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**STANDING COMMITTEE ON THE LAW OF TRADEMARKS,
INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS**

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DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS

Document prepared by the Secretariat

INTRODUCTION

1. At the twenty-first session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), held in Geneva from June 22 to 26, 2009, the SCT requested the Secretariat to prepare a working document, for consideration at its twenty-second session, examining the possible extension of the WIPO Digital Access Service for Priority Documents (“DAS”), which currently operates only with respect to priority documents for patents, to priority documents for industrial designs and for trademarks (see document SCT/21/7, paragraph 9).

2. Accordingly, the Secretariat has prepared the present document, which provides background information on the DAS, and presents legal and administrative considerations on a possible extension of the service to priority documents for industrial designs and trademarks.

DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS

a) Background

3. In accordance with Article 4D(3) of the Paris Convention for the Protection of Industrial Property (“the Paris Convention”), national and regional offices may require that priority claims in patent, trademark and industrial design applications be substantiated by certified copies of the application from which priority is claimed (“priority documents”).

4. As stated in Document WIPO/DAS/PD/WG/1/2, “traditional paper-based means of furnishing and certifying priority documents are burdensome and inefficient, both for Offices which have to issue, receive and store them and for applicants who have to obtain and transmit multiple copies.”

5. In the field of patents, the handling of priority documents has been significantly rationalized. With regard to international applications under the Patent Cooperation Treaty (PCT), procedures have been put in place under the PCT Regulations to streamline and render more cost-effective the treatment of priority documents. Moreover, the Patent Law Treaty (PLT) contains several provisions which aim at rationalizing formalities relating to priority claims, in particular by providing that a Contracting Party is not to require applicants to file a copy of the earlier application where that earlier application is, *inter alia*, available to the Office of that Contracting Party from a digital library which the Office accepts for that purpose.

6. In that context, and in response to an Agreed Statement by the Diplomatic Conference for the Adoption of the Patent Law Treaty in which WIPO was urged to expedite the creation of a digital library system for priority documents, the International Bureau has recently established the DAS.

(b) Main features

7. The DAS functions as follows:

8. After a first filing, a patent applicant requests the office of first filing to deposit the priority document in a participating digital library, or submits a paper copy thereof to the International Bureau, for uploading into the digital library. Following the deposit by the office of first filing or the uploading by the International Bureau, the applicant is sent an “access code” by either the office of first filing or the International Bureau.

9. When making subsequent filings, the applicant claims priority in exactly the same way as normal, but instead of sending a priority document to the office of second filing, the applicant asks the office to retrieve a copy via the DAS. To that end, the applicant has to have first authorized the office to access the document, by using the access code to manage a list of offices permitted to access the document. Such list is held on WIPO’s PATENTSCOPE® website.

10. The DAS is available also to offices which are not in a position to handle documents in electronic form. Priority documents can be submitted in paper form and scanned by the International Bureau for uploading into the digital library. Similarly, priority documents which are available in the digital library can be provided in paper form by the International Bureau to those offices which are not in a position to access them electronically.

11. WIPO does not charge for the DAS. However, a fee may be charged by the offices of first or second filing for the storage or retrieval of documents. The use of the DAS is voluntary for both applicants and offices.

(c) Participation in the DAS

12. On April 1, 2009, the Priority Document Access Service became operational with the participation of the Japan Patent Office (JPO) and the PCT Receiving Office of the International Bureau (as office of first filing only). The United States Patent and Trademark Office (USPTO) joined on April 20, 2009, and the Korean Intellectual Property Office (KIPO), on July 1, 2009. There are several other offices at various stages of testing, some of which (the UK Patent Office and the Spanish Office, for instance) will probably join the system later this year.

EXTENSION OF THE SERVICE TO PRIORITY DOCUMENTS FOR INDUSTRIAL DESIGNS

(a) General remarks

13. The general features of the service with regard to priority documents for industrial designs would be the same as for patent priority documents, as described in paragraphs 7 to 11, above.

14. The International Bureau would be the office of first filing for a number of international industrial design applications filed under the Hague Agreement for the International Registration of Industrial Designs (“the Hague Agreement”). An international industrial design application can serve as a basis for claiming priority and shall, whatever may be its subsequent fate, be equivalent to a regular filing within the meaning of Article 4 of the Paris Convention¹. In 2008, the International Bureau was the office of first filing with respect to approximately 1000 applications made under the Hague Agreement (around 65% of the total number of registrations recorded that year), but that number is due to increase as new accessions to the Geneva Act of the Hague Agreement occur. In the same year, 499 requests for certified copies of international applications were made to the International Bureau. All those copies were transmitted in paper form.

