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## **STANDING COMMITTEE ON THE LAW OF PATENTS**

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DRAFT PATENT LAW TREATY AND REGULATIONS:  
DRAFT ADMINISTRATIVE AND FINAL CLAUSES

*prepared by the International Bureau*

## INTRODUCTION

1. The present document contains a first draft of the administrative and final clauses of the draft Patent Law Treaty, together with explanatory Notes.
2. These clauses are modeled after the administrative and final provisions of the WIPO Copyright Treaty (WCT) (1996) and the WIPO Performances and Phonograms Treaty (WPPT) (1996). Where appropriate, account has also been taken of the administrative and final provisions of the Trademark Law Treaty and Regulations (TLT), of proposals for that Treaty contained in document TLT/DC/3, of the proposal submitted to the 1991 Diplomatic Conference at the Hague for the Draft Treaty Supplementing the Paris Convention as far as Patents are Concerned, contained in the documents PLT/DC/3 and 69, and of the proposal to be submitted to the Diplomatic Conference for the new Act of the Hague Agreement concerning the International Registration of Industrial Designs, contained in document H/DC/3. The corresponding provisions of those Treaties and proposals are indicated in the Notes on each clause. The text placed in square brackets in bold ([...]) in the Notes would not be submitted to the Diplomatic Conference.

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*Article 1*

*Abbreviated Expressions*

For the purposes of this Treaty, unless expressly stated otherwise:

...

(xviii) “Contracting Party” means any State or intergovernmental organization party to this Treaty;

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “International Bureau” means the International Bureau of the Organization;

(xxi) “Director General” means the Director General of the Organization.

*Article 14*

*Regulations*

(1) [*Content*] [Unchanged]

(2) [*Amending the Regulations*] (a) The Assembly may amend the Regulations and shall determine the conditions for the entry into force of each amendment.

(b) Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.

(3) [*Requirement of Unanimity*] (a) The Regulations may specify provisions of the Regulations which may be amended only by unanimous consent.

(b) Any amendment resulting in an addition to, or deletion of, provisions specified pursuant to subparagraph (a) as requiring unanimous consent for amendment shall require unanimous consent.

(4) [*Conflict Between the Treaty and the Regulations*] [Unchanged]

*Article 15*

*Relation to the Paris Convention*

(1) [*Special Agreement Under the Paris Convention*] This Treaty is a special agreement within the meaning of Article 19 of the Paris Convention, as regards Contracting Parties that are countries [of the Union established by that Convention][bound to apply the provisions of that Convention]. Except as expressly provided by any reference to the Patent Cooperation Treaty in this Treaty and the Regulations, this Treaty shall not have any connection with treaties other than the Paris Convention, nor shall it prejudice any rights and obligations under any other treaties.]

(2) [*Obligations and Rights Under the Paris Convention*] (a) Nothing in this Treaty shall derogate from obligations that Contracting Parties have to each other under the Paris Convention.

(b) Nothing in this Treaty shall derogate from rights that applicants and owners enjoy under the Paris Convention.

(3) [*Obligation to Comply with the Paris Convention*] Any Contracting Party shall comply with the provisions of the Paris Convention which concern patents.

*Article 16*

*Assembly*

(1) [*Composition*] (a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2) [*Tasks*] The Assembly shall:

(i) deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty;

(ii) establish Model International Forms and Model International Formats referred to in Article 14(1)(c);

(iii) perform the function allocated to it under Article 19(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty;



(iv) perform such other functions as are appropriate under this Treaty.

(3) [Voting] (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this Treaty is a Member State of another such intergovernmental organization, and that another intergovernmental organization participates in that vote.

(4) [Sessions] The Assembly shall meet in ordinary session once every [two] years upon convocation by the Director General.

(5) [Rules of Procedure] The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty and Regulations, the required majority for various kinds of decisions.

*Article 17*

*International Bureau*

The International Bureau shall perform the administrative tasks concerning the Treaty.

