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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON THE LAW OF PATENTS

**First Session, Second Part
Geneva, November 16 to 20, 1998**

REPORT*

prepared by the International Bureau

INTRODUCTION

1. The Standing Committee on the Law of Patents (hereinafter referred to as “the Standing Committee” or “the SCP”) held its first session, second part, in Geneva from November 16 to 20, 1998.
2. The following States members of WIPO and/or the Paris Union were represented at the meeting: Algeria, Andorra, Angola, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bolivia, Brazil, Burkina Faso, Canada, Chile, China, Côte d’Ivoire, Cuba, Czech Republic, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Germany, Ghana, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Latvia, Lesotho, Lithuania, Malaysia, Mali, Malta, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Syria, Tajikistan, The former Yugoslav Republic of Macedonia, Tunisia,

* Subject to adoption at the second session of the SCP. Paragraphs which were modified following comments received on the Draft Report (document SCP/1/11 Prov.) are marked with an asterisk (*).

Turkmenistan, Uganda, United Kingdom, United States of America, Ukraine, Uruguay, Venezuela and Zambia (82).

3. Representatives of the World Trade Organization (WTO), the Eurasian Patent Office (EAPO), the European Commission (EC), the European Patent Office (EPO) and the African Intellectual Property Organization (OAPI) took part in the meeting in an observer capacity (5).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Bar Association (ABA), American Intellectual Property Law Association (AIPLA), Asian Patent Attorneys Association (APAA), Asociación de Agentes Españoles autorizados ante Organizaciones Internacionales de Propiedad Industrial e Intelectual (AGESORPI), Asociación interamericana de la propiedad industrial (ASIPI), Brazilian Association of Industrial Property Agents (ABAPI), Brazilian Association of Intellectual Property (ABPI), Chartered Institute of Patent Agents (CIPA), Committee of National Institutes of Patent Agents (CNIPA), Federal Chamber of Patent Attorneys (FCPA), Federation of German Industry (BDI), Institute of Professional Representatives before the European Patent Office (EPI), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Intellectual Property Society (IIPS), International League of Competition Law (LIDC), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), Korea Patent Attorneys Association (KPAA), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI), Patent and Trademark Institute of Canada (PTIC), Trade Marks, Patents and Designs Federation (TMPDF), Union of European Practitioners in Industrial Property (UEPIP), Union of Industrial and Employers' Confederations of Europe (UNICE) and World Association for Small and Medium Enterprises (WASME) (26).

5. The list of participants is contained in Annex I of this report.

6. Discussions were based on the following documents prepared by the International Bureau of WIPO: "Draft Patent Law Treaty and Draft Regulations" (SCP/1/3), "Notes" (SCP/1/4), "Revised Draft Report" (SCP/1/7 Prov. 2), "Revised Text of Provisions Referred to the International Bureau for Further Study" (SCP/1/8), "Agenda" (document SCP/1/9).

7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions without reflecting all the observations made.

GENERAL DISCUSSION

Agenda Item 1: Opening of the session

8. The second part of the first session was opened by Mr. Alan Troicuk, the Chair of the first session.

9. Mr. Shozo Uemura, Deputy Director General of WIPO, welcomed the participants. He reported that the General Assembly of WIPO which was held in September approved the work carried out by and plans for future work of the Standing Committee on the Law of Patents. With respect to the draft Patent Law Treaty (PLT), he indicated, in particular, that: (i) the Standing Committee would, at one of its meetings in 1999, set dates for a diplomatic conference which could be held as early as 2000; (ii) discussions should be undertaken in close coordination with deliberations concerning PCT reform, electronic filing and information technology in other relevant WIPO bodies. As regards the reduction of fees for applicants of developing countries, he noted that a Circular was sent to national and regional Offices to collect information regarding their practices and that a letter was sent to the World Trade Organization to solicit its views concerning consistency with the TRIPS Agreement.

Agenda Item 2: Adoption of the Draft Agenda

10. The draft agenda (document SCP/1/9) was adopted without modification.

Agenda Item 3: Adoption of the Draft Report of the first session, first part

11. As regards the substance of the draft Report (document SCP/1/7 Prov.2), the Delegation of Belgium stated that, in paragraph 184, the words “the provisions of the Belgian Law approving” should be inserted before “the European Patent Convention.” The draft report was adopted by the Standing Committee with this modification and subject to a reservation by the Delegation of Australia in view of the extended period for the circulation and adoption of the draft report.

12. Concerning the procedure for circulating the draft report, two delegations objected to the procedure which had been taken to circulate and adopt the draft report of the first session, first part, of the SCP, noting that a full report would preferably be prepared at the end or near the end of the meeting. In reply, the International Bureau suggested the full implementation of the SCP Electronic Forum, and to continue to permit the SCP to have five full days for discussion. The detailed procedure proposed by the International Bureau was as follows: (i) a “Summary by the Chair” would be adopted at the end of the meeting; (ii) on the Wednesday following the meeting, a provisional draft report, in English, French and Spanish, would be posted on the Electronic Forum, with a several day period for comments; (iii) taking the comments into consideration, the International Bureau would issue a Report on paper and on the Electronic Forum 10 days after the close of the meeting. The Report would be subject to adoption at the next meeting.

13. Following a statement of the Delegation of Australia that the period to submit comments on the provisional draft report was too short, the Delegation of Germany, supported by the Delegation of France, proposed a two week period to provide comments.

14. The Chair concluded that the procedure to circulate a draft report via the SCP Electronic Forum with a sufficient period for comments (for example, two weeks) was adopted. A suggestion made by the International Bureau with respect to electronic adoption of the draft report was opposed by one delegation, and received no support.

Agenda Item 4: Draft Patent Law Treaty

15. The Standing Committee discussed the provisions of the draft PLT and Regulations in document SCP/1/3 as revised by document SCP/1/8. The Chair reiterated the contents of document SCP/1/6, paragraph 20, with respect to the decision-making process of the Standing Committee.

Draft Article 1: Abbreviated Expressions

16. *New item.* The Chair proposed, in the context of discussions concerning Article 8, a new definition as follows: “‘Signature’ means any means of self-identification.” The new definition was adopted as proposed by the Chair.

Draft Article 1bis: Notification by the Office

17. The discussions concerning Article 1bis were based on the proposals in document SCP/1/8.

18. *Paragraph (1).* This paragraph was adopted as proposed.

19. *Paragraph (2).* The International Bureau suggested that this provision should be modified to read:

“Where an Office does not notify an applicant, owner or other interested person of a failure to comply with any requirements under this Treaty or the Regulations, that absence of notification does not relieve that applicant, owner or other interested person of the obligation to comply with that requirement.”

20. In response to a proposal by the Delegation of the United States of America that this paragraph be made subject to Article 6(1), the International Bureau explained that, while this had not been done since Article 6(1) provided for what was, in effect, a statute of limitations for sanctions rather than relief from obligations, nevertheless it had no objection to the proposal. The Delegation of Australia proposed that the word “the” be amended to “any” before “obligation.”

*21. The Delegation of the United States of America, supported by one other delegation, suggested that the paragraph could be expanded to take account of, and, if appropriate, incorporate provisions on notification from elsewhere in the Treaty, including those under Article 14(6)(b). A suggestion by the representative of one intergovernmental organization that the procedures to be followed where no notification was possible should be left to national law was opposed by one delegation which was of the view that the case where the Office makes an error should be expressly regulated. The Delegation of Germany proposed the addition of a provision to the effect that “if a notification is not made, no time limit will run.” The representative of one non-governmental organization suggested that the paragraph refer to the relevant time limit prescribed in the Regulations. Clarification of the relationship of this provision with Article 5(10)(a) was requested.

22. The Delegation of Egypt stated that, in view of the effect of this paragraph on the sanctions which could be applied under Article 5(10), it wished to reserve its position on that Article.

23. In the light of these discussions, it was agreed that this paragraph should be referred to the International Bureau for further study.

*24. *Paragraph (3)*. The Delegation of the Russian Federation proposed that a Contracting Party should be permitted to require that the address referred to in this paragraph be on the territory of the Contracting Party concerned. In addition, in the course of discussions as to the relationship of this paragraph to Article 7(3), in particular as to whether Article 7(3) would still be required, the Delegation of the United States of America confirmed that it wished to be able to require both the address to permit correspondence referred to in this paragraph and an address for legal service. It was also noted that the name and address of the applicant would be required under Article 5(1) by virtue of PCT Rule 4.5(a). One delegation proposed that provisions concerning representation and addresses be dealt with separately.

25. In light of these discussions, it was agreed that paragraph (3) should be referred to the International Bureau for further study.

Draft Article 4: Filing Date

26. *Paragraph (1)(a), introductory words*. During the course of discussion on draft Article 5(3), the Delegation of the United States of America requested re-opening further discussion on this provision. That Delegation proposed that the words “, filed by means permitted by the Office” be deleted, to ensure that a filing date would be accorded for any application filed with an Office on paper, even if paper was not a means permitted by that Office. The applicant could then be required to re-submit the application by means permitted by the Office. One non-governmental organization proposed that “any means and forms” be referred to in the chapeau of the subparagraph. After some discussion, the Chair proposed that the words “, at the option of the applicant, on paper or” be inserted before the words “by means permitted by the Office.” The provision was adopted with this modification.

Draft Article 5: Application

27. *Studies by the International Bureau*. In order to optimize the incorporation-by-reference of provisions of the PCT into the draft PLT, as decided at the last meeting through the adoption of Article 5(1), without creating unforeseen problems and difficulties, the International Bureau suggested that it should conduct a detailed study regarding the interface between the draft PLT and the PCT. In doing so, it requested input from the Standing Committee regarding any potential problems or uncertainty which had already been encountered. The Standing Committee supported this initiative of the International Bureau and further requested, and the International Bureau agreed, that this opportunity be taken to consider, in light of the PCT experience, which matters under the draft PLT might be better dealt with in the Regulations.

28. *“ISAF” Presentation.* As a prelude to the discussion concerning Article 5(2)(b) and (3), the Delegation of the United States of America gave a presentation on ISAF (International Standard Application Format) which was summarized as follows:

“Although the various Intellectual Property Offices have been moving towards a paperless electronic environment with the progress of projects such as the Electronic Filing System (EFS), the Electronic File Wrapper (EFW) and PCT-EASY, conversion to electronic applications will be gradual for a number of reasons. There appears to be concern about requiring full electronic filing, as represented by prohibitions against it in the draft PLT Articles, and the Regulations of the PCT. On the technical side, many applicants and firms use computer systems which will require considerable modification to incorporate the electronic filing software into their systems. There is also the ‘trust’ factor that applicants will simply take time before they trust new, unfamiliar methods of filing.

