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STANDING COMMITTEE ON THE LAW OF PATENTS

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DIFFERENCES BETWEEN THE BASIC PROPOSAL IN DOCUMENTS PT/DC/3 AND 4
AND THE TEXT ADOPTED AT THE THIRD SESSION OF THE SCP

document prepared by the International Bureau

I. Introduction

1. At the third session of the Standing Committee on the Law of Patents (SCP), held from September 6 to 14, 1999, the Committee adopted the text of the draft Patent Law Treaty (PLT) that would form the basis for discussion at the Diplomatic Conference for the Adoption of the PLT (May 11 to June 2, 2000). Paragraph 86 of the Report of that session (document SCP/3/11) contains the following paragraph:

“After some discussion, during which the Chair pointed out that it was normally the International Bureau that proposed the basic proposal for a Diplomatic Conference, it was agreed that the International Bureau would modify, where appropriate, the final and administrative provisions of the basic proposal for the PLT in conformity with the relevant provisions under the Geneva Act of the Hague Agreement. It was also agreed that the International Bureau was entrusted to make additional changes to the text of the draft Treaty, such as conformity of language, correction of clerical mistakes or other obvious mistakes, with the understanding that the International Bureau would issue a separate document which would indicate all of the above-mentioned changes which were made.”

2. In accordance with the decision by the Committee, the present document reflects the differences between the text adopted at the third session of the SCP and the basic proposal contained in document PT/DC/3 and 4.

II. Changes to the Articles (document PT/DC/3)

3. Compared with the text adopted at the third session of the SCP, the following provisions in document PT/DC/3 have been modified by the International Bureau, as authorized by the SCP. In addition, consequential re-numbering of the provisions has been made throughout the document.

Article 2(2) [French only]

The words “toute Partie contractante” are replaced by “une Partie contractante.”

Article 5(1)(a)

The word “other” is added for clarity in the fourth line, after “on paper or by,” since “means permitted by the Office” may also include filing “on paper.”

Article 5(3)

The word “relevant” before “time limit prescribed in the Regulations” is deleted.

Article 5(4)(b) [English and Spanish only]

In the English text, the word “therefore” at the end of the subparagraph is replaced by “therefor.” In the Spanish text, the word “consiguientes” is replaced by “del caso.”

Article 5(6)(b) [English and Spanish only]

In the English text, the words “a description or missing drawing” in the first line are replaced by “the description or the missing drawing.” In the Spanish text, the words “una descripción” are replaced by “la descripción.”

Article 6(5)

The words “the requirements prescribed in” are inserted after the words “in accordance with.”

Article 6(7)

The word “relevant” before “time limit prescribed in the Regulations” is deleted.

Article 7(5)

The word “relevant” before “time limit prescribed in the Regulations” is deleted.

Article 8(6)

The title of paragraph (6) is replaced by “Address for Correspondence, Address for Legal Service and Other Address,” in order to reflect all the items under this paragraph.

Article 8(7)

The word “relevant” before “time limit prescribed in the Regulations” is deleted.

Article 10(2) [Spanish only]

The words “correcciones dentro de un plazo razonable, cuando le esté permitido en virtud de la legislación aplicable.” are replaced by “correcciones cuando le esté permitido en virtud de la legislación aplicable, dentro de un plazo razonable.”

Article 11, title [French and Spanish only]

The words “ce qui conerne les” are replaced by “matière de” in the French text. In the Spanish text, the title “Recurso en caso de incumplimiento de un plazo” is replaced by “Recursos en materia de plazos.”

Article 13(2)(iii) [English only]

The word “ground” is replaced by the word “grounds.”

Article 14(1)(b)(i) [English and Spanish only]

The word “and” is replaced by the word “or” in consequence of the title of Rule 15.

Article 14(1)(c)

In consequence of the adoption, at the third session of the SCP, of the text of Article 6(2)(b), the words “the modifications referred to in Article 5(2)(b)” are replaced by “a request Form or format for the purposes of Article 6(2)(b).”

Article 14(2)

Paragraph (a) is moved to new Article 16(2)(iv) for clarity, since the provision relates to the tasks of the Assembly.

New Article 14(3)(c)

The substance of former Rule 22(2) is moved to new subparagraph (c) of Article 14(3), which reads as follows:

“(c) In determining whether unanimity is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.”

The second sentence is modeled after Article 21(5)(b) of the Geneva Act of the Hague Agreement signed on July 6, 1999 (hereinafter referred to as “the Geneva Act”).