*Article 18*

*Revisions*

(1) [*Revision of the Treaty*] Subject to paragraph (2), this Treaty may be revised by a conference of the Contracting Parties. The convocation of any revision conference shall be decided by the Assembly.

(2) [*Amendment of Certain Provisions of the Treaty*] (a) Proposals for the amendment of Articles 16 and 17 may be initiated by any Contracting Party or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(b) Amendments to the Articles referred to in subparagraph (a) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any revision to Article 16 shall require four-fifths of the votes cast.

(c) Any amendment to the Articles referred to in subparagraph (a) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the Contracting Parties at the time the amendment enters into force, or which become Contracting Parties thereof at a subsequent date.

*Article 19*

*Eligibility for Becoming Party to the Treaty*

(1) [*States*] Any Member State of the Organization [or State which is a party to the Paris Convention] and in respect of which patents may be obtained, either through the State's own Office or through the Office of another Contracting Party, may become party to this Treaty.

(2) [*Intergovernmental Organizations*] The Assembly may decide to admit any intergovernmental organization to become party to this Treaty if all the member States of that intergovernmental organization are Member States of [or party to] the Organization [or Paris Convention] and it declares that it is competent in respect of, and has its own legislation binding on all its member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) [*Regional Patent Organizations*] [The European Patent Organisation][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][ and the African Intellectual Property Organization], having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

*Article 20*

*Signature of the Treaty*

This Treaty shall be open for signature until [reserved], by any State that is eligible for becoming party to the Treaty under Article 19 and by [the European Patent Organisation][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][ and the African Intellectual Property Organization].

*Article 21*

*Entry into Force*

(1) [*Entry into Force of This Treaty*] This Treaty shall enter into force three months after [five] instruments of ratification or accession by States have been deposited with the Director General.

(2) [*Effective Dates of Ratifications and Accessions*] This Treaty shall bind:

(i) the [five] States referred to in paragraph (1), from the date on which this Treaty has entered into force;

(ii) each other State, from the expiration of three months after the date on which the State has deposited its instrument with the Director General, or from any later date indicated in that instrument;

(iii) [the European Patent Organisation][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][ and the African Intellectual Property Organization], from the expiration of three months after the deposit of its instrument of ratification or accession, or from any later date indicated in that instrument if such instrument has been deposited after the entry into force of this Treaty according to paragraph (1), or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession, or from any later date indicated in that instrument.

*Article 22*

*Reservations*

[(1) [*Declaration*] Any State or intergovernmental organization may declare through a reservation that:

(i) the provisions of Article 5(1) shall not apply to any requirement relating to unity of invention applicable under the Patent Cooperation Treaty to an international application;

(ii) the provision of Article 6(1)(b) shall not apply to the signature of a representative in the case of an oath or declaration or a revocation of a power of attorney;

(iii) the Regulations established pursuant to Article 14(1)(b)(ii) and (iv), concerning request for recordal of change in applicant or owner or for correction of a mistake, shall not apply in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law of the Contracting Party.

(2) [*Modalities*] Any reservation under paragraph (1) shall be made in a declaration accompanying the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the reservation.



- (3) [*Withdrawal*] Any reservation under paragraph (1) may be withdrawn at any time.
- (4) [*Prohibition of Other Reservations*] No reservation to this Treaty other than the reservation allowed under paragraph (1) shall be permitted.

*Article 23*

*Denunciation of the Treaty*

(1) [*Notification*] Any Contracting Party may denounce this Treaty by [written] notification addressed to the Director General.

(2) [*Effective Date*] Any denunciation shall take effect one year from the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Treaty to any application pending or any patent in force in respect of the denouncing Contracting Party at the time of the expiration of the said one-year period.