Therefore, if the Offices must devise a method to accept paper applications and also want to proceed with electronic examination and its concomitant efficiencies, these paper applications will have to be converted to electronic representations for processing. Systems are being developed to scan them into electronic images, and convert them by optical character recognition (OCR) to electronic text. That text is, in fact, the most important product of the conversion process, which is the same ‘raw data’ as that presented by electronic filing. Clear, accurately converted text can facilitate automated searches, automated preliminary classification, internal screenings and otherwise facilitate electronic examination.

It is essential to convert these documents to electronic form in the most efficient and accurate manner possible. Errors are expensive. Standard formats for the information on the paper facilitate quick, convenient and accurate scanning and OCR conversion. This project is directed to the implementation of a Standard Format for patent applications that will be convenient for the applicant, yet provide the Offices with paper documents that facilitate electronic conversion.”

29. The Delegation of Japan stated that the presentation by the Delegation of the United States was informative and that its project would facilitate the transition toward electronic filing.

30. *Paragraph (2)(b).* The International Bureau suggested that the words “Patent Cooperation Treaty” be added after the words “request Form corresponds to the,” and the words “with the modifications” be added before the words “provided in the Regulations,” so that this subparagraph would be tied to the PCT request Form. In reply to a proposal by one delegation to include “a format” as well as a Form, the International Bureau explained that the notion of “format” had not yet been resolved in the PCT and that the word “corresponds” would provide sufficient flexibility. This provision was adopted with the modification suggested by the International Bureau.

31. *Paragraph (3).* The International Bureau suggested the following amendments which would facilitate the accommodation of future technical developments: that the title of the

paragraph be amended to “Form, Format and Means of Filing of Applications”; that the words “form, format and means of” be added after the words “apply as regards the”; that the words “on paper or in electronic form or by other means” be deleted; that, in items (i) and (iii), the word “electronic” be deleted and the words “with its Office” be replaced by the words “in a form, or by means, other than filing on paper”; and that, in item (ii), the words “with its Office” be deleted.

*32. In accordance with the modification adopted in draft Article 4(1)(a), the Delegation of Japan, supported by the Delegations of the United States of America, Germany, Andorra and the Netherlands, and by the Representatives of JPAA and JIPA, suggested that item (iii) requiring “unanimous consent” to exclude “the filing of applications on paper” be deleted, as its inclusion could retard the ability of a Contracting Party to keep pace with trends toward a “paperless society” if just one country should dissent in the future. The Delegation of Spain proposed to reconsider this issue after a period of, for instance, five years. Further, the Delegation of the Russian Federation suggested that item (iii) be deleted and draft Rule 3(1) be transferred to draft Article 5. The Representative of the EPO stated that, although it preferred the deletion of item (iii), if that would not be acceptable to the Standing Committee, this item should be transferred to the Regulations. However, the Delegations of Malta, Cuba and Spain opposed the deletion of item (iii). The Delegation of the United Kingdom said that the requirement with respect to “unanimous consent” should be in the Regulations. In the absence of any consensus, the Chair proposed that item (iii) be placed in square brackets. This was supported by the Delegations of Brazil and Tajikistan. The Delegation of Japan stated that, if item (iii) were not deleted, it would express a reservation concerning draft Article 4(1)(a). After some discussion, the proposal by the Chair to present item (iii) in square brackets was adopted.

33. In order to clearly distinguish paragraph (3) from the provisions of draft Article 4, the International Bureau suggested that the word “filing” be replaced by the word “presentation” throughout the paragraph. After some discussion clarifying the notion of these words, it was decided that, since draft Article 1(vi) also used the words “filed with,” the present draft should be maintained in order to avoid creating inconsistency, but that the Notes should be expanded to clarify the matter.

34. Further, in relation to amended draft Article 4(1)(a), the Representative of FICPI suggested, and it was agreed, that the words “Except for the establishment of a filing date under Article 4(1)(a),” should be added at the beginning of the paragraph.

35. In response to a question raised by the Delegation of Andorra, the International Bureau explained that, where an application filed was not in conformity with the format accepted by the Office, the applicant would be accorded a filing date if the applicant complied with the requirements under draft Article 4, but could then be required to comply with any requirements as to the format imposed by that Office within a prescribed time limit.

36. In conclusion, paragraph (3) was adopted with these modifications.

37. *Paragraph (4)*. The International Bureau suggested that the words “or format” be included after “request form” for consistency with paragraph (2), and explained that the paragraph was presented in square brackets because it would not be required if, as anticipated,

a corresponding requirement for registration numbers to be indicated in the PCT request were adopted by the PCT Assembly prior to the adoption of the Patent Law Treaty. The Delegation of the United States of America supported the inclusion of this provision, until it is incorporated into the PCT. The Delegation of Japan suggested that a similar requirement be included in Articles 9 to 16. The paragraph was adopted with the modification suggested by the International Bureau.

38. *Paragraphs (5) and (6).* These paragraphs were approved as proposed.

*39. *Paragraph (7)(a).* A suggestion that the title of paragraph (7) be amended to “Priority Document” was adopted. A proposal by the Delegation of the United Kingdom that this provision should be made mandatory to ensure access of third parties to priority documents by amending “may require” to “shall require” was supported by one other delegation, but opposed by four delegations and the representatives of one intergovernmental organization and of four non-governmental organizations. The Delegation of the Russian Federation suggested inclusion of a provision requiring that a certified copy of an earlier application indicate which elements of that application were received on the filing date. The representative of one non-governmental organization, supported by the representatives of three other non-governmental organizations, suggested that the problem of third party access might be dealt with in an alternative manner. Following some discussion, paragraph (7)(a) was adopted with the modification of the title. A proposal by the Delegation of the United Kingdom that the Standing Committee should consider the matter of access of third parties to priority documents at a future session as a matter of priority was agreed, and that Delegation indicated that it would submit proposals via the SCP Electronic Forum.

40. *Paragraph (7)(b).* A suggestion by the representative of a non-governmental organization that the copy of the earlier application should always be certified was opposed by one delegation. This provision was adopted as proposed.

41. *Paragraph (7)(c).* The International Bureau suggested that the words “was filed with its Office or” and the words “in an official form” be deleted, and that the words “by electronic means” be replaced by “as provided for in the Regulations”, so that the details of this provision would be moved to the Regulations. Following some discussion, during which the representative of a non-governmental organization observed that, as in the case of subparagraph (a), the access by third parties to copies of earlier applications from digital libraries would need to be considered, this provision was adopted with the modifications suggested by the International Bureau.

42. *Paragraph (7)(d).* Proposals by the Delegation of the Russian Federation that a Contracting Party should be permitted to require a translation of an earlier application where the contents of the application claiming priority were considered as comprised in the state of the art for the purposes of an application other than the application claiming priority, and by the Delegation of Ireland that there should be no restriction on the right of a Contracting Party to require a translation, were opposed by the Delegations of Australia and the United States of America. After some discussion, during which 12 delegations and the representatives of an intergovernmental organization and a non-governmental organization expressed their support for the provision, the provision was adopted as proposed, subject to reservations by the Delegations of Switzerland, Ireland, Spain, Greece, Uruguay, Belgium and China.

- *43. *Paragraph (8)*. The International Bureau suggested the addition of the words “or format” after “request Form” for consistency. A proposal of the Delegation of the United States of America, as modified by a further suggestion by the International Bureau, that the words “, or the accuracy of any translation of a priority document required under paragraph (7)(d)” be added after the words “a declaration of priority” was supported by five other delegations. The paragraph was adopted with these modifications.
44. *Paragraph (9)*. This paragraph was adopted as proposed.
- *45. *Paragraph (10)(a)*. The International Bureau suggested that the words “, provided that the applicant has been notified under paragraph (9)” be deleted in view of Rule 5(3) and Article 1*bis*, and that the two sets of square brackets be removed. In response to an observation by one delegation and the representative of a non-governmental organization, the International Bureau confirmed that, where the applicant has complied with the requirements under Article 4 for according a filing date, the Office would not be permitted to impose a sanction under paragraph (10)(a) which involved the loss of that filing date. Apart from this limitation, a Contracting Party would be free, subject to subparagraphs (b) and (c), to provide any sanction if it so wished. In response to a query by the representative of an intergovernmental organization, the International Bureau explained that, in accordance with Article 4(1)(a)(ii), a filing date could be accorded even if the indications enabling the applicant to be contacted by the Office were not provided. The Representative of FICPI opposed the deletion of the words “provided that the applicant has been notified under paragraph (9),” explaining that, in connection with Article 1*bis*(2), an applicant might lose his application due to a minor defect, for example, non-compliance with the requirement under Article 5(4), if he did not receive a notification. Following some discussion, paragraph (10)(a) was adopted with the modifications suggested.
46. *Paragraph (10)(b) and (c)*. The International Bureau suggested that a reference to paragraph (7) be inserted after the reference to paragraph (1), and that subparagraph (c) be deleted, and that the words “, except where otherwise provided for in the case of an international application under the Patent Cooperation Treaty in respect of such non-compliance” be deleted for consistency. After some discussion, paragraph (10)(b) was adopted with the modifications suggested, together with the deletion of subparagraph (c).
47. *Paragraph (10)(d)*. This provision was adopted as proposed, with the square brackets retained, but renumbered as paragraph (10)(c) consequential to the deletion of former paragraph (10)(c).
48. *Access to Genetic Resources*. The Delegation of Peru, supported by the Delegation of Panama, noted, with reference to Article 5, a decision which had the force of law in the Andean Group of countries, namely Bolivia, Ecuador, Colombia, Peru and Venezuela, providing that the national industrial property offices would require a patent applicant to indicate the registration number of an access contract concerning access to genetic resources for research or industrial purposes in these countries, as well as to provide a copy thereof, as a precondition for the grant of patents for certain materials. The Delegation was of the view that the provisions of Article 5 as presently worded did not provide for such a requirement. The Delegation did not have any specific proposal to put forward at this time, but wished to

point out this was an important issue which should be borne in mind by the Standing Committee. The Andean Group countries would take up the issue of biodiversity and genetic resources at a later stage, and would make proposals through the Electronic Forum.