Article 16(1)(b)

In accordance with Article 21(1)(b) of the Geneva Act, this subparagraph is modified to read as follows:

“(b) Each Contracting Party shall be represented in the Assembly by one delegate, who may be assisted by alternate delegates, advisors and experts. Each delegate may represent only one Contracting Party.”

Article 16(1)(c)

Since there is no corresponding provision in the Geneva Act, the second sentence is deleted.

The first sentence of this subparagraph had been originally removed, along with the second sentence, from the preliminary draft of the Basic Proposal prepared by the International Bureau, on the grounds that neither sentence appeared in the Geneva Act, and that both sentences were even less appropriate for the PLT than for the Hague Agreement, which has its own income and budget. However, following a comment of one Delegation on the Electronic Forum referring to paragraph 91 of the Report, the first sentence has been replaced into the Basic Proposal, on the grounds that the paragraph had been discussed at the SCP meeting, as reflected in the Report, where it was indicated only that the second sentence may be removed. Any further modification of the paragraph should be agreed by the Member States. It should be noted that provisions corresponding to both sentences are included in Article 15(1)(c) of the WIPO Copyright Treaty.

Article 16(2)(ii)

In consequence of the modification made in the provision under Article 14(1)(c), the words “Model International Forms and Model International Formats, referred to in Article 14(1)(c)” are replaced by “Model International Forms, Model International Formats, and the request Form or format, referred to in Article 14(1)(c), with the assistance of the International Bureau.”

New Article 16(2)(iii)

In accordance with Article 21(2)(a)(iv) of the Geneva Act, the following new item (iii) is added:

“(iii) amend the Regulations;”

New Article 16(2)(iv)

Former Article 14(2) is moved to new item (iv) of Article 16(2) with a consequential modification concerning the inclusion of “request Form or format” as follows:

“(iv) determine the conditions for the date of application of each Model International Form, Model International Format, and the request Form or format, referred to in item (ii), and each amendment referred to in item (iii);”

New Article 16(3)

In accordance with Article 21(3) of the Geneva Act, new Article 16(3) is added as follows:

“(3) [*Quorum*] (a) One-half of the members of the Assembly which are States shall constitute a quorum.

(b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.”

Article 16(4)

The title of the paragraph is modified from “Voting” to “Taking Decisions in the Assembly” in accordance with the title of Article 21(4) of the Geneva Act.

In accordance with Article 21(4)(a) and (b) of the Geneva Act, the following paragraph is inserted as new paragraph (a):

“(a) The Assembly shall endeavor to take its decisions by consensus.”

In addition, former subparagraphs (a) and (b) are moved to items (i) and (ii) under new paragraph (b), respectively, and the chapeau of new paragraph (b) reads as follows:

“(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case:”

New Article 16(5)

In accordance with Article 21(5) of the Geneva Act and Article 14(3)(c) of the draft PLT, new paragraph (5) of Article 16 is added as follows:

“(5) [*Majorities*] (a) Subject to Articles 14(2) and (3) and 18(3), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.”

Article 16(7)

In consequence of the addition of new paragraphs (3) and (5) of Article 16, the words “, the requirements of a quorum and, subject to the provisions of this Treaty and Regulations, the required majority for various kinds of decisions” are deleted.

Article 17

In accordance with Article 22 of the Geneva Act, former Article 17 is placed in paragraph (1)(a) with the modification of the words “the Treaty” to “this Treaty.”

Further, new paragraphs (1)(b) and (2) to (5) are included as follows:

“(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) [*Meetings Other than Sessions of the Assembly*] The Director General shall convene any committee and working group established by the Assembly.

(3) [*Role of the International Bureau in the Assembly and Other Meetings*]

(a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly.

(b) The Director General or a staff member designated by the Director General shall be *ex officio* secretary of the Assembly, and of the committees and working groups referred to in subparagraph (a).

(4) [*Conferences*] (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(5) [*Other Tasks*] The International Bureau shall carry out any other tasks assigned to it in relation to this Treaty.”

New Article 18(2)

In accordance with Article 25(2) of the Geneva Act, new paragraph (2) of Article 18 is included as follows:

“(2) [*Revision or Amendment of Certain Provisions of the Treaty*] Article 16(2) and (6) may be amended either by a revision conference, or by the Assembly according to the provisions of paragraph (3).”

