

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

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

**Third Session**  
**Geneva, September 6 to 14, 1999**

DRAFT 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 third session, in Geneva from September 6 to 14, 1999.
2. The following States members of WIPO and/or the Paris Union were represented at the meeting: Algeria, Andorra, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Georgia, Germany, Greece, Haïti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Lithuania, Madagascar, Malawi, Malaysia, Mali, Mexico, Morocco, Namibia, Netherlands, Nigeria, Norway, Panama, Paraguay, Philippines, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Turkey, Uganda, Ukraine, United Kingdom, United States of America, Viet Nam and Zambia (78).
3. Representatives of 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 (4).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Bar Association (ABA), Brazilian Association of Industrial Property Agents (ABAPI), American Intellectual Property Law Association (AIPLA), Asian Patent Attorneys Association (APAA), Committee of National Institutes of Patent Agents (CNIPA), Confederation of Indian Industry (CII), 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 Federation of Industrial Property Attorneys (FICPI), International Federation of Inventors' Associations (IFIA), International League of Competition Law (LIDC), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), Korean Patent Attorneys Association (KPAA), The Chartered Institute of Patent Agents (CIPA), Trade Marks, Patents and Designs Federation (TMPDF), Union of European Practitioners in Industrial Property (UEPIP) and World Association for Small and Medium Enterprises (WASME) (20).

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

6. Discussions were based on the following documents prepared by the International Bureau of WIPO: "Agenda" (SCP/3/1), "Draft Patent Law Treaty and Draft Regulations" (SCP/3/2), "Notes" (SCP/3/3), "Interface Between the Draft Patent Law Treaty (PLT) and the Patent Cooperation Treaty (PCT); suggested amendments to Article 5 of the draft PLT" (SCP/3/4), "Availability of Priority Documents" (SCP/3/5), "Fee Reductions by the Offices" (SCP/3/6), "Additional Information Concerning Fee Reductions by the Offices" (SCP/3/6 Add.), "Draft Patent Law Treaty: Working document" (SCP/3/7), "Draft Regulations under the Draft Patent Law Treaty: Working document" (SCP/3/8); and the following proposals submitted by delegations: "Draft Articles 4(6)(b) and 13(2*bis*); Draft Rules 2(4), 15(4*bis*) and (4*ter*)" (SCP/3/9) and "Protection of Biological and Genetic Resources" (SCP/3/10).

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 session was opened by Mr. Shozo Uemura, Deputy Director General of WIPO, who welcomed the participants and underlined the importance of the present meeting for the conclusion of the draft Patent Law Treaty (hereinafter referred to as "draft PLT") and its adoption by the Diplomatic Conference next year.

### Agenda Item 2: Adoption of the Agenda

9. The draft agenda (document SCP/3/1) was adopted as proposed.

### Agenda Item 3: Draft Patent Law Treaty

10. The Standing Committee discussed the provisions of the draft PLT based on documents SCP/3/2 to 5, 7 and 8. Unless otherwise indicated, the following summary is based on the text presented in documents SCP/3/7 and 8.

#### *Draft Article 1: Abbreviated Expressions*

11. *Item (v)*. Following an intervention by the Delegation of China, the International Bureau suggested to add the word “other” before “information” in order to align this provision with items (vi) and (vii), where the word “information” was used in a broad sense. The item was adopted with this change.

12. *Item (vii)*. Following an intervention from the Delegation of the United States of America, it was agreed to replace the term “recordal” by the word “recording”, which would involve consequential changes throughout the Treaty and the Regulations. The item was adopted with this change.

13. *Item (viii)*. A proposal by the Delegation of Canada to add, for the sake of clarity, after the words “applying for the patent, or” the words “whom the records of the Office show”, was adopted. The item was adopted with this change.

14. *Item (xiii)*. This item was adopted as proposed.

15. *Item (xiv)*. The suggestion of the Delegation of the United States of America to modify the last sentence of related Note 1.13 in order to clearly distinguish between proceedings in respect of a patent and proceedings not in respect of a patent, was agreed. This item was adopted as proposed.

16. *Item (xvii)*. This item was adopted as proposed.

#### *New Draft Article 1bis: General Principles*

17. The International Bureau presented its suggestion for a new draft Article 1bis which would read as follows:

“[(1)] [*More Favorable Requirements*] A Contracting Party shall be free to provide for requirements which, from the viewpoint of applicants and owners, are more favorable than the requirements referred to in this Treaty and the Regulations.