Draft Rule 3: Filing of Applications Under Article 5(3); Communication in Electronic Form or by Other Means

49. *Title.* A suggestion by the International Bureau that the words “in Electronic Form or by Other Means” be replaced by “of Other Documents and Correspondence” to render it technologically neutral was agreed.

50. *Paragraph (1).* Following a comment by the Delegation of the United States of America that this paragraph should be placed in square brackets for joint consideration with Article 5(3)(iii), it was agreed that paragraph (1) should be adopted with the text as proposed placed in square brackets.

51. *Paragraph (2)(a).* The International Bureau suggested that, for consistency with PCT Rule 89*bis*, the words “or by electronic means” should be added after each instance of the use of the term “electronic form” in the title and text of this paragraph, that the term “electronically” should be amended to “in electronic form or by electronic means,” and that the word “complying” should be replaced by “in accordance.”

52. The International Bureau explained that the “form” of an application referred to the physical form of that which contained the information, for example, paper sheets, a floppy disk or an electronic file, while the “means” referred to the manner in which the form was delivered or transmitted to the Office. The “format” referred to the arrangement of the information or data, which could be the same for communications in paper form and in electronic form. For example, an application mailed to the Office would represent paper form and physical means, while a floppy disk mailed to the Office would represent electronic form and physical means. A telefacsimile transmission would represent a paper form communicated by electronic means, and an electronic communication from computer to computer would represent an electronic form communicated by electronic means. Subject to an agreement that this explanation should be included in the Notes, paragraph (2)(a) was adopted with the modifications suggested.

53. *Paragraph (2)(b).* The International Bureau suggested that, as in the case of subparagraph (a), the words “or by electronic means” be added after “electronic form.” The provision was adopted with this modification.

54. *Paragraph (3)(a).* The International Bureau suggested that, with a view to simplifying this provision, the words “by others means” should be deleted from the text as ambiguous, and that, consequently, the words “Other Means” in the title should be replaced by “Telegraph, Teleprinter, Telefacsimile or Other Like Means of Communication.” It also suggested that, as under paragraph (2)(a), the word “complying” should be replaced by “in accordance.” This provision was adopted with this modification, subject to re-numbering of paragraph (3) as paragraph (3)(a) consequential to the adoption of new paragraph (3)(b).

55. *New paragraph (3)(b)*. The International Bureau suggested that the substance of Rule 8(4)(b) be transferred to Rule 3 as a new paragraph (3)(b), which would read:

“(b) The Contracting Party referred to in subparagraph (a) may require that the original document on paper which was transmitted by telegraph, teleprinter, telefacsimile or other like means be filed with the Office within a time limit which shall be not less than one month from the date of the receipt of that transmittal.”

*56. The International Bureau explained that this provision would enable an Office to require a copy of the original of a telefacsimile, for example, for purposes other than signature, in particular, for legibility. Following the suggestion by one delegation concerning the applicability of this provision to a telefacsimile communication sent from a computer without any “paper original,” it was agreed that the words “on paper” should be transferred after the words “other like means be filed.” In reply to a question raised by one delegation with respect to the consistency of the time limit with that in PCT Rule 92.4(d), the International Bureau explained that it had suggested the amendment of this Rule to the effect that the time limit for furnishing the original document would be 14 days, or a longer period as may be allowed by the Office, from the date of the transmission. It also pointed out that a sufficient period should be allowed where an original has to be sent by mail to an Office abroad, which would be rare cases under the PCT. One delegation suggested that the PCT be harmonized with the draft Treaty with respect to the minimum time limit of one month. Following this discussion, new paragraph (3)(b) was adopted with the modification suggested.

*57. *Paragraph (4)(a) and (b)*. The International Bureau suggested that, as under paragraphs (2)(a) and (3)(a), the words “if they comply” should be replaced by “in accordance.” One delegation, supported by another delegation, suggested that the language requirement with respect to an application filed in electronic form be added in subparagraph (4)(a) in order to be consistent with paragraph (2)(a). One intergovernmental organization, supported by one delegation, observed that the word “copy” should be construed as meaning a copy in the same language as the original. After some discussion on whether a document filed in electronic form in a character set which the Office was unable to decipher would be a document filed to that Office in a language not permitted by that Office, it was agreed in principle that the words “in a particular language” would be added where appropriate and, following the suggestion by one intergovernmental organization, that the word “filing” should be replaced by the word “furnishing” for consistency with the PCT and other provisions in the draft Treaty. One delegation suggested that an explanation of the above matter should also be included in the Notes. A further delegation questioned whether the provision was intended to apply to applications in mixed mode format. In conclusion, it was agreed that this paragraph should be referred to the International Bureau for further study.

58. *Paragraph (5)*. The International Bureau suggested that the title should be amended to read “Communication of Other Documents and Correspondence” for consistency. The paragraph was adopted with this modification.

Draft Rule 4: Evidence Under Articles 5(8), 7(9), 8(3)(a), 9(8), 10(9), 11(9), 12(8) and 14(7)

59. Following the suggestion by the Delegation of Australia in order to be consistent with draft Article 5(8), it was agreed that the words “or the accuracy of the translation,” be added after the words “other means of self-identification,”. The provision was adopted with this modification.

New Draft Rule 4bis

60. The International Bureau suggested a new Rule 4bis, which would read:

“Availability of Priority Document under Article 5(7)(c)

No Contracting Party shall require the furnishing of a copy or a certified copy of the earlier application, or a certification of the filing date, as referred to in Article 5(7)(a) and (b), where the earlier application was filed with its Office or is available to that Office, in a legally accepted electronic format, from a digital library which is accepted by the Office.”

61. Following some discussion, new Rule 4bis was adopted with a minor textual amendment proposed by one delegation, namely that the final words “the Office” be replaced with “that Office.”

Draft Rule 5: Time Limits Concerning the Application under Article 5

62. *Paragraph (1)*. This paragraph was adopted as proposed.

63. *Paragraph (2)*. The International Bureau suggested that subparagraph (c) should be deleted with consequential renumbering of subparagraph (d) as subparagraph (c). The Delegation of Germany observed that it may be desirable for the Ad Hoc Advisory Group on Proposed Amendments of the PCT Regulations to review the time limit applicable under the PCT referred to in paragraph (2)(d), namely PCT Rule 26bis.1(a). After some discussion, paragraph (2) was adopted with the modifications proposed.

64. *Paragraph (3)(a)*. The International Bureau suggested that this provision should be modified to read:

“(a) The time limit referred to in Article 5(10)(a) shall be:

(i) subject to items (ii) and (iii), the time limit applied under paragraph (2)(a);

(ii) where a notification under Article 5(9) has not been made because indications allowing the applicant to be contacted by the Office have not been furnished, not less than three months from the earliest date on which one or more of the elements referred to in Article 4(1)(a) were first received by the Office;

(iii) where paragraph (2)(b) or (c) applies, the time limit under that paragraph.”

65. In response to a query by the representative of an intergovernmental organization, the International Bureau confirmed that item (ii) would not preclude a Contracting Party from prescribing a time limit of not less than three months calculated from the filing date and that this would be explained in the Notes. In response to an observation by the representative of a non-governmental organization, the International Bureau expressed the view that the means of notification should be a matter of national law and not regulated by the draft Treaty. After some discussion, paragraph (3)(a) was adopted with the modifications suggested by the International Bureau.

66. *Paragraph (3)(b)*. This provision was adopted as proposed, with the consequential change that “paragraph (2)(d)” would be modified to “paragraph (2)(c).”

Draft Rule 6: Receipt of Communications

67. *Paragraph (1)*. A proposal by the Delegation of Australia that this paragraph should be deleted because it was unnecessary and had no basis in the Treaty was supported by one other delegation and the representative of one intergovernmental organization. The Chair suggested that the matter might be dealt with in the Notes or an Agreed Statement at the Diplomatic Conference. The Delegation of Switzerland, supported by the representatives of three non-governmental organizations, expressed the view that the actual date of receipt should always be accorded to communications received by electronic means, although another delegation, while agreeing, questioned whether different rules could be applied to communications received on paper and those received by electronic means. Another delegation suggested that the style of the provision did not fit within the usual style of the Treaty of providing maximum allowable requirements. A further delegation suggested that the phrase “closed for the receipt of such communications” be amended to “closed for business.” Following this discussion, it was agreed that the paragraph be referred to the International Bureau for further study.

68. *Paragraph (2)*. The Delegation of the United States of America stated that paragraph (2) suffered from the same defects as paragraph (1), and suggested that the rule as a whole be deleted. In response to a query by the representative of a non-governmental organization, the International Bureau explained that the manner in which a delivery service was specified was a matter for national law. Following some further discussion, paragraph (2) was referred to the International Bureau for further study.

Draft Article 6: Validity of Patents; Revocation

69. *Paragraph (1)*. In response to a question by the Delegation of the United States of America, it was agreed that the term “fraudulent intention” covered both fraud and inequitable conduct, and that this should be stated in the Notes. Following an intervention from the Representative of EAPO, it was also agreed to include in the Notes a clarification with respect to the relation between the term “fraudulent intention” and civil or criminal liability. In reply

to a query raised by the Delegation of Burkina Faso, the International Bureau explained that, as stated in the Notes, the phrase “revoked or invalidated” was intended to encompass any sanction of equivalent effect, and would not require a Contracting Party to adopt any particular form of revocation or invalidation. Following this discussion, paragraph (1) was adopted as proposed.

70. *Paragraph (2)*. In response to a proposal of one delegation to make it clear that the phrase “where permitted under applicable law” referred to amendments and not to revocation, the Chair suggested removing the comma after the word “corrections.” In response to a query by the Delegation of the United States of America, it was agreed that the Notes would clarify that an opportunity to make observations prior to a decision in court proceedings would satisfy this provision. Following this discussion, paragraph (2) was adopted with the change suggested by the Chair

Draft Article 7: Representative; Address for Service

71. *Paragraph (1)(a)*. This provision was adopted as proposed.

*72. *Paragraph (1)(b)*. This provision was agreed to be acceptable, subject to a request by the Delegation of the United States of America to exclude the signature of an oath or declaration by the inventor, which could not be signed by a representative even if the inventor were the applicant. The representative of one non-governmental organization expressed the view that this provision should not include acts, such as the transfer of title or abandonment, where the signature of the owner rather than the representative should be required. However, one delegation and the representative of another non-governmental organization disagreed and said that the representatives should be able to carry out any act on the applicant’s behalf if so authorized. The Chair’s suggestion to include any acts under this subparagraph except those expressly referred to by the Delegation of the United States of America was supported by one delegation. It was agreed that this provision would be referred to the International Bureau for further study as to how to best include the exception expressed by the Delegation of the United States of America into the draft Treaty.

