

Patent Cooperation Treaty (PCT) Working Group

Sixteenth Session
Geneva, February 6 to 8, 2023

SPECIAL RULES OF PROCEDURE

Document prepared by the International Bureau

SUMMARY

1. New Rules of Procedure are proposed for the PCT Working Group aimed at:
 - (a) adopting new arrangements for election of Officers in line with those agreed or proposed for other similar WIPO bodies;
 - (b) granting “special observer” status within the PCT Working Group to intergovernmental authorities having that status in the PCT Assembly but not already members of the Working Group; and
 - (c) confirming the membership and other observers of the Working Group.

BACKGROUND

2. The PCT Working Group was set up as an advisory group by the thirty-sixth session of the PCT Assembly, following the completion of the work of the Committee and Working Group on Reform of the PCT (see document PCT/A/36/1 and paragraphs 132 to 134 of document PCT/A/36/13). Various arrangements were taken forward from those bodies concerning funding and membership of intergovernmental organizations that act as an International Searching and Preliminary Examining Authority under the PCT. Otherwise, the governance of the Working Group follows the WIPO General Rules of Procedure (“General Rules of Procedure”).
3. At their Sixty-Third Series of Meetings held from July 14 to 22, 2022, the Assemblies of the Member States of WIPO adopted amendments to the WIPO General Rules of Procedure and certain Special Rules of Procedure (see documents A/63/5 Rev. and paragraphs 17 and 18

of document A/63/9). The main aim of the amendments was to modify the electoral cycle of officers. In addition, a number of other provisions were modernized – for the PCT Assembly this meant amending Rule 4 of the Special Rules of Procedure to eliminate reference to the reviews *La Propriété industrielle* and *Industrial Property*, which are no longer published. The General Rules of Procedure and the Special Rules of Procedure of the PCT Assembly (and other Governing Bodies of WIPO), as amended, are available from the WIPO website¹.

4. Rule 45 of the General Rules of Procedure allows each body to adopt and amend its own special rules of procedure, which may enter into force with immediate effect.

ELECTION OF OFFICERS

5. Rule 9 of the amended General Rules of Procedure reads as follows:

Rule 9: Officers

(1) In the first meeting of each ordinary session, each body shall elect a Chair and two Vice-Chairs.

(2) Officers' terms of office shall begin following the final meeting of the session during which they were elected. Officers shall remain in office until terms of office of newly elected officers begin.

(3) The outgoing Chair and Vice-Chairs shall not be immediately eligible for re-election to the office which they have held.

6. In addition to amendments made throughout the General Rules of Procedure for gender neutrality, paragraph (2) of Rule 9 was amended to align the electoral cycle for the remainder of the officers of the Assemblies of the Member States of WIPO (WIPO Assemblies) and other bodies of the Member States of WIPO with that of the WIPO General Assembly. In doing so, the officers' terms of office begin, as is the case with the officers of the WIPO General Assembly, following the final meeting of the session during which they were elected. The purpose of this was to give clarity well in advance and to allow the officers to assist effectively with the preparation of the sessions that they will lead.

7. With regard to Rule 9(3), although the PCT Working Group and its predecessor bodies have not previously had formal Special Rules of Procedure, it has been common for officers to serve multiple consecutive terms. The International Bureau proposes that this arrangement be formalized. This is explicitly provided for in the Special Rules of Procedure of a number of other WIPO bodies, including the various Standing Committees². For the PCT Working Group, it is proposed to follow the arrangement recently adopted by the Committee on WIPO Standards (see paragraph 12 of the Annex to document CWS/10/2), where officers are elected for two consecutive sessions and may be re-elected for one further consecutive term.

