to which the correction is to be transferred; otherwise, the applicant~~ shall be submitted on ~~required to submit~~ a replacement sheet embodying the correction and ~~the letter accompanying the replacement sheet~~ shall be accompanied by a letter which draws ~~draw~~ attention to the differences between the replaced sheet and the replacement sheet.

[COMMENT: It is proposed to amend Rule 26.4 so as to increase the ability of the Offices and Authorities to efficiently process applications electronically by eliminating the provision for handwritten corrections in the application.]

26.5 and 26.6 [No change]

[End of Annex and of document]