*73. *Paragraph (2)*. The Delegations of Australia, the Republic of Korea, Switzerland, the United Kingdom and the United States of America and the Representatives of EPO, ABA, AIPLA and BDI were in favor of including a maximum number of exceptions under this paragraph, in particular, inclusion of both Alternatives A and B, and addition of a missing part of the description under item (iii***bis***) in accordance with amended draft Article 4(5). They believed that the filing of certain documents and payment of fees did not require any substantive work, and simplification of the patent system would result in cost reduction. The Representative of the EPO noted that, although the EPO did not require any mandatory representation of applicants located in one of the EPC contracting states, representatives were still appointed in 90% of the cases.

*74. The Delegations of Canada, South Africa and the Russian Federation were in favor of deleting all exceptions. The Delegation of South Africa pointed out the difficulties for the Office in contacting applicants outside the territory. The Delegation of Italy, recalling that the draft Treaty was aimed at simplifying procedures and not directed to substantive law, stated

that this paragraph as drafted would impose on smaller offices the need to handle documents, and would have the effect of creating an imbalance between developed and developing countries. In this respect, it proposed that, except for the purposes of draft Article 4, any Contracting Party should be permitted to require that a person be represented for any procedure before the Office, or alternatively, that the exceptions be limited to items (i), (ii) and (iv). The Representative of PTIC said that the exceptions under this paragraph would only benefit large corporations which would be capable of proceeding before foreign Offices.

*75. The Delegation of Portugal reserved its position concerning the paragraph as a whole. The Delegation of Japan reserved its position to solicit internal and external opinions on what the role of the representative should be, although its current requirement that foreign residents be represented worked efficiently in Japan. The Delegation of China was in favor of deletion of all the exceptions under this paragraph, and stated that, if the exceptions were maintained, it would reserve its position concerning this paragraph as a whole.

*76. The Delegations of Burkina Faso and Tajikistan and the Representative of OAPI proposed that the exceptions under this paragraph be left to national laws. The Representative of AGESORPI agreed, on the grounds that national Offices should have the power to adopt representation rules appropriate to ensure the applicant's safety, the proper operation of the Office and the quality of translations. As this provision would have a detrimental impact on the profession throughout the world, he considered that the issue was highly political. The Representative of ASIPI said that the provisions relating to representatives under the national laws of each country would be in conflict.

77. The Delegation of Indonesia and the representative of FICPI were opposed to this paragraph for the following reasons: item (ii) was superfluous in view of the requirements under draft Article 4; implementation of this provision would impose additional cost and infrastructure on an Office since it would have to deal regularly with non-residents; this provision hindered development of skills of the patent agent profession, especially in developing countries; and it was a matter of substantive law. The Representative of ABPI and ABAPI also noted that this paragraph could be a serious disadvantage to developing countries in terms of the development of an industrial property profession.

78. The Delegation of Iran (Islamic Republic of) and the Representative of the EAPO suggested the deletion of this paragraph as a whole.

*79. Some delegations and representatives supported only certain items or suggested deleting other items. The Delegation of Spain agreed on the inclusion of items (i) and (ii) but suggested to delete Alternative A, item (iii), and said that item (iii*bis*) was confusing. The Delegation of Belgium suggested that the square brackets around Alternative A be taken out and the square brackets around Alternative B be left. The Delegation of the Netherlands supported the inclusion of items (i), (iii) and (iii*bis*), but suggested deleting item (ii). The Delegation of Peru was opposed to item (ii) and Alternative A. The Delegation of The former Yugoslav Republic of Macedonia pointed out that item (i) created a problem where the Office could not check the payment of fees. The Representatives of APAA and JPAA said that items (ii) and (iii) of Alternative A should be deleted. The Representative of JPAA stated that effective cooperation between the national patent office and qualified representatives would maintain a high quality of the first application and translation, furthering effective protection

for inventors. The Representative of KPAA indicated that the submission of translations by non-professionals might result in a low quality of translation, which would be against the benefit of applicants.

80. Concerning item (i), the Representative of PTIC stated that a separate maintenance fee might be acceptable as an exception under this paragraph.

81. As regards item (ii), in reply to an intervention of the Delegation of the United States of America, the International Bureau explained that, if item (ii) were deleted from the draft Treaty, although an applicant could file an application without a representative and receive a filing date under draft Article 4, the applicant would have to appoint a representative within a short time or the application would be refused. On the other hand, if item (ii) were retained in the draft Treaty, an applicant would only be obliged to appoint a representative at the point when some action would have to be taken in the subsequent procedure after the filing of his application. Further, the Representative of FICPI pointed out that item (*iii bis*) could be incorporated into item (ii) since both items were related to the establishment of a filing date.

82. The Delegation of Australia pointed out that, although the PCT did not require any representation in order to enter the national phase, no negative consequences had yet appeared. It further stated that item (*iii bis*) should include other missing elements of an application. The Delegation of Switzerland questioned whether the payment of a fee referred to in item (i) could be considered a "procedure before the Office," and whether item (ii) could be included under Article 4.

83. After a full discussion, it was agreed that this provision would be referred to the International Bureau for further study on the basis of the comments made.

84. *Paragraph (3)*. The discussion of this paragraph was based on the proposals in document SCP/1/8. A proposal by the Delegation of the United States of America that this paragraph be deleted, both in order to avoid undermining any exceptions which might be adopted under paragraph (2) and to avoid imposing an unnecessary burden on an applicant who appointed a representative only after filing an application, was opposed by two other delegations. Another delegation stated that it wished to study the proposal.

85. The Delegation of Germany also proposed the deletion of paragraph (3) on the grounds that the provision of the address required by the Office was adequately covered by the provisions of proposed new Article *1 bis*(3). In response to a query by the Delegation of Switzerland, the International Bureau expressed the opinion that it would not be possible to delete paragraph (3) on the basis that the requirement for the provision of an address for service was a requirement which was less than the maximum of mandatory representation permitted under paragraph (2).

86. The Delegation of the United States of America proposed that a further provision should be added to paragraph (3) to permit a Contracting Party to require an applicant to state whether an application had been prepared with the assistance of an invention marketing company and, if so, to indicate the name and address of that company. Following some discussion, the proposal was referred to the International Bureau for further study.

87. *Paragraph (3)(a)*. A proposal by the Chair, in response to a comment by the representative of one intergovernmental organization that the preamble should make it clear that the provision applied “Where no representative is required and no representative is appointed...” was supported by one delegation. As an alternative, the representative of one non-governmental organization suggested that paragraph (3)(a) should be expanded to state that the requirement to provide an address for service would be satisfied by the provision of a representative’s address for service.

88. The Delegation of the Russian Federation suggested that the wording “other than a procedure referred to in paragraph 2(i) to (iv)” should be deleted so that there would be no exceptions to the right of a Contracting Party to require an unrepresented applicant, owner or other person to provide an address for service on the territory of the Contracting Party for the purposes of any procedure before the Office. The Chair’s proposal that the exceptions should be retained but the wording in question amended to refer to “... any exceptions referred to in paragraph (2)” was supported by one delegation.

89. Following some discussion, during which it was noted that “an address for service” might be different from “an address for correspondence,” and the terms “address for correspondence” or “an address in the designated State for the purposes of receiving notifications” (as used in PCT Article 27(7)) were suggested as alternatives to the term “address for service,” the International Bureau recommended that the latter term be retained for conformity with Article 2(3) of the Paris Convention for the Protection of Industrial Property which expressly reserves the designation of an address for service from the provision on national treatment for nationals of countries of the Paris Union. The Delegation of Australia stated that it was not prepared to relinquish its rights under this provision of the Paris Convention. In response to interventions by the Delegations of Spain and Switzerland, it was agreed that the International Bureau should ensure that the terminology in the Spanish and French languages used for the term “address for service” in the draft Treaty should be the same as that in the Paris Convention.

90. The Delegation of Australia also proposed the deletion of the words “on the territory of the Contracting Party” to leave the matter of the territory to national law. The Chair noted that if this proposal were adopted, the same amendment would appear necessary in Article 7(1)(a). Following some discussion, during which this proposal was supported by one delegation but opposed by one delegation, and alternative proposals were made by two other delegations and the representative of a non-governmental organization, the Chair suggested that paragraph (3)(a) should be amended to permit a Contracting Party to require that “the address for service be on the territory of the Contracting Party or any territory accepted by that Contracting Party.” This proposal was supported by the Delegation of Australia and two other delegations on the understanding that, in the case of, for example, the Netherlands, the territory could be, say, the Benelux or the European Economic Community. The International Bureau confirmed that, in the case of a regional Office such as the European Patent Office, the territory could be the territory of the Contracting States of that Office.

91. Following further discussion, it was agreed that paragraph (3)(a) should be referred to the International Bureau for further study, taking account of the above matters and the relationship with Article (1*bis*)(3).