MEMBERS AND OBSERVERS

8. In reviewing the Special Rules of Procedure of the PCT Assembly, the International Bureau noted Rule 2:

¹ https://www.wipo.int/policy/en/rules_of_procedure.html

https://www.wipo.int/treaties/en/docs/pdf/special_rules.pdf

² <https://www.wipo.int/policy/en/special-rules-of-procedure-wipo-standing-committees.html>

Rule 2: Special Observers

Intergovernmental authorities having the power to grant patents effective in one or more States members of the PCT Union shall be invited as “special observers” to all sessions of the Assembly. They shall have the same rights in the sessions of the Assembly as States members of the Assembly, except the right to vote.

9. In practical terms, this means that regional Offices that act as designated Offices have the right to make (but not vote on) proposals to the PCT Assembly. Given that one of the main purposes of the PCT Working Group is to give preliminary consideration of issues that may be of relevance to the Assembly, the International Bureau considers that it would be desirable for these regional Offices that are not members of Working Group to have the same rights in the Working Group.

PROPOSAL

10. The International Bureau proposes the Special Rules of Procedure of the PCT Working Group set out in the Annex.

11. Draft Rules 1 and 3(1) are based on Rules 1 and 2 of the Rules of Procedure of the PCT Assembly. Draft Rules 2 and 3(2) serve to clarify that, apart from the regional Offices referred to in paragraph 9, above, the members and observers of the Working Group are unchanged from current practice.

12. Draft Rule 4 maintains the principle of amended Rule 9(1) and (2) of the General Rules of Procedure for the PCT Working Group, but bases the period of office on two sessions of the Working Group. It also allows the possibility of re-election of officers once, setting a maximum consecutive term of four sessions.

13. If these proposals are approved, it is proposed that they come into force immediately and apply to the mandate of officers elected at this session, noting that the present Chair was elected under amended Rule 9 of the General Rules of Procedure, acting for the fifteenth session of the Working Group as a transitional arrangement. Consequently, newly elected officers would be expected to begin their terms of office immediately following the end of the present session and act for the seventeenth and eighteenth sessions.

14. The Working Group is invited to adopt the Special Rules of Procedure set out in the Annex to document PCT/WG/16/5.

[Annex follows]

DRAFT SPECIAL RULES OF PROCEDURE

Rule 1

Application of the General Rules of Procedure

The Rules of Procedure of the Patent Cooperation Treaty (PCT) Working Group (“the Working Group”) shall consist of the General Rules of Procedure of WIPO, supplemented and amended by the provisions set forth hereinafter.

Rule 2

Members

The States members of the International Patent Cooperation Union (PCT Union) and those intergovernmental organizations appointed by the Assembly of the PCT Union (“the Assembly”) to act as an International Searching and Preliminary Examining Authority under the Patent Cooperation Treaty shall be invited as members to all sessions of the Working Group.

Rule 3

Observers and Special Observers

(1) Intergovernmental authorities having the power to grant patents effective in one or more States members of the PCT Union and not referred to in Rule 2 shall be invited as “special observers” to all sessions of the Working Group. They shall have the same rights in the sessions of the Working Group as members of the Working Group, except the right to vote.

(2) All States and organizations invited as observers to the Assembly or the Standing Committee on the Law of Patents and not referred to in Rules 2 or 3(1) shall be invited to all sessions of the Working Group as observers.

[COMMENT: Rule 8(2) of the General Rules of Procedure (“In addition, each body shall decide, in a general way or for any particular session or meeting, which other States and organizations shall be invited to be represented by observers.”) would apply and is not repeated here.]

Rule 4
Officers

(1) During every other session, the Working Group shall elect a Chair and two Vice-Chairs.

[COMMENT: Rule 9(2) of the General Rules of Procedure (“Officers’ terms of office shall begin following the final meeting of the session during which they were elected. Officers shall remain in office until terms of office of newly elected officers begin.”) would continue to apply and is not repeated here.]

(2) The outgoing Chair and Vice-Chairs shall be immediately eligible for re-election to the office which they have held provided their re-election would not result in serving in the same office for more than four consecutive sessions.

[End of Annex and of document]