(b) System requirements

15. For the purpose of communicating with participating offices, the DAS builds on existing system architectures used by several offices and under the PCT, in particular the Electronic Document Interchange (PCT EDI) and Trilateral Document Access Priority Document eXchange (TDA-PDX) systems. Both systems are secure transport mechanisms which take due account of the need to ensure the confidentiality of unpublished priority documents, which is also of concern with respect to industrial designs.

16. A service for industrial designs priority documents could, in its turn, build on the two aforementioned systems. Not only are those systems appropriate to handle priority documents for industrial designs, but they are also already used by a reasonable² range of offices.

17. Some work would be necessary to adapt the systems to certain features which are particularly required by industrial design priority documents. Thus, the architectures would need to be revised to support, for instance, exchange of color, grayscale and large-sized images. However, given that the infrastructure is already in place for priority documents for patent applications, it is foreseen that the resources needed for adapting the existing systems would consist mainly of programmer resources.

18. In addition to building on an existing architecture, the service for industrial design priority documents and the existing service for patent priority documents could be integrated into a single service with access through a single portal and sharing of maintenance resources. From the point of view of users, this approach would be beneficial, as it would offer central access to a service for priority documents for both patents and industrial designs. Initially, programmer resources would be needed for adapting the portal to provide access to industrial design priority documents.

19. It is envisaged that human resources would also be necessary for the purposes of scanning and printing priority documents handled on paper. The need of such resources would be dependent upon the extent to which the service is used by offices which are not in a position to handle documents in electronic form.

(c) Legal considerations

20. The establishment of the DAS was approved by the Assemblies of the Paris Union for the Protection of Industrial Property, the Patent Law Treaty and the International Patent Cooperation Union (PCT Union), at the occasion of the 42nd series of meetings of the Assemblies of the Member States of WIPO held in Geneva from September 25 to October 3, 2006.

21. While the DAS was initially designed having regard to patent priority documents, and operates at present only for those documents, the proposal which was put forward to the aforementioned Assemblies was not limited to the establishment of a service for priority documents *for patents*, but rather relates to a service for priority documents in general. Hence, operation of the service for priority documents for industrial designs would not require a new endorsement by the Assembly of the Paris Union.

22. In addition, the extension of the service to industrial designs can rely on an agreed understanding of the Assembly of the Paris Union, concerning the certification of priority documents (Annex I). That understanding was adopted in 2004 by the Assembly of the Paris Union in order to enhance certainty with respect to the growing use of electronic means for the provision, storage and dissemination of priority documents. In accordance with that agreed understanding, streamlined procedures should be implemented, where appropriate, for certifying priority documents made available from digital libraries. That understanding, which is not limited to priority documents for patents, is equally applicable to priority documents for other industrial property rights.

23. The existing service operates in accordance with the Framework Provisions for the Digital Access Service for Priority Documents (“the Framework Provisions”) (Annex II). Those provisions were established by the International Bureau following a decision of the Paris Union Assembly, the PLT Assembly and the PCT Union Assembly, and the recommendations of the Working Group on the Digital Access Service for Priority Documents (“the Working Group”) convened following the decision of the said Assemblies and composed by the States party to the Paris Convention, the PLT and the PCT.

24. The Framework Provisions would need to be adapted to cover operation of the service with respect to industrial design priority documents. Although it is not anticipated that major changes would be required, it would be necessary that the Working Group discuss the changes needed and make recommendations to the International Bureau for the amendment of the Framework Provisions. To that end, a session of the Working Group would have to be held.

EXTENSION OF THE SERVICE TO PRIORITY DOCUMENTS FOR TRADEMARKS

(a) General remarks

25. The general features of the service with regard to priority documents for trademarks would be the same as for patent priority documents, as described in paragraphs 7 to 11, above.

26. With respect to trademarks, the International Bureau would not be an office of first filing. Under the Madrid Agreement for the International Registration of Marks and the Protocol Relating to that Agreement (“the Madrid System”), an international application must be based on a registration or, under the Madrid Protocol, an application of the mark in the Office of origin.