- *92. *Paragraph (3)(b)*. A suggestion by the representative of a non-governmental organization that the words “real and effective” be deleted from the term “real and effective industrial or commercial establishment” was not adopted following an explanation from the International Bureau that this term had been used for conformity with Article 3 of the Paris Convention.
93. On the suggestion of the Chair, it was agreed that paragraph (3)(b) be referred to the International Bureau for further study together with paragraph (3)(a).
94. *Paragraph (4)(a)*. The discussion of this subparagraph was based on the proposals in document SCP/1/8. The International Bureau further suggested that the words “or format” be added after “form” in item (ii), consequential to the modification adopted under Article 5(2). Following some discussion during which the International Bureau confirmed that the separate communication under item (i) could be in the form of a power of attorney plus a cover sheet, this provision was adopted with the modifications proposed.
95. *Paragraph (4)(b)*. In response to a query by the Representative of OAPI, the International Bureau explained that in the case of a power of attorney relating to more than one application and/or patent, any Contracting Party which so wished would be able to require a separate copy of the single request for each application and patent and also to charge a fee based on the total number of applications and patents concerned. The Delegation of Australia suggested that this provision be part of the study on the PLT-PCT interface, and proposed the transfer of much of the content of this paragraph to the Regulations. Following this discussion, this provision was adopted as proposed, on the understanding that it could, as with all provisions, be re-opened based on the results of the study.
- *96. *Paragraph (5)*. The International Bureau suggested that, for consistency, the words “or Format” be added after the word “Form” in the title, and that the words “or in a format” be added after each instance of the word “Form.” The Delegation of Australia, supported by the Delegations of Germany and Greece, proposed that this provision also be transferred to the Regulations. The International Bureau observed that the proposed transfer could mean that mandatory acceptance of Model Forms or Format could be deleted by a simple majority decision in the Assembly.
97. The Delegation of the United States of America inquired as to whether a Contracting Party could require that a power of attorney be in the format of the ISAF that it had explained earlier in the meeting. The International Bureau observed that, if the ISAF format were in the future to be incorporated by the PLT Assembly into the Regulations as the international norm, a Contracting Party could then require that format. In response to a suggestion by the Delegation of Andorra that the term “corresponds to” was too broad, the International Bureau observed that the term had been used in the Trademark Law Treaty (TLT) to refer to forms in a different language. However, in light of the current discussion concerning electronic filing and format, it might be necessary to revisit this terminology. Following this discussion, paragraph (5) was adopted with the modifications proposed by the International Bureau.
98. *Paragraph (6)*. The International Bureau suggested that the title of this paragraph be amended to “Form, Format and Means of Filing of Powers of Attorney” for consistency. The paragraph was adopted with this modification.

99. *Paragraph (7)*. The International Bureau suggested that the title of this paragraph should be amended to “Translation of Power of Attorney.” The paragraph was adopted with this modification.

100. *Paragraph (8)*. The International Bureau suggested that a new item (i), “the name and address of the representative,” be added to provide generally for the requirement currently included in Rules 9(1) to 12(1), with consequential renumbering of former items (i) and (ii). The Delegation of the United States of America questioned whether this provision would allow a requirement for a digital certificate in an electronic communication from a representative. The International Bureau suggested that it would study the inclusion of a general provision concerning authentication of electronic communications. Paragraph (8) was adopted with the modifications proposed by the International Bureau, on the understanding that the International Bureau would study the question of authentication of electronic communications.

101. *Paragraph (9)*. This paragraph was adopted as proposed.

*102. *Paragraph (10)*. In response to a question by one delegation, the International Bureau confirmed that the issue of whether or not a law firm could act as a representative was a matter for national law not regulated by the Treaty. In response to a second question by the same delegation as to whether the provisions under PCT Rule 90 concerning representatives were imported into the draft Treaty, the International Bureau stated that the specific provisions of the PCT, in particular with respect to common representatives, were not expressly incorporated, but that the proposed study on the PCT-PLT interface would consider this matter. That same delegation indicated that it did not support the inclusion of the provisions of PCT Rule 90 in the PLT. Following this discussion, paragraph (10) was adopted as proposed.

103. *Paragraph (11)*. The International Bureau suggested that the references “(a) [and (c)]” be added after “Article 5(9) and (10)” in order to restrict the reference to the relevant subparagraphs (a) and (c) of Article 5(10), the latter of which was adopted in square brackets. The Delegation of Australia pointed out that the phrase “except that the time limits with respect to any procedure concerning representation and address for service shall be prescribed in the Regulations” implied that, without such an express exception, corresponding Rules were incorporated by reference along with Articles through the use of *mutatis mutandis*, and that this would contradict the practice used in other places of the draft Treaty, for example, the use of *mutatis mutandis* in the Regulations. After some discussion, it was agreed that the words were implicit and should be deleted, and that the International Bureau would comprehensively study the use of *mutatis mutandis* in the draft Treaty in order to avoid inconsistencies. Following this discussion, paragraph (11) was adopted with the modifications proposed.

Draft Rule 7: Details Concerning Representation and Address for Service Under Article 7

*104. *Paragraph (1)*. The International Bureau suggested that, for consistency, the title of this paragraph should be amended to read “Form, Format and Means of Filing of Powers of

Attorney,” that the words “form, format and means of” should be inserted before the word “filing,” and that the words “on paper or in electronic form or by other means” should be deleted. The paragraph was adopted with these modifications.

105. *Paragraph (2)(a)*. This provision was adopted as proposed.

106. *Paragraph (2)(b)*. The International Bureau suggested that the words “because indications allowing the applicant, owner or other person to be contacted by the Office have not been furnished” be inserted after the words “have not been made,” in line with the modification adopted under Rule 2(1)(ii). The provision was adopted with this modification.

107. *Paragraph (2)(c)*. This provision was adopted as proposed.

Draft Article 8: Signature

108. *Paragraph (1)*. The International Bureau suggested to amend this paragraph so that it would apply to any means of communication, not only those enumerated. One delegation proposed that a further amendment be added so that the paragraph would apply to all means of self-identification, not only to a hand-written signature, as was the case in paragraphs (2) and (3).

109. After some discussion, the Chair proposed to add a new definition in Article 1 of the term “signature” as “any means of self-identification,” and to re-draft Article 8(1) to read:

“*[Signature of communications]* Where a Contracting Party requires a signature for the purposes of any communication, that Contracting Party shall accept any signature that complies with the requirements prescribed in the Regulations.”

110. The consequence of this amendment would be that a Contracting Party would be required to accept any signature that complies with the requirements prescribed in the Regulations, but would remain free to accept any other signature it wished. The paragraph and the definition of “signature” were adopted as proposed by the Chair.

*111. *Paragraph (2)*. The International Bureau suggested that the words “or by telefacsimile” be added to the end of this paragraph, in order to bring it in line with PCT Rule 92.4(b). After some discussion, it was agreed that this paragraph should not be limited to signatures communicated “on paper or by facsimile,” but rather to delete these words in order to preclude any of the enumerated forms of certification by third parties with respect to any signature under the new definition, including digital signatures or certificates issued by certification authorities. However, it was agreed that the words “except as provided in the Regulations” would be added, so that the Regulations could allow, for example, authentication of digital signatures or certificates by a certification authority where that was the norm. It was also agreed that this paragraph should not be made subject to paragraph (3), as had been proposed by the International Bureau, as that would allow a Contracting Party to require any of the enumerated forms of certification as evidence in cases of doubt. It was further agreed that the words “, or other means of self-identification,” should be deleted as a consequence of the adoption of a new definition of “signature.”

112. Paragraph (2) was adopted with the above modifications.

113. *Paragraph (3)(a)*. After some discussion concerning whether a Contracting Party should be permitted to require, as evidence in cases of doubt, any of the forms of certification enumerated in paragraph (2), it was agreed that the words “Subject to paragraph (2)” would be added to the beginning of this provision, so that, while a Contracting Party could accept such certification offered as evidence, it could not require it. It was further agreed that the words “, or other means of self-identification,” should be deleted as a consequence of the adoption of a new definition of “signature.”

114. The provision was adopted with the above modifications.

115. *Paragraph (3)(b)*. Following an observation by the International Bureau that this provision was not clearly necessary if it were only included to prevent the provisions of paragraph (2) being circumvented, as stated in Note 8.06, it was agreed that it should be deleted. As a consequence paragraph (3)(a) would become paragraph (3).

116. *Paragraph (4)*. The International Bureau suggested that, since only subparagraph (a) of paragraph (10) was relevant to Article 8(1) and (2), the reference to “paragraph (10)” should be modified to “paragraph (10)(a)”. The International Bureau also suggested that the words “except that the time limits with respect to signature shall be prescribed in the Regulations” be deleted in line with the modification in Article 7(11). The paragraph was adopted with these modifications.

Draft Rule 8: Details Concerning Signature Under Article 8

117. *Paragraph (1)(a)*. The International Bureau suggested that the words “, or the seal” and “or whose seal is used” be deleted from the introductory words, consequential to the definition of “signature” adopted in the discussions under Article 8(1). After some discussion, during which the International Bureau explained that item (ii) was of particular relevance where a person signed on behalf of a legal entity, this provision was adopted with the modification suggested.

118. *Paragraph (1)(b)*. A suggestion by the International Bureau that this provision be deleted as no longer needed was adopted, with consequential renumbering of paragraph (1)(a) as paragraph (1).

119. *Paragraph (2)*. The International Bureau suggested that the words “, bar-coded label or seal”, “or sealing” (two occurrences) and “or seal” be deleted, consequential to the definition of signature. The paragraph was adopted with these modifications.

120. *Paragraph (3)*. This provision was adopted as proposed.

121. *Paragraph (4)(a)*. The International Bureau suggested that the words “or the reproduction of the seal, together with, where required under paragraph (1)(a), the indication in letters of the name of the natural person or legal entity whose seal is used” be deleted, since

the new definition of “signature” would imply that, while the communication must be considered to be signed under this paragraph, that signature would still be subject to the other paragraphs of the Rule in order to be accepted by a Contracting Party.

122. One delegation observed that, if a reproduction of a seal appeared as a result of an electronic communication, the Contracting Party should consider that communication to be signed, but it was not consequentially required to accept that form of signature if it did not otherwise accept it on paper. Another delegation commented that Note R8.06 should be amended.

123. An extended discussion ensued, relating to whether this paragraph should apply to paper communications only, or to paper and telefacsimile, or to other electronic communications as well. In particular, one delegation explained that other technologies such as PDF were, similar to facsimile, electronic communications which resulted in paper copies that contained signatures. The representative of a non-governmental organization pointed out that graphical reproductions of signatures could appear on a computer screen, as well as on paper, as a result of communication by electronic means.

124. In view of this, the International Bureau, supported by the representative of an intergovernmental organization, suggested that the provision refer to a “graphical representation of a signature.” This suggestion was opposed by another delegation which preferred the phrase “electronic image form,” but the International Bureau pointed out that the intention would be to cover both paper copies and electronic images. One delegation suggested that it would be preferable to use terminology which was technologically neutral. In response to a suggestion that an electronic image of a signature could also be included on a floppy disk that was mailed to the Office, the International Bureau suggested also including the phrase “communications to the Office by electronic means or in electronic form.”

125. The International Bureau, by way of offering clarification of Rule 8, suggested that paragraphs (1) and (2) related to signatures in any form and communicated by any means. Paragraph (3) related to signatures of communications on paper. Paragraph (4) extended the provisions of paragraph (3) to signatures which appear in graphical form as a result of a communication by electronic means, whether in electronic form or on a paper copy, without the possibility of requiring an original signature on paper for confirmation. Paragraph (5) would relate to signatures in electronic, but not graphical, form.