*Article 24*

*Languages of the Treaty*

(1) [*Original Texts*] This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) [*Official Texts*] An official text in any language other than those referred to in paragraph (1) shall be established by the Director General, after consultation with the interested parties. For the purposes of this paragraph, interested party means any State which is party to the Treaty, or is eligible for becoming party to the Treaty under Article 19(1), whose official language, or one of whose official languages, is involved, and [the European Patent Organization][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][ and the African Intellectual Property Organization] and any other intergovernmental organization that is party to the Treaty, or may become party to the Treaty, if one of its official languages is involved.

*Article 25*

*Depositary; Registration*

- (1) [*Depositary*] The Director General is the depositary of this Treaty.
  
- (2) [*Registration*] The Director General shall register this Treaty with the Secretariat of the United Nations.

*Rule 22*

*Requirement of Unanimity for Amending Certain Rule Under Article 14(3)*

Amendment of Rule 8(1) and of the present Rule shall require that no Contracting Party having the right to vote in the Assembly vote against the proposed amendment. [In determining whether the present Rule is complied with, only votes actually cast shall be taken into consideration.]

Note on Article 1

(Abbreviated Expressions)

...

1.12 Item (xviii). This item is the same as TLT Article 1(ix). Provisions on eligibility for becoming party to the Treaty are contained in Article 19.

1.13 Items (xix) to (xxi). These items would seem to be self-explanatory.

...

Note on Article 14

(Regulations)

...

14.03 Paragraphs (2) and (3). [Paragraph (2) is the same as Article 29(2) contained in document PLT/DC/3 and 69. It is proposed that] amendment of draft Rule 8(1) should require unanimous consent under paragraph (3)(a) (see draft Rule 22).

...

Note on Article 15

(Relation to the Paris Convention)

15.01 Paragraphs (1) and (2)(a) are modeled after WTC Articles 1(1) and (2). The reference to the Contracting Parties which are “bound to apply the provisions of the Paris Convention” is intended to refer to the Contracting Parties which are members of the World Trade Organization, and are therefore bound to apply Articles 1 through 12 and 19 of the Paris Convention under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Paragraph (2)(a) maintains the existing obligations that Contracting Parties have to each other under the Paris Convention. Paragraph (2)(b)[, which has been added as the result of the study referred to in paragraph 87 of the draft Report of the first session, first part, of the Standing Committee on the Law of Patents (document SCP/1/7/Prov.1),] similarly maintains the rights of applicants and owners under that Convention. Paragraph (3) is modeled after TLT Article 15.

Note on Article 16

(Assembly)

16.01 This Article contains provisions concerning the governing body of the Treaty, namely the Assembly. Except for this provision to which reference is made in Note 16.03, the provisions of this Article are the same as those provided for in WCT Article 15 and WPPT Article 24.

16.02 It is to be noted that, except as provided under paragraph (1)(c), the Treaty would not establish any financial obligations: Contracting Parties would not have to pay any contribution to WIPO, neither would the Assembly adopt a program. Any activity concerning the Treaty that would cause an expense to the International Bureau would be borne by WIPO, as is already the case, for example, for the WCT, the WPPT, the Rome Convention, the Phonograms Convention, the Budapest Treaty and the TLT or, among the older treaties, the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods.

16.03 Paragraph (3)(b). This provision, which is based on WCT Article 15(3)(b) and WPPT Article 24(3)(b), contains special rules in respect of voting by the European Community, regional patent and industrial property organizations and any other intergovernmental organization that may become party to the Treaty. The essence of those rules is that such an organization may only exercise the right to vote of its Member States, that is, it would not have a separate additional vote of its own; in any votation, its vote would be equal to the number of votes of those of its Member States that are party to the Treaty; and it could not vote if any of its Member States itself exercises its right to vote. The third sentence of paragraph (3)(b), which is not present in WCT Article 15(3)(b) or WPPT Article 24(3)(b), would ensure that two intergovernmental organizations with one or more States in common, in particular, the European Community and the European Patent Organisation, could not both participate in the same vote in place of their Member States. A requirement that an intergovernmental organization may only exercise the right to vote of a Member State which is present has not been included in view of the decision not to include such requirement in the WCT and WPPT.