27. Neither would the service be used in respect of priority claims made in international applications filed under the Madrid System. Pursuant to Article 4(2) of the Madrid Agreement and Protocol, international registrations enjoy the right of priority, without it being necessary to comply with the formalities provided for in Section D of Article 4 of the Paris Convention.

28. The service would however be useful for streamlining the procedures relating to priority claims outside the Madrid System, as national and regional offices generally require the filing of priority documents, where priority has been claimed.

(b) System requirements

29. The service for priority documents for trademarks, together with the service to be established for industrial designs and the existing service for patent priority documents, could be integrated into a single service. The considerations and remarks made in paragraphs 18 and 19, above, would be applicable.

30. For the purpose of communicating with participating offices, the service for trademark priority documents could either build on PCT EDI architecture or use the File Transfer Protocol (FTP) for international registrations under the Madrid system. The latter is widely

used by the International Bureau and approximately 50 offices, although it does not offer the same level of confidentiality as PCT EDI. However, insofar as novelty and deferment of publication are not of concern with respect to trademarks, such high level of confidentiality would arguably not be required for trademark priority documents.

31. No major resources would be needed for adapting PCT EDI architecture for use in respect of trademark priority documents. However, FTP architecture might be preferred by trademark offices which already communicate, or intend to communicate in the future, with the International Bureau under that protocol, in the context of the Madrid System. For those offices, as well as for the International Bureau, adapting the FTP architecture for the purpose of communicating trademark priority documents would presumably not be very resource intensive. However, there would be an additional need for resources for the purposes of adapting the DAS system to communicate with the trademark FTP environment.

32. The Working Group would have to consider the pros and cons of using the FTP architecture as part of the DAS system, and ultimately recommend the architecture that would be more convenient for communicating trademark priority documents within a single DAS system.

(c) Legal considerations

33. Extension of the existing digital access service to priority documents for trademarks would not need to be endorsed by the Paris Union Assembly. The considerations set out in paragraph 21, above, are applicable.

34. As would be the case for industrial designs, operation of the service for priority documents for trademarks would also be based on the Agreed Understanding of the Assembly of the Paris Union Concerning the Certification of Priority Documents, adopted in 2004 by the Assembly of the Paris Union (see paragraph 22, above).

35. Finally, the Framework Provisions would need to be adapted to cover operation of the service with respect to priority documents for trademarks. To that end, a session of the Working Group would have to be held.

CONCLUSION

36. Extension of the DAS to priority documents for industrial designs and trademarks would offer the possibility for more streamlined and cost-efficient handling of priority documents for those two industrial property rights, for the benefit of both offices and applicants.

37. With a view to examining the questions relating to an extension of the DAS to priority documents for industrial designs and trademarks, it is intended to convene a session of the Working Group during the first half of 2010. The Working Group will be open to participation by all States and observers entitled to participate in sessions of the Assembly of the Paris Union.

38. *The Standing Committee is invited to take note of the present document.*

[Annexes follow]

¹ Article 4A(2) of the Paris Convention provides the following: “Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.”

² At the date of drafting of this document, approximately 20 offices use those systems.

ANNEX I

AGREED UNDERSTANDING ADOPTED BY THE
ASSEMBLIES OF THE PARIS UNION AND THE PCT UNION

(adopted by the Assemblies on October 5, 2004; document A/40/7, paragraph 173, referring to document A/40/6, paragraph 9, in which an agreed understanding was proposed in order to enhance certainty with respect to the growing use of electronic means for the provision, storage and dissemination of priority documents)

The Assemblies of the Paris Union and the PCT Union agree that the following principles shall apply to the application of Article 4D(3) of the Paris Convention, Article 8 of the PCT and Rule 17 of the PCT Regulations:

(i) it is for the competent authority furnishing the priority document to determine what constitutes certification of a priority document and the date of filing, and how it will certify such a document;

(ii) each Office will accept a single certification that applies to more than one priority document (“collective certification”), provided that such certification permits identification of all priority documents to which it relates;

(iii) a non-exhaustive list of examples of forms of certification of priority documents agreed to be acceptable consists of the following:

- certification in paper form;
- certification in electronic character coded form;
- an electronic image of a certification on paper;
- the collective certification of multiple priority documents transmitted by an Office to another Office or to the International Bureau;
- the collective certification of multiple priority documents contained in an Office database providing access to such documents to those entitled;

(iv) for the purpose of Article 8 and Rule 17 of the PCT, once a priority document has been issued and certified in accordance with the foregoing principles by the receiving Office, and transmitted to the International Bureau in electronic form, no designated or elected Office may require any different form of certification or any re-certification of that priority document; however, the International Bureau will continue, on request by any designated or elected Office, to furnish copies in paper form of priority documents held in connection with international applications under the PCT.