126. In conclusion, this subparagraph was referred to the International Bureau for further study.

127. *Paragraph (4)(b)*. It was agreed that this provision should be deleted as suggested by the International Bureau.

128. *Paragraph (5)(a)*. In view of the purpose of this Rule, as explained by the International Bureau during the discussion under paragraph (4), the International Bureau suggested the following draft for discussion:

“(5) [*Electronic Signatures*] (a) Where a Contracting Party permits electronic signatures and there are requirements applicable under the Patent Cooperation Treaty in

relation to electronic signatures, that Contracting Party shall accept an electronic signature which complies with those requirements.”

129. As an alternative to the term “electronic signature,” the words “signature in electronic form,” “digital signature” or “digital self-identification” were discussed. One delegation observed that the term “self-identification” should not be used, as it already appeared in the definition of “signature”. Another delegation pointed out that the term “digital self-identification” would include a signature by facsimile. The Delegation of the United States of America pointed out that the concept of a “digital signature” and a “digital certificate” should be distinguished, explaining that a “digital signature” was used to prove that the content of the document which was received was identical to the content of the document which was sent, while a “digital certificate” certified the identity of the signatory.

130. In conclusion, it was agreed that this provision should be referred to the International Bureau for further study together with paragraph (4).

131. *Paragraph (5)(b)*. This provision was adopted as proposed.

132. *Paragraph (6)(a)*. This provision was adopted as proposed.

133. *Paragraph (6)(b)*. The International Bureau suggested that, for consistency, the words “because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been furnished” be added after the words “has not been made.” This provision was adopted with the modification suggested by the International Bureau.

Draft Article 9: Request for Recordal of Change in Name or Address

134. The Delegation of the United States of America, supported by the Delegations of the United Kingdom and Australia, proposed that Articles 9 to 11 be transferred to the draft Regulations. The International Bureau explained that authority for such Regulations would still be needed in the Treaty. It also noted that PCT Article 58(1)(ii) and (iii) provided in general terms for Regulations to provide Rules concerning administrative matters and details useful in the implementation of the Treaty. Following some discussion, it was agreed that Articles 9 to 11 should be moved to the Regulations on the understanding that authority for such Regulations in express, rather than general, terms would be provided in the Treaty, and that the International Bureau would make any changes, necessary consequential to the transfer, to any text of Articles 9 to 11 that might be adopted at the present meeting.

*135. *Paragraph (1)*. The discussion of this paragraph was based on the draft provision contained in document SCP/1/8. In reply to a question raised by one delegation, the International Bureau confirmed that, under Article 7(1)(b), a representative would be permitted to sign on behalf of the applicant or owner. A suggestion by the representatives of one intergovernmental organization and one non-governmental organization to delete the words “signed by an applicant or owner” in this Article as well as in Articles 10 and 12, since these words were in contradiction with the fact that, under Article 7, a Contracting Party might provide for mandatory representation in these matters, did not receive support from any Member State. This paragraph was adopted as proposed.

136. *Paragraph (2)*. The International Bureau suggested that, for consistency, the words “or Format” should be added after “Form” in the title and in subparagraph (b), and that the words “or in a format” should be added after “Form” in subparagraph (a) and after the words “presented on a form” in subparagraph (b). The paragraph was adopted with these modifications.

137. *Paragraph (3)*. The International Bureau suggested that, for consistency, the title should be amended to read “Form, Format and Means of Filing of Requests.” The paragraph was adopted with this modification.

138. *Paragraphs (4) and (5)*. These paragraphs were adopted as proposed.

139. *Paragraph (6)*. In response to a comment by the representative of an intergovernmental organization, the International Bureau explained that a corresponding requirement was provided for in the TLT. In addition, as in the case of powers of attorney under Article 7(4)(b), any Contracting Party which so wished would be able to require a separate copy for each application and patent, and to charge a fee based on the total number of applications and patents concerned. In response to a comment of one delegation, the International Bureau pointed out that the long recital of words concerning applications and patents was included to avoid the use of the term “and/or”, which was ambiguous in translation. Following this discussion, paragraph (6) was adopted as proposed.

140. *Paragraph (7)*. This provision was adopted as proposed.

141. *Paragraph (8)*. In response to a question raised by one delegation, the International Bureau explained that the antecedent for the word “request” could be found in paragraph (1). This paragraph was adopted as proposed.

142. *Paragraph (9)*. A proposal by the Delegation of Canada that the word “formal” be added to the word “requirements” as in Article 7(10) was agreed. A suggestion by one delegation that the last sentence should be deleted was withdrawn following comments by one delegation and the representatives of three non-governmental organizations, to the effect that the wording was needed to make it clear that certificates could not be required as evidence under paragraph (10). Instead, it was agreed that the Notes should explain that a Contracting Party could require evidence to be furnished to the Office where the Office reasonably doubted the veracity of any indication contained in the request, but that the applicant should be able to decide what evidence he would submit.

* 143. The Delegation of China indicated that, even if there were only a change in name or address and no change in the rights of an owner, its Office required certificates to be submitted as provided for by its relevant laws and regulations. The International Bureau made some general remarks explaining that Article 9 also covered the situation in which there was a change in name, but no change in the person of the applicant or owner, for example, as a result of a change of name upon marriage.

144. Following the discussions, paragraph (9) was adopted with the modification agreed.

145. *Paragraph (10)*. The International Bureau explained that it would appear more appropriate to regulate non-compliance in a separate paragraph, and to restrict paragraph (10) to notifications. It therefore proposed the deletion of the words “and (10)” from the text, and “Non-Compliance with Requirements” from the title, of this paragraph. The International Bureau also suggested that, in accordance with the modification adopted under Article 7(11), the words “, except that the time limits with respect to requests for recordal of a change in name or address shall be as prescribed in the Regulations” should be deleted. The paragraph was adopted with these modifications.

146. *New Paragraph (10bis)*. Consequential to the modification adopted under paragraph (10), the International Bureau suggested the addition of a new paragraph (10bis), which would read:

(10bis) “[*Non-Compliance with Requirements*] Where one or more of the requirements applicable under paragraphs (1) to (7) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may provide that the request shall be refused, but no more severe sanction may be applied.”

147. In response to a question by the Delegation of Switzerland, the International Bureau explained that this proposal was intended both to limit the sanction to the refusal of the request, so that no more severe sanction, such as revocation of the patent, should apply, and to allow a Contracting Party to apply a less severe sanction if it wished. Following this explanation, the new paragraph was adopted as proposed.

148. *Paragraph (11)*. The International Bureau suggested that the reference to paragraph (10) be amended to (10bis) consequential to the adoption of new paragraph (10bis). This paragraph was adopted with this modification.

Draft Rule 9: Details Concerning Request for Recordal of Change in Name or Address Under Article 9

149. *Paragraph (1)*. The discussion of this paragraph was based on the draft provision contained in document SCP/1/8. The paragraph was adopted as proposed.

150. *Paragraph (2)*. The International Bureau suggested that, for consistency, the title should be amended to read “Form, Format and Means of Filing of Requests.” The paragraph was adopted with this modification.

151. *Paragraph (3)*. The International Bureau suggested that, consequential to the modifications adopted under Article 9(10), paragraph (3)(b) should be deleted with the consequential renumbering of paragraph (3)(a) as “paragraph (3)” and the deletion of the words “Subject to subparagraph (b)” from that paragraph. The paragraph was adopted with these modifications.

152. *New paragraph (4)*. The International Bureau suggested that, consequential to the adoption of new Article 9(10bis), a new paragraph (4) be added, as follows:

“(4) [*Time Limit Under Article 9(10bis)*] The time limit referred to in Article 9(10*bis*) shall be

- (i) subject to item (ii), the time limit applied under paragraph (3);
- (ii) where indications allowing the person who made the request referred to in Article 9(1) to be contacted by the Office have not been furnished, not less than three months from the date on which the request referred to in Article 9(10*bis*) was received by the Office.”

153. This new paragraph was adopted as suggested.

*154. *Registration numbers.* The Delegation of Japan, supported by the Delegation of the United States of America, suggested that Article 5(4), which provides for a requirement concerning a registration number of an applicant or representative, apply, *mutatis mutandis*, to requests under Articles 9 to 16. The International Bureau pointed out that, as far as the number of the representative was concerned, this was covered by Article 7(8)(iii). The Delegation of the United States of America observed that electronic communications might require a customer of the Office to have a personal identification number (PIN) or a digital certificate containing a registration number. The International Bureau stated that it would examine this issue in the context of its study on authentication of electronic communications.

Draft Article 10: Request for Recordal of Change in Applicant or Owner

155. The Chairman noted that it had been agreed during the discussions on Article 9 that all of the details under Article 10 should be transferred to the Regulations, under the authority of a chapeau Article to be included in the Treaty.

156. *Paragraph (1).* Discussion of this paragraph was based on the proposals included in documents SCP/1/8. The International Bureau suggested that the word “new,” which had been unintentionally omitted in that document, should be reinserted before “owner” in the phrase “new applicant or owner.” In response to the representative of an intergovernmental organization, it was explained that the term “owner” was used only in relation to patents in accordance with the definition of that term in Article 1(ix), and that, in accordance with Article 7(1)(b), a representative could sign on behalf of an applicant, owner, new applicant or new owner. These points would be made clear in the Notes. Following a query by one delegation, it was agreed that the term “communication” should be retained in the chapeau, the form of the communication being regulated under paragraphs (2) and (3). Following this discussion, paragraph (1) was adopted as proposed, with the further modification suggested by the International Bureau.

157. *Paragraph (2).* This paragraph was adopted with the modification, suggested by the International Bureau, that the title be changed to read “Request Form or Format” for consistency.

158. *Paragraph (3)*. This paragraph was adopted with the modification, suggested by the International Bureau, that the title be changed to read “Form, Format and Means of Filing of Requests” for consistency.