Note on Article 17

(International Bureau)

17.01 This Article is the same as WCT Article 16 and WPPT Article 25 and follows a tradition established in several other WIPO-administered treaties.

Note on Article 18

(Revisions)

18.01 Paragraph (1). This paragraph is modeled after Article 26 contained in document H/DC/3 and Article 60(2) of the PCT. It should be noted that, in accordance with Article 18, Articles 16 and 17 as well as the Regulations could be amended by the Assembly, whereas any other provisions under the Treaty could be amended by a revision conference of the Contracting Parties.

18.02 Paragraph (2). This paragraph is modeled after Article 61 of the PCT.

Note on Article 19

(Eligibility for Becoming Party to the Treaty)

19.01 Paragraph (1). [The text of this paragraph is modeled after Article 33(1)(i) contained in document PLT/DC/3 and 69.] Under this paragraph, the eligibility for becoming party to the Treaty would be limited to States which are party to WIPO [or the Paris Convention] and which either maintain an Office or provide for patents to be obtained through the Office of another State or of an intergovernmental organization, which is a Contracting Party to the Treaty. This means that States which do not have Patent Offices, but for which patents are obtainable through another Office, could become parties to this Treaty.

19.02 Paragraph (2). This paragraph is modeled after WCT Article 17(2) and WPPT Article 26(2). However, in line with the requirement under paragraph (1) that only States which are party to WIPO [or the Paris Convention] are eligible for becoming party to the Treaty, paragraph (2) requires that all of the Member States of an intergovernmental organization must similarly be Member States of [or party to] WIPO [or that Convention]. [Article 33(1)(ii) and (iii) in document PLT/DC/3 and 69 contained the same requirement.]

19.03 Paragraph (3). This paragraph, which is modeled after WCT Article 17(3) and WPPT Article 26(3), lists[, in square brackets,] the intergovernmental organizations which [would] have a right to become party to the treaty, subject to making the declaration referred to in paragraph (2). [The European Community, whose Member States are all members of WIPO [or the Paris Union] and which is named in WCT Article 17(3) and WPPT Article 26(3), would have the right to become a party to the Treaty as soon as the Community Patent Convention, or other Community legislation on matters covered by this Treaty (discussed, for example, in the “Green Paper on the Community patent and patent system in Europe (COM(97)314 final) presented by the European Commission on June 24, 1997) enters into force. The existing regional patent and industrial property organizations, which are named in this paragraph, would also have the right to become party to the Treaty.]



Note on Article 20

(Signature of the Treaty)

20.01 This Article is modeled after WCT Article 19 and WPPT Article 28. It is customary to have treaties open for signature for approximately one year after their adoption.

20.02 It is to be noted that intergovernmental organizations other than those referred to, namely, the organizations identified in Article 19(3), would not be able to sign the Treaty since their admission would have to be authorized by the Assembly (see Article 16(2)(iii) and 16(3)), the Assembly would start functioning only after the entry into force of the Treaty, and it is very unlikely that the Treaty would enter into force before the time limit for signing under this Article.

Note on Article 21

(Entry into Force)

21.01 Paragraph (1). This paragraph is modeled after WCT Article 20, WPPT Article 29 and TLT Article 20(2). As in the case of those provisions of previous treaties, the Article disregards, for the purposes of the initial entry into force of the Treaty, a possible instrument of ratification or accession by any of the intergovernmental organizations identified in Article 19(3) and any other intergovernmental organization.

21.02 The requirement of the deposit of instruments of ratification or accession of five States is the same as that under TLT Article 20(2).

21.03 Paragraph (2). This paragraph is modeled after WCT Article 21, WPPT Article 30 and TLT Article 20(3).

21.04 Item (i). The reference to five States is presented in square brackets in accordance with [the proposal under] paragraph (1) (see Note 21.01).