[Annex II follows]

ANNEX II

FRAMEWORK PROVISIONS FOR THE
DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS¹

established on March 31, 2009

Digital Access Service

1. These provisions are established by the International Bureau in accordance with a decision of the Paris Union Assembly, the PLT Assembly and the PCT Union Assembly and the recommendations of the Working Group on the Digital Access Service for Priority Documents (“the Working Group”)².
2. The digital access service for priority documents (“the service”) operates in accordance with these provisions and having regard to the general principles and system architecture recommended by the Working Group³.
3. The aim of the service is to provide applicants and Patent Offices with a simple and secure option whereby priority documents may be furnished for the purposes of the applicable law, having regard to relevant international agreements and understandings⁴.
4. The implementation of these provisions by Patent Offices is a matter for the applicable law⁵.
5. These provisions come into effect from the date on which they are established, except that the service commences practical operations in terms of deposit of and access to priority documents from a date to be fixed by the International Bureau after consultation with the Consultative Group⁶.
6. Words and expressions used in these provisions are to be understood with reference to paragraph 26.

Participating Digital Libraries

7. A digital library participates for the purposes of these provisions (“participating digital library”):
 - (i) if it is so designated by the International Bureau when these provisions come into effect⁷;
 - (ii) if, upon request by a Patent Office, it is so designated by the International Bureau at a later time after consultation with the Consultative Group.
8. The criteria referred to in paragraph 23 apply to all participating digital libraries.
9. The giving by a Patent Office of a notification under paragraph 12 does not give rise to any obligation on the part of that Office to accept a participating digital library for the purposes of Rule 4(3) of the Regulations under the PLT⁸.

Depositing Offices and Availability of Priority Documents Via the Service

10. A Patent Office (“depositing Office”) may notify the International Bureau that copies of patent applications deposited by it in a participating digital library⁹ are to be made available via the service as priority documents in accordance with these provisions. The notification also informs the International Bureau of relevant operating procedures and technical requirements referred to in paragraph 23, including any specification of options from among those available.

11. The applicant may submit a priority document to the International Bureau, or to a Patent Office that is prepared to receive priority documents for the purpose, together with a request that it be deposited in a participating digital library and made available via the service.

Accessing Offices

12. A Patent Office (“accessing Office”) may notify the International Bureau that, for the purposes of the applicable law¹⁰ and subject to paragraphs 13 to 15, the Office treats a priority document that is available to it via the service as though it had been furnished to it by the applicant. The notification also informs the International Bureau of relevant operating procedures and technical requirements referred to in paragraph 23, including any specification of options from among those available.

13. A certificate by the International Bureau that a priority document is available via the service to a particular accessing Office, including bibliographic details¹¹ and the date on which the priority document became available, is made available via the service to the applicant and the Office¹². The certificate is, subject to paragraphs 14 and 15, accepted by the Office for the purposes of the applicable law as proof of the matters it contains.

Opportunity to Comply

14. (a) Where a certificate referred to in paragraph 13 states that a priority document became available via the service to an accessing Office on a date which is on or before the date (“the relevant date”) by which the priority document is required to be furnished under the applicable law, but the Office finds, whether before, on or after the relevant date, that the priority document is in fact not available to it, the Office so notifies the applicant, giving the opportunity to furnish the priority document to it, or to ensure that the priority document is made available to it via the service, within a time limit of not less than two months from the date of the notification¹³.

(b) Where the priority document is furnished or becomes available to the Office within that time limit, it is treated as though it had been available on the date stated in the certificate. Where the priority document is not furnished or does not become available to the Office within that time limit, the consequences provided by the applicable law apply¹³.