Article 18(3)(a)

In accordance with Article 26(1) of the Geneva Act, the words “by the Assembly” are added after the word “amendment” in the title and in the provision.

Article 18(3)(b)

In accordance with Article 26(2) of the Geneva Act, the provision is modified as follows:

“(b) Adoption of any amendment to the provisions referred to in subparagraph (a) shall require three-fourths of the votes cast.”

Article 18(3)(c)

In accordance with Article 26(3)(a) of the Geneva Act, the words “which were Contracting Parties” are replaced by “which were members of the Assembly.”

Title of Article 19

In accordance with the title of Article 27 of the Geneva Act, the title of Article 19 “Eligibility for Becoming Party to the Treaty” is replaced by “Becoming Party to the Treaty.”

Article 19(2)(ii) [English and Spanish only]

In conformity with the language of other provisions, the words “the Treaty” are replaced by “this Treaty.”

Article 19(3)

The words “European Patent Organization” are replaced by “European Patent Organisation.” *[English only]*

In conformity with the language of other provisions, the words “the preceding paragraph” are replaced by “paragraph (2).”

Article 19(4)

In accordance with Article 27(2) of the Geneva Act, new paragraph (4) of Article 19 is included as follows:

“(4) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraphs (1) to (3) may deposit:

- (i) an instrument of ratification if it has signed this Treaty; or
- (ii) an instrument of accession if it has not signed this Treaty.”

Article 20, title

In order to reflect the provisions under paragraph (2), the words “Effective Dates of Ratifications and Accessions” are added in the title.

Article 24(2) [English only]

The words “European Patent Organization” are replaced by “European Patent Organisation.”

Article 25

Former Article 20 is moved to this Article. In addition, a reference to “Article 19” is replaced by a reference to “Article 19(1)” for clarity.

III. Changes to the Regulations (document PT/DC/4)

4. Compared with the text adopted at the third session of the SCP, the following provisions in document PT/DC/4 have been modified by the International Bureau, as authorized by the SCP. In addition, consequential re-numbering of the provisions has been made throughout the document.

Rule 2(5)(b)(i)

The word “earlier” in the first line is replaced by the words “previously filed.”

Title of Rule 4; Rule 4(3)

Since the provisions under Rule 2(5)(b) relate to the “previously filed application,” the following modifications are required:

(i) In the title of Rule 4, the word “and” before “(5)(b)” is replaced by the words “or of Previously Filed Application Under Rule 2”;

(ii) The words “or of Previously Filed Application” are added at the end of the title of paragraph (3). Further, in paragraph (3), the words “, and Rule 2(4) and (5)(b), where the earlier application” are replaced by “and Rule 2(4), or a copy or a certified copy of the previously filed application as referred to in Rule 2(5)(b), where the earlier application or the previously filed application.”

Rule 4(3) [Spanish only]

The words “un formato electrónico aceptado jurídicamente,” are replaced by “un formato electrónico legalmente aceptado y.”

Rule 7(6)(ii)

The words “the time limit to comply with the requirements and to make observations under that Article shall be” are deleted. This phrase had been included in the text by mistake.

Rule 8(1)(a)

The words “this Treaty” are replaced by “the Treaty.”

Rule 8(2)(b)

The reference to “Article 25” is replaced by a reference to “Article 24.”

Rule 10(5)

The reference to “paragraph (1)” is replaced by a reference to “paragraph (1)(a)(iii) and (b)(iii)” for clarity.

Rule 12, title [French and Spanish only]

In accordance with the modification made in the title of Article 11, the title of Rule 12 is modified to “Précisions relatives au sursis en matière de délais prévu à l’article 11” in French and “Detalles relativos a los recursos en materia de plazos en virtud del Artículo 11” in Spanish.

Rule 13(2) [English only]

The words “The time limits” in the beginning of the paragraph are replaced by “The time limit.”

Rule 16(2)(a)

The words “recording of a” in the second line are deleted.

Rule 16(7)

The word “Article” in the third line is replaced by “Rule.”

Rule 18(1)(b)

The reference to “paragraph (4)” is replaced by a reference to “paragraph (3).”

The words “the correction” are added after the word “incorporating” in the third line.
[English only]

Rule 21

In accordance with the structure of the provision under Rule 30(1) of the Regulations under the Geneva Act, this Rule is presented as follows:

“Amendment of the following Rules shall require unanimity:

- (i) Rule 3(1);
- (ii) Rule 8(1)(a);
- (iii) the present Rule.”

[End of document]