21.05 Items (ii) to (iv). The three-month period is the customary one (see Articles of previous treaties referred to in Note 21.03), and takes into account that the instrument of ratification or accession of the intergovernmental organizations referred to in Article 19(3) would not be among the five instruments that cause the initial entry into force of the Treaty. Other intergovernmental organizations could deposit an instrument of accession only after the entry into force of the Treaty, since their request for accession would have to be decided upon by the Assembly and the Assembly would start functioning only after the entry into force of the Treaty. The words “or from any later date indicated in that instrument” are modeled after Article 28 contained in document H/DC/3.

Note on Article 22

(Reservations)

22.01 Paragraph (1). This paragraph, which is modeled after TLT Article 21(1), would permit a reservation in respect of requirements as to (i) unity of invention, (ii) the signature of a representative in the case of an oath or declaration or a revocation of a power of attorney and (iii) changes in inventorship in respect of request for recordal of change in applicant or owner or for correction of a mistake [, and is introduced in response to a reservation expressed by the Delegation of the United States of America. It is proposed that consideration of the inclusion of any further reservations be deferred until the Diplomatic Conference.]

22.02 Paragraphs (2) to (4). These paragraphs are modeled after TLT Article 21(2) to (4).

Note on Article 23

(Denunciation of the Treaty)

23.01 Paragraph (1). This paragraph is of the traditional kind: see, for example, WCT Article 23, first sentence, WPPT Article 31, first sentence and TLT Article 23(1). The word “written”, which appears within square brackets for consideration by the Standing Committee, is for avoidance of doubt.

23.02 Paragraph (2). The first sentence of this paragraph is also of the traditional kind, see, for example, WCT Article 23, second sentence, WPPT Article 31, second sentence and TLT Article 23(2), first sentence. The second sentence of this paragraph is modeled after the second sentence of TLT Article 23(2); see also Article 37(2) contained in documents PLT/DC/3 and 69. The words “or from any later date indicated in that instrument” are modeled after Article 32 contained in document H/DC/3.

Note on Article 24

(Languages of the Treaty)

24.01 Paragraph (2). This provision enables the Director General to initiate the establishment of official texts if he deems it necessary. The definition of “interested party” in the second sentence of paragraph (2) takes account of the different provisions for eligibility of States for becoming party to this Treaty under Article 19, compared with WCT Article 17 and WPPT Article 26.

Note on Article 25

(Depositary; Registration)

25.01 Paragraph (1). This paragraph is the same as WCT Article 25 and WPPT Article 33 and corresponds to present trends in WIPO; see also, for example, TLT Article 25.

25.02 The depositary functions include the preservation of the signed copy of the Treaty, the placing of the original copy at the disposal of those States which want to and have the right to sign it, the establishment and distribution of certified copies of the Treaty, the receipt of the deposit of instruments of ratification or accession and of notifications of denunciation, as well as the individual notification of those events to all interested parties, and the publication, of all signatures, ratifications, accessions and denunciations and the dates of entry into force of the Treaty.

Note on Rule 22

(Requirement of Unanimity for Amending Certain Rule Under Article 14(3))

R22.01 [For consistency with the requirement under former Article 5(3)(iii) in document SCP/1/3 that the adoption of any provision in the Regulations allowing a Contracting Party which accepts the electronic filing of applications with its Office to exclude the filing of applications on paper shall require unanimous consent, it is proposed that amendment of Rule 8(1), which states that “A Contracting Party shall permit the filing of applications on paper” should require unanimous consent.] This provision would ensure that the right of applicants to file applications on paper with any particular Office would not be excluded without the unanimous agreement. [The text of this Rule is modeled after Rule 12 contained in document PLT/DC/3 and 69.]

R22.02 According to Rule 36(1) of WIPO General Rules of Procedure, in determining whether the required majority or unanimity is attained, only votes actually cast shall be taken into consideration. Therefore, the second sentence, which appears within square brackets for consideration by the Standing Committee, is for avoidance of doubt.

[End of document]