15. (a) Paragraph 14 does not apply to an accessing Office whose applicable law provides that it shall notify the applicant where the priority document is not available to it on the date by which it is required to be furnished under that law, giving the opportunity to furnish the priority document to it, or to ensure that the priority document is made available to it via the service, within a time limit of not less than two months from the date of the notification. Where the priority document is not furnished or does not become available to the Office within that time limit, the consequences provided by the applicable law apply¹³.

- (b) An accessing Office need not apply paragraph 14 where, under the applicable law:
- (i) there is no fixed date, calculated from either the filing or the priority date, by which the priority document must be received by or made available to the Office;
 - (ii) it is required that the priority document be received by or made available to the Office before grant; and
 - (iii) the Office provides an online file inspection service enabling the applicant to monitor whether the priority document has been received by or made available to the Office¹³.

Priority Documents That Are Not Publicly Available

16. A priority document that is not publicly available under paragraph 17 is available via the service only to Offices (“authorized accessing Offices”) by which access is authorized by the applicant in accordance with the operating procedures and technical requirements referred to in paragraph 23.

Priority Documents Becoming Publicly Available

17. A priority document becomes publicly available via the service¹⁴:
- (i) upon a request to that effect received by the International Bureau from the applicant;
 - (ii) upon a notification received by, or on the basis of information obtained by, the International Bureau from the depositing Office that the document is publicly available under the applicable law¹⁵;
 - (iii) upon a notification received by, or on the basis of information obtained by, the International Bureau from an authorized accessing Office that the document is publicly available under the applicable law or would be so available if it had been furnished to that Office by the applicant;
 - (iv) if it becomes publicly available as a priority document held by the International Bureau in connection with an international application under the Patent Cooperation Treaty¹⁶.

18. A priority document that is publicly available under paragraph 17 is available to any accessing Office, and may be made available to the general public, without the need for authorization by the applicant.

Translations of Priority Documents

19. The International Bureau may establish procedures, after consultation with the Consultative Group, to enable translations of priority documents to be deposited and made available under the service¹⁷.

Publication of Information

20. The International Bureau publishes on WIPO's website information relating to the service, including:

- (i) the establishment of these provisions and any subsequent modifications of them;
- (ii) the commencement of practical operations of the service;
- (iii) participating digital libraries¹⁸;
- (iv) notifications and information received from Patent Offices¹⁹ under paragraphs 10 and 12;
- (v) operating procedures and technical requirements referred to in paragraph 23.

Consultative Group

21. The Consultative Group consists of:

- (i) Patent Offices from which the International Bureau receives a notification under paragraph 10 or 12;
- (ii) any other Patent Offices that notify the International Bureau that they wish to participate in the Group;
- (iii) as observers, interested organizations invited to meetings of the Working Group that notify the International Bureau that they wish to participate in the Consultative Group.

22. The proceedings of the Consultative Group take place primarily through correspondence and an electronic forum on WIPO's website.

Operating Procedures and Technical Requirements

23. The International Bureau may, after consultation with the Consultative Group, establish and modify operating procedures and technical requirements useful for the operation of the service, including criteria for the participating digital libraries²⁰ under paragraph 7 and the means by which applicants authorize access²¹ for the purpose of paragraph 16.

Modification

24. These provisions may be modified by the International Bureau in accordance with recommendations of the Working Group or after consultation with all of the members of the Working Group.

Languages

25. These provisions are established in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic²².

Meanings of Words and Expressions

26. In these provisions:

(i) “applicable law” means the national law or regional legal enactments under which a Patent Office operates;

(ii) “applicant” means a person who appears as applicant in the records of the Patent Office with which a patent application was filed, and includes a representative of the applicant recognized under the applicable law;

(iii) “certified” means certified for the purposes of these provisions and Article 4D(3) of the Paris Convention, whether by the Office with which the patent application concerned was filed or by the International Bureau in connection with access via the service, and having regard to the agreed understanding of the Paris Union Assembly and the PCT Union Assembly concerning certification of priority documents²³;

(iv) “Consultative Group” means the Consultative Group referred to in paragraph 21;

(v) “International Bureau” means the International Bureau of WIPO;

(vi) “Paris Convention” means the Paris Convention for the Protection of Industrial Property;

(vii) “Paris Union” means the Paris Union for the Protection of Industrial Property;

(viii) “patent application” means an application of a kind referred to in Article 3 of the PLT²⁴;

(ix) “Patent Office” means an authority entrusted with the granting of patents or the processing of patent applications by a State that is party to the Paris Convention or is a member of WIPO or by an intergovernmental organization at least one of whose member States is party to the Paris Convention or a member of WIPO²⁵;

(x) “PCT” means the Patent Cooperation Treaty;

(xi) “PCT Union” means the International Patent Cooperation Union;

(xii) “PLT” means the Patent Law Treaty;

(xiii) “priority document” means a certified copy of a patent application²⁶;

(xiv) “WIPO” means the World Intellectual Property Organization.