159. *Paragraph (4)(a), introductory words*. A proposal by the Delegation of Japan that the phrase “, where the recordal is requested by the new applicant or new owner, rather than by the applicant or owner,” together with the associated square brackets, be deleted to enable the Contracting Party to require documentation in all cases in order to establish the reliability of the recordal, was supported by the Delegations of the Russian Federation, the Republic of Korea, China, South Africa, the United States of America, Burkina Faso, Tajikistan, Belgium, Andorra, Brazil, Sudan and Ghana, and by the Representatives of the EAPO, ABA, JPAA and BDI. A counter-proposal by the Delegation of Australia that the above phrase should be retained without the square brackets was supported by the Delegations of Switzerland, Andorra, France, New Zealand and South Africa, and by the Representatives of EPO, AIPPI and UNICE. The Delegation of Spain stated that it reserved its position on the above proposals, but could withdraw its reservation if the documentation referred to in items (i) to (iii) was at the option of the Contracting Party rather than the requesting party. The Representative of FICPI stated that, although he preferred the retention of the phrase in question, he would not oppose its deletion if the applicant had the option of furnishing an uncertified certificate of transfer under item (iii). In view of the lack of consensus on this matter, it was agreed that the phrase in question should be retained in square brackets.

160. The Delegation of the United States of America proposed that the phrase “at the option of the requesting party” be replaced with “at the option of the Contracting Party.” Following some discussion during which it was noted by the International Bureau that the phrase “at the option of the requesting Party” was used in the TLT, Article (11)(1)(b), the proposal was supported by the Delegations of Spain, Japan, the Russian Federation and China, and by the Representative of ABA, but opposed by the Delegations of Australia, Switzerland, the United Kingdom, Burkina Faso, Finland and Malta, and by the Representatives of the EPO, AIPPI, CIPA, FICPI and UNICE, it was agreed that the words “requesting party” should be placed in square brackets followed by “[Contracting Party]”. The introductory words were adopted with this modification.

161. *Items (i) and (ii)*. These items were adopted with the modification, suggested by the International Bureau, that the words “, at the option of the requesting party,” should be added after the word “certified” in each item, for consistency.

162. *Item (iii)*. This item was adopted with the following modifications, suggested by the International Bureau: the words “by contract” were added after “transfer of ownership,” the words “in the form and” were deleted, and the sentence “Article 9(2) shall apply, *mutatis mutandis*, to the uncertified certificate of transfer of ownership” was added at the end of the item.

163. *Paragraph (4)(b) and (c)*. These provisions were adopted as proposed.

*164. *Paragraph (4)(d)*. The Delegation of Germany observed that the provision did not clearly cover the situation in which several co-owners had previously furnished to the Office an agreement stating that any one of the co-owners may dispose separately of his share of the

patent. Another delegation observed that if the national law of a Contracting Party required the consent of all the co-owners for a transfer to concur, it should be sufficient for the Office to be furnished with documentation showing that national law had been complied with, since consent of all the co-owners could then be assumed. In response to a query by the Delegation of the United Kingdom, it was agreed that the Notes would clarify that a copy of a prior agreement of joint applicants or owners to the sale of a share would satisfy the requirement of “evidence of consent to a change” under this paragraph.

165. Following some discussion it was agreed, on the proposal of the Chair as amended by a further proposal by one delegation, that, after the words “a Contracting Party may require that”, the words “evidence to the consent to the change of” be added, and that the words “give his consent to the change in a communication” be replaced by “be provided.” Paragraph (4)(d) was adopted with this modification.

166. *Paragraph (5)*. This paragraph was adopted with the modification, suggested by the International Bureau, that the words “where the document” be replaced by “where a document”.

167. *Paragraphs (6) and (7)*. These paragraphs were adopted as proposed.

*168. *Paragraph (8)*. The Delegation of China stated that its reservation on Rule 17 applied also to this paragraph. It was agreed that the words “or owner” should be deleted in conformity with the title. The paragraph was adopted with this modification, subject to the reservation of the Delegation of China.

169. *Paragraph (9)*. This paragraph was adopted as proposed.

170. *Paragraph (10)*. Following a proposal by the Chair that the paragraph be modified to refer to “formal requirements,” the representative of a non-governmental organization inquired as to the compatibility of the modified provision with the law of the United Kingdom. The Delegation of the United Kingdom explained that its national law on taxation prevented a statutory registrar from registering any document which had not been duly taxed by the payment of stamp duty. The Chair noted that this point had also arisen under the TLT, and had been dealt with by an agreed statement in the Records of the Diplomatic Conference to the effect that a requirement for taxation which would permit a Contracting Party to cancel, but not refuse, a recordal was consistent with that Treaty. If, however, the situation under United Kingdom law in respect of the transfer of applications and patents would not be covered by a similar statement, it might be necessary to consider adding a further provision to the Regulations. Following the discussion, paragraph (10) was adopted with the modification initially proposed by the Chair.

171. *Paragraph (11)*. The International Bureau suggested that the reference to Article 5(10) be changed to refer to Article 9(10*bis*), and that the words “except that the time limits with respect to recordal of a change in applicant or owner shall be as prescribed in the Regulations” be deleted for consistency. The paragraph was adopted with these modifications.

*172. *Paragraph (12)*. Discussion of this paragraph was based on the proposals included in document SCP/1/8. In response to a query from one delegation, the International Bureau

explained that the second sentence in the text of this paragraph as proposed in document SCP/1/8 had been inserted for avoidance of doubt, and that this would be made clear in the Notes. The paragraph was adopted as proposed.

* *Draft Rule 10: Details Concerning Request for Recordal of Change in Applicant or Owner Under Article 10*

*173. *Paragraph (1)*. Discussion of this paragraph was based on the proposals included in document SCP/1/8. The Delegation of the United States of America stated that it assumed that the request referred to in draft Article 10 would correspond to a cover sheet under its practice. It suggested that the following additional items be included under this paragraph: (i) description of the interest being conveyed; (ii) a statement that the information contained in the request is true and correct, and that the copies of the document are true copies; (iii) the signature of the person submitting the request and making the statements; and (iv) information relating to any government interest. The International Bureau pointed out that the third item was covered by the requirements under Articles 7(1)(b) and 10(1). The Delegation further explained that, in the course of implementing the ISAF project, the first item would permit easy administration and establishing a searchable database. The Delegation of Cuba stated that it might make a reservation on this paragraph as the proposal by the Delegation of the United States of America was not clear. The Chair suggested that the discussion could be elaborated further using the SCP Electronic Forum. It was agreed that further discussion was deferred to the next session.

Draft Rule 17: Manner of Identification of an Application Without Its Application Number

174. The Delegation of China reserved its position concerning this Rule.

175. *Paragraph (1)*. The International Bureau suggested that the words “or other person submitting the application” in two places in item (iii) were unnecessary in view of the definition of an “applicant” under adopted draft Article 1(viii). This provision was adopted with the modification.

176. *Paragraph (2)*. This provision was adopted as proposed.

General Comments on Other Articles and Rules

177. The Chair opened the floor for general comments on provisions of the draft Treaty that had not been discussed at the present meeting.

178. The Delegation of Australia said that it would prefer that the documents referred to in Article 11(4)(a)(ii) may be required, no matter who filed the request for recordal. With respect to Articles 13, 14 and 15, as proposed in document SCP/1/8, the Delegation stated that the revised proposal by the International Bureau addressed all of its concerns, but that it would prefer to keep the words “by the Office” in the text of Article 14.

* 179. The Delegation of Japan proposed the deletion of Article 4(5)(c), (d) and (e) as proposed in document SCP/1/8. In countries which have a first-to-file system, the filing date should not be dependent on the results of substantive examination concerning whether a missing part of the description or a missing drawing contained new matter, since the applicant or other relevant parties would be allowed to appeal against the results of the substantive examination, in effect causing instability of the patent rights. With respect to paragraph (d), the Delegation considered this to be a matter of substance which should not be covered by this draft Treaty. In addition, it preferred that the requirements referred to in Article 14(1)(ii) as proposed in document SCP/1/8 not include substantive requirements concerning patentability, such as novelty and inventive step.

180. The Delegation of the United States of America reiterated its earlier comments concerning Article 10(4) with respect to Article 11(4), and proposed including a phrase in Article 12, to the effect that “a Contracting Party may exclude the application of this Article to any mistake which must be corrected through reissue procedures.” With respect to the suggested revisions of Articles 13 through 15, the Delegation believed that they were evolving in a positive direction, but considered that Article 13 might not be necessary or, at least, should not be mandatory, as extensions prior to expiration of a time limit were an administrative burden. Extensions after expiration could be dealt with under Article 14. It preferred to retain the words “fixed by the Office” in Article 14, was concerned with the time limit which ran from the notification under Rule 14, and inquired whether the grounds mentioned in (iv) were consistent with those in (v).

181. The Delegation of Canada expressed the same concerns as the Delegation of the United States of America with respect to Article 12.

182. The Delegation of Spain supported the intervention of the Delegation of the United States of America with respect to Article 11(4), and reiterated its earlier comments concerning Article 10.

* 183. The Delegation of the Russian Federation supported the comments of the Delegation of Japan with respect to Article 4(5) as proposed in document SCP/1/8, and suggested that Article 4 oblige a Contracting Party to consider the set of elements referred to in paragraph (1)(a) as required and sufficient for the purposes of the filing date, rather than be an obligation to determine a particular date as the filing date. Thereby the Treaty would allow the Contracting Party’s freedom in determining another (earlier) filing date proceeding from the interests of the applicant. As regards Article 13, it was proposed to delete the words “fixed by the Office” from the title and from the text of that Article, and to add in the beginning of the text the words “A Contracting Party shall provide that.” As regards Articles 14 and 15, the Delegation proposed that Article 14 should be deleted and Article 15(1)(v) made optional. The Delegation also pointed out, with respect to the proposed amendment to the text of Article 3, that Contracting Parties take “measures” with respect to national security rather than “actions,” and gave examples of such “measures.”

* 184. The Delegations of South Africa and Germany stated their belief that the word “promptly,” which had been retained in Article 4(3) as proposed in document SCP/1/8, would cause difficulties for Offices which may not be able, because of heavy workloads, to send notifications promptly. The Delegation of the United States of America, supporting these

delegations, suggested that the word “promptly” be changed to, for example, “as soon as practicable.”

*185. The Delegation of the United Kingdom, supported by the Delegation of China, entered a reservation with respect to the proposed text for Articles 14 and 15, concerning their relative scope, and suggested that the provisions concerning reinstatement under Article 14 could be moved to Article 15, so that Article 14 would concern only further processing, not requiring intervening rights, and Article 15 would concern all reinstatement of rights. As the definition of failures in Article 15 had been broadened, the time limits could now also be expanded. The Delegation preferred a specific exemption for the time from the lapse of a patent, and, although it is consistent with the European Patent Convention, suggested that the time limit under Rule 15(1) not run from the date of removal of a cause, since determination of a “cause” and a “date of the removal of the cause” might be difficult for a Contracting Party which was more lenient with respect to the requirement under Article 15(1)(v) concerning the finding of due care or unintentionality by the Office. In the list of exceptions in Rules 15, it recommended to clarify that refusal to reinstate rights concerning accelerated processing could only result in a reversion to unaccelerated status.