EXPLANATORY NOTES

1. The framework provisions are supplemented by these notes, prepared by the International Bureau for explanatory purposes, which do not form part of the framework provisions themselves but were approved by the Working Group together with the framework provisions (see document WIPO/DAS/PD/WG/2/4, paragraph 38). The explanatory notes may be modified by the International Bureau after consultation, on changes of substance, with the Consultative Group.
2. For the Assemblies' decision that the service be established according to the recommendations of the Working Group, see their report, adopted on October 3, 2006, document A/42/14, paragraph 220. For the recommendations of the Working Group, see its report, adopted on July 19, 2007, document WIPO/DAS/PD/WG/2/4.
3. See document WIPO/DAS/PD/WG/2/4, paragraphs 23 and 35 and Annexes I and II.
4. The relevant international agreements and understandings include, in particular:
 - (i) the Agreed Statement by the Diplomatic Conference for the Adoption of the PLT, adopted on June 1, 2000, urging WIPO to expedite the creation of a digital library system for priority documents and noting that such a system would be of benefit to patent owners and others wanting access to priority documents (see Agreed Statement No. 3 appearing in document PT/DC/47 and in WIPO Publication No. 258);
 - (ii) the provisions of the Paris Convention, the PLT and the PCT concerning declarations of priority and priority documents (see, in particular: Paris Convention, Article 4D; PLT Article 6 and Rule 4; and PCT Article 8 and Rule 17);
 - (iii) the agreed understanding adopted by the Paris Union Assembly and the PCT Union Assembly on October 5, 2004, concerning the certification of priority documents provided, stored and disseminated in electronic form (see document A/40/7, paragraph 173, referring to document A/40/6, paragraph 9);
 - (iv) the obligations of Members of the World Trade Organization that are not party to the Paris Convention to recognize priority rights, for which purpose priority documents may also be deposited and accessed via the service.
5. The framework provisions do not create international treaty-style obligations for participating Patent Offices. The provisions are intended to facilitate the furnishing of priority documents for the purposes of the Paris Convention but do not affect the basic rights and obligations established by that Convention or the PLT or give rise to any new obligation under the Paris Convention or the PLT; see, in particular, paragraph 9 of the framework provisions.
6. This will, for example, enable the giving of notifications under paragraphs 10, 12 and 21(ii) and (iii) of the framework provisions before the service commences practical operations, thus enabling the Consultative Group to have an active role in implementation of the service.

7. The International Bureau envisages that the initial designation of participating digital libraries would be of those Patent Offices which are already in practice exchanging priority documents in electronic form, namely, the State Intellectual Property Office of the People's Republic of China, the Japan Patent Office, the Korean Intellectual Property Office, the United States Patent Office and the European Patent Office, as well as of the International Bureau itself.
8. While a participating Patent Office would not be obliged to accept a participating digital library for the purposes of PLT Rule 4(3), it would of course be free to accept such a digital library for that purpose of it so wished.
9. A Patent Office which is not able, or does not wish, to establish and maintain its own digital library may make arrangements with the International Bureau, or with another Office that is prepared to handle such deposits, to deposit priority documents in the digital library maintained by the International Bureau or that other Office. The International Bureau is prepared for this purpose to receive such documents in electronic form or to scan them if received in paper form. The arrangements made would need to provide for certain technical matters such as the use of an appropriate data format.
10. See notes 4 and 5, above, as to the way in which the provisions operate in the context of the applicable law and the provisions of the Paris Convention and other international agreements and understandings.
11. Which bibliographic details would be included is a matter to be addressed by the Consultative Group, having regard, for example, to requirements under applicable laws as to maintaining the confidentiality of unpublished applications.
12. Certificates would be available to the applicant and the Office concerned (but not to others) for viewing on-line or by transmission on request.
13. The purpose of paragraph 14 of the framework provisions is to assure applicants that, if they make use of the service complying with the requirements of the provisions, their priority rights will be protected in a case where the priority document concerned is found not to be available to an accessing Office via the service. The time limit of two months referred to in paragraph 14(a) is consistent with the time limit prescribed in PLT Rule 6(1). An Office which follows in general the practice of sending notifications referred to in paragraph 14(a) before the relevant date may of course do so whether or not the priority document in question is the subject of a certificate referred to in paragraph 13. Paragraph 14 does not apply to an accessing Office whose procedures provide for safeguards of the kind set out in paragraph 15(a), such as the European Patent Office, and need not be applied by an accessing Office whose procedures provide for safeguards of the kind set out in paragraph 15(b), such as the United States Patent and Trademark Office. Notifications by accessing Offices given to the International Bureau under paragraph 12, and published under paragraph 20(iv), include details of the applicable procedures under paragraphs 14 and 15.
14. Paragraph 17 of the framework provisions is exhaustive of the ways in which a priority document may become publicly available via the service, but has no operation in relation to ways in which priority documents may become publicly available outside the service. It is envisaged that the operating procedures and technical requirements under paragraph 23 would

include provisions designed to cover cases where the application claiming priority is withdrawn at a late stage.

15. While items (ii) and (iii) of paragraph 17 of the framework provisions *enable* the depositing Office or an authorized accessing Office, respectively, to notify the International Bureau that the priority document is, or would be if furnished, publicly available under the applicable law (that is, applicable by the Office giving the notification), such an Office is *not obliged* by those provisions to give such a notification. Information as to public availability could also, when authorized by an Office, be obtained by way of data obtained by the International Bureau from the Office.

16. See PCT Rule 17.2(c).

17. Operating procedures and technical requirements providing for the deposit of and access to translations would need to be established under paragraph 23 of the framework provisions before a date could be determined under paragraph 19. The framework provisions do not address or limit the kind of certification, etc., that accessing Offices are entitled to require in the case of translations, and do not assure that a translation submitted under the services would satisfy the needs of any particular accessing Office; those matters would be left to the applicable law in each Office. It is to be hoped, however, that future work might achieve a degree of commonality of approach on the matter, with the result that a single translation might be able to be accepted by a number of accessing Offices.

18. Published details concerning participating digital libraries would include, for example, the date on which a digital library is to commence operations under the service, document format requirements, etc.

19. The publication of up-to-date details of notifications and Office requirements, and changes therein, is of course vital to applicants wishing to rely on the service as a secure means of satisfying requirements for the provision of priority documents. As an example, it will be important to publish details of which possible routes for entry of priority documents into the service (see Annex I of document WIPO/DAS/PD/WG/2/4) are available in a particular Office of first filing.

20. It is envisaged that the criteria for participating digital libraries might include, for example, criteria as to giving access and ensuring confidentiality and a requirement that arrangements be in place for deposited priority documents to be stored for a specified period from the priority date. By way of comparison, it is noted that files relating to international applications under the PCT must be kept by the International Bureau for 30 years from the date of receipt of the record copy; see PCT Rule 93.2(a).

21. As explained in document WIPO/DAS/PD/WG/2/2, the only system presently envisaged for ensuring the applicant's authorization of access is by means of the applicant's control of a list of authorized Offices held by the International Bureau. An access control code will be used to confirm the identity of the applicant when maintaining the list, and the use of secure communication channels between the International Bureau and the accessing Office will assure the identity of the latter.

22. The working languages of the service in its practical operations would be the official working languages of the International Bureau (that is, English and French), with the possibility of extension to other languages when practicable.

23. See note 4(iii), above.

24. PLT Article 3(1) in turn refers to certain provisions of the Paris Convention and the PCT. See also the Explanatory Notes on PLT Article 3. While the definition refers to the PLT, that is purely for the sake of the definition; there is no implication that the Offices concerned must be bound by the provisions of the PLT. As a further point, while the definition covers most kinds of priority document that are likely to be important in practice, future review may be needed to determine whether other kinds of priority document should also be included (for example, priority documents relating to utility models).

25. See also Note 4(iv), above.

26. See also the definition of “certified” in paragraph 26(iii) of the framework provisions.

[End of Annex II and of document]