186. The Delegation of Sweden observed that the term “time limits” did not appear appropriate in the context of Article 13(2). With respect to Article 14(1), it preferred to retain the text “fixed by the Office.” It also expressed concern with respect to Article 13(5), as its Office did not allow extension of time limits for payment of fees. With respect to the first point, the International Bureau agreed that there was a problem in the draft Treaty, and suggested that the term “exceptions” may be preferable.

187. The Delegation of Egypt inquired whether, under Articles 11(9) and 12, there would be any restriction on the means allowed for notification. It pointed out that, since the burden of providing evidence of notification fell upon the Office, and any limitation on the means of notification permitted would go beyond the competence of national legislation under this Treaty, the Contracting Party should be free to provide for any means of notification.

188. The Representative of the EPO expressed agreement with the intervention of the Delegation of Japan concerning Article 4. He supported Articles 13 through 16 as proposed in document SCP/1/8, in general, including the proposed re-drafts of Articles 14 and 15, subject to deletion of the text in square brackets in Article 14. He stated that the exceptions under Articles 14 and 15 should be minimum and said there was no need for any provision concerning intervening rights.

*189. The Representative of OAPI preferred that, as had been proposed under Article 10(4), Article 11(4) should include the phrase “at the option of the Contracting Party.” As regards Article 14, the Representative stated that this Article did not provide for the situation, in Offices that do not undertake substantive examination when a priority is claimed, where the priority time limits were not respected and the applicant had, or had provided, reasons that have prevented him from respecting priority deadlines under the Paris Convention. The Representative stated that he was reviewing the proposal, but suggested that a new item (iii) under Article 14(1) might resolve its problems. He suggested that Articles 14 and 15 be combined, and that they not go into great detail.

*190. The Representative of PTIC, with respect to the statements of the Delegations of the United States of America and Canada concerning Article 12, suggested that the following definition could be included in Article 1: “‘Mistake’ means a formal, clerical or obvious omission or error in the records of the Office.”

*191. The Representative of FICPI expressed agreement with Articles 14 and 15, as proposed in document SCP/1/8.

192. The Chair thanked the Committee for its comments, and indicated that further comments and clarifications could be submitted through the Electronic Forum.

Agenda Item 5: Future work

193. The Chair invited the International Bureau to make comments concerning the future work of the SCP.

194. Concerning the draft Report of the present meeting, the International Bureau recalled the decision of the Standing Committee that the draft Report would be circulated, and comments submitted, using the SCP Electronic Forum. In particular, the draft Report would be distributed via the Electronic Forum on the Wednesday following the meeting, and there would be a two-week period for submission of comments. Those comments would be incorporated immediately into a Report, which would be put on the Electronic Forum and distributed on paper in the usual way, for adoption at the next session of the SCP.

195. The International Bureau suggested that the second session of the SCP be two weeks in duration in order to complete discussions concerning the substance of the provisions of the draft Treaty, and proposed the tentative dates of April 12 to 23, 1999, subject to a brief hiatus or change of venue during those dates to accommodate another WIPO event. The agenda for the second session could be limited to consideration of the draft Treaty and the issue of fee reductions for applicants from developing countries.

196. Concerning the documents for the second session, the International Bureau indicated that a provisional document containing a revised draft of the Treaty, Regulations and Notes would be circulated via the Electronic Forum in December 1998. Formal documents for the second session, including the draft Treaty and Regulations, Notes, and proposed final administrative provisions, would be printed and mailed in January 1999.

197. The Chairman suggested, in order to increase the time for discussion at the next session of the SCP, that there be no opening statements, and that the lunch break be limited to one and a half hours.

198. The Delegation of the United States of America asked, concerning future work on model forms, whether model forms should be considered in parallel with discussions concerning international standard application format, whether there should be a resolution of the SCP concerning such formats or whether they should be considered in the framework of the Standing Committee on Information Technology (SCIT) or the PCT, and whether the International Bureau should undertake a study on these matters. The International Bureau

suggested, since the SCP had decided that the request form under the PLT would be linked with the PCT request, that the International Bureau consider the question of model forms in the course of its study concerning the interface between the PLT and the PCT, supplemented by informal consultations with interested Member States, and that it make a proposal for consideration by the SCP at its second session.

199. Concerning future work leading to a Diplomatic Conference for adoption of the Patent Law Treaty, the International Bureau suggested that a Preparatory Meeting be held in conjunction with the second or third session of the SCP, and that tentative dates for a Diplomatic Conference be considered to be May 15 to June 2, 2000, in Geneva. The dates and venue could be finalized at the second session of the SCP, depending on progress made at that session, and on whether any invitation is received from a Member State in the meantime for hosting the Diplomatic Conference. As the documents to be submitted to the Diplomatic Conference should be printed and mailed six months in advance of the Conference, that is, in November 1999, the International Bureau suggested that the draft Treaty and Regulations, Notes and any Model Forms be finalized at a third session of the SCP, which could be held, tentatively, in October 1999.

200. The International Bureau also suggested that it be given latitude by the SCP to conduct informal consultations with Member States in preparation for the Diplomatic Conference, and that it keep the SCP informed of all such consultations.

201. The Delegation of Japan recalled that it had in the past supported the convening of a Diplomatic Conference as early as possible, and welcomed the dates proposed by the International Bureau. In response to the Delegation's concern that the intention of the Standing Committee on Copyright and Related Rights (SCCR) to also convene a diplomatic conference at an early date would interfere with the proposed timing, the International Bureau indicated that the WIPO General Assembly would discuss the issue of a diplomatic conference in the context of the SCCR, but believed that this would pose no hindrance to the proposed dates.

202. The Delegation of the United States of America expressed support for the timing of the Diplomatic Conference as suggested by the International Bureau.

203. The Delegation of Sudan recalled the request of the Delegation of Jordan at the last meeting and requested, on behalf of its country and Egypt, Algeria, Syria, Oman and Saudi Arabia, that the International Bureau provide, at the next meeting and later meetings, interpretations into and from Arabic, and translations of working documents into Arabic in sufficient time for those delegations to study the documents prior to the meetings. The International Bureau stated that the matter had been discussed by the WIPO General Assembly during the meeting of the Assemblies of the Member States of WIPO in September 1998. The International Bureau was given some flexibility to utilize additional resources for the purpose of interpretation and translation, and was undertaking a study to determine how to implement this flexibility in the context of the four Standing Committees.

204. The Standing Committee agreed to the suggestions of the International Bureau and the Chair concerning future work.

205. In particular, the Standing Committee decided that the second session of the SCP would tentatively be scheduled for April 12 to 23, 1999, and the International Bureau agreed that documents would be ready by January 1999, including the final administrative provisions. The agenda for that meeting would be limited to the draft PLT and the issue of fee reductions for applicants from developing countries. Dates for a Diplomatic Conference to adopt the PLT were tentatively decided as May 15 to June 2, 2000, and would be finalized at the second session. The International Bureau was asked to schedule a Preparatory Meeting in conjunction with the second or third session of the SCP, and was authorized to conduct informal consultations with Member States in preparation for the Diplomatic Conference, and to keep the SCP informed of all such consultations.

Agenda Item 6: Summary by the Chair

206. The Chair presented a draft Summary (document SCP/1/10 Prov.), orally proposed some additions to the draft Summary concerning the procedure for circulating the draft Report and future work, and received comments from the participants concerning draft Article 10(1) and studies to be undertaken by the International Bureau in the context of the draft Treaty.

Agenda Item 7: Closing of the Session

207. The Chair closed the first session of the SCP.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS MEMBRES/MEMBER STATES

(dans l'ordre alphabétique des noms français des États)
(in the alphabetical order of the names in French of the States)

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Craig John BURTON-DURHAM, Deputy Registrar of Patents, Trade Marks, Designs and Copyright, Department of Trade and Industry, Pretoria

ALGÉRIE/ALGERIA

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Susanne BECK (Ms.), Executive Assistant in the Patent Law Section, Federal Ministry of Justice, Bonn

Klaus MÜLLNER, Head, Patent Division, German Patent Office, Munich

Andrea WITTICH-BONK (Mrs.), Deputy Head of International Industrial Property Law Section, German Patent Office, Munich

Heinz BARDEHLE, Patent Attorney, Munich

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Eusebi NOMEN, Advisor to the Head of Government for Intellectual Property, Andorra La Vella

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Sofia Pegado DA SILVA (Mme), première secrétaire, Mission permanente, Genève

ARABIE SAOUDITE/SAUDI ARABIA

Khalid AL-AKEEL, Assistant Research Professor, Patent Directorate, Riyadh

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Alan TROICUK, Legal Counsel to the Canadian Intellectual Property Office, Hull

Quan-Ling SIM, First Secretary, Permanent Mission, Geneva

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Alejandro ROGERS, Counsellor, Permanent Mission, Geneva

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II. ORGANISATIONS INTERGOUVERNEMENTALES/
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ORGANIZATION (WTO)

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COMMISSION EUROPÉENNE (CE)/EUROPEAN COMMISSION (EC)

Dominique VANDERGHEYNST, administrateur, Bruxelles

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(OAPI)/AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

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American Intellectual Property Law Association (AIPLA)

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Asociación de Agentes Españoles autorizados ante Organizaciones Internacionales de Propiedad Industrial e Intelectual (AGESORPI)/Association of Spanish Attorneys before International Industrial and Intellectual Property Organizations (AGESORPI)

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Asociación interamericana de la propiedad industrial (ASIPI)/Interamerican Association of Industrial Property

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Association internationale pour la protection de la propriété industrielle (AIPPI)/International Association for the Protection of Industrial Property (AIPPI)

Michel DE BEAUMONT, Chairman Q89E, Grenoble
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Gottfried SCHÜLL, Patent Attorney, Düsseldorf

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Gert SCHMITT-NILSON, Patentanwalt, Committee on Patent Law and Utility Model Law, Munich

Chartered Institute of Patent Agents (CIPA)

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John David BROWN, Representative, Munich

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Fédération internationale des conseils en propriété industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI)

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