“[(2)] [*No Regulation of Substantive Patent Law*] Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of substantive patent law as it desires.]”

18. *Paragraph (1)*. The suggested draft was supported by the Delegations of Germany, Australia and the United States of America, and by the Representative of the EPO. The

Delegations of the United Kingdom and Sweden, however, objected to this provision on the grounds that the interests of applicants should be balanced against the rights of third parties. This would be particularly true with regard to the requirements for the establishment of a filing date under Article 4, which was adopted with the words “no later than” in square brackets. Furthermore, the provision as proposed might threaten the general trend towards international uniformity in patent procedures which, in itself, would be beneficial to users of the international patent system. This objection was supported by the Delegation of the Russian Federation and the Representatives of CIPA and ABA, who additionally pointed out that a Contracting Party and an applicant might have diverging views as to the user-friendliness of requirements which were not referred to in the PLT.

19. The International Bureau explained that during previous sessions it had been understood that, other than in Article 4, the PLT only provided maximum standards, in principle, and that Contracting Parties would be free to adopt systems that were more favorable to users. It noted that suggested draft Article *1bis* would not change the substance of the Treaty, but would merely state, for the sake of clarity, the principle of deregulation which underlined the PLT. The Treaty did not attempt to establish a completely uniform procedure throughout the world, but rather to assure applicants that their applications had to be accepted in every Contracting Party if they complied with the maximum formal requirements allowed under the PLT. The International Bureau also pointed out that Article 27(4) and (5) of the Patent Cooperation Treaty (“PCT”) contained similar provisions to draft Article *1bis*, which had so far not created any particular problems. In order, however, to accommodate the special nature of Article 4, the International Bureau suggested to add, at the end of paragraph (1), the words “, other than Article 4.”

20. After further discussion, the provision was adopted without square brackets and with the proposed modification.

21. *Paragraph (2)*. This paragraph was adopted with the replacement of the words “substantive patent law” by “substantive national law relating to patents”, as proposed by the Delegation of the United States of America. It was also agreed to remove the square brackets.

#### *Draft Article 2: Applications and Patents to Which the Treaty Applies*

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

23. *Paragraph (1)(b)*. The International Bureau withdrew its suggestion to delete the words “Subject to the provisions of the Patent Cooperation Treaty” in order to ensure that the provisions of the PCT would apply to international applications in the national phase so that, for example, a filing date accorded to an international application could not be challenged under the PLT once the international application entered the national phase. The provision was adopted as proposed without the withdrawn deletion.

#### *Draft Article 4: Filing Date*

24. *Paragraph (1)*. The Delegation of Canada proposed to add, after the words “the date on which its Office has received,” the words “, or a Receiving Office established under the PCT has received, together with a designation of the Contracting Party,”. Although two

delegations expressed some support for the principle behind the proposal, they also expressed concern with regard to its wording. In the absence of support, the proposal was not adopted.

25. *Paragraphs (2), (4) and (5)*. These paragraphs were adopted as proposed.

26. *Paragraph (6), title*. The title of this provision was adopted as proposed.

27. *Paragraph (6)(b)*. Following an intervention by the Delegation of the Russian Federation, the International Bureau suggested to replace the words “at the time of filing” by the words “at the date on which one or more elements referred to in Article 4(1)(a) were first received by the Office,” as used in Rule 2(3)(ii).

28. The Delegation of Japan, supported by the Delegations of the Russian Federation, the Republic of Korea, China, India, and the Representative of JIPA, presented a proposal (document SCP/3/9) to delete draft Article 4(6)(b) and Rule 2(4), and to introduce new provisions under Article 13 and Rule 15, with a view to establishing a stable and reliable filing date. This proposal would accomplish the desired result by introducing a mechanism of restoration of a priority claim where a missing part of a description or missing drawing was later filed, and a later filing date was accorded. The Delegations of the United States of America and Australia and the Representative of ABA opposed this proposal, on the grounds that it took away the possibility for the applicant to establish a filing date as a date of original filing, even if no new matter was added. The Delegation of Australia also noted that the effect of the proposal would be to extend the term of the patent, since the term was counted from the filing date. After some discussion, following a suggestion by the International Bureau, the Delegation of Japan indicated that it would consider submitting a revised proposal to the Diplomatic Conference.

29. The provision was adopted with the modifications that were agreed.

30. *Paragraph (7)(a)*. The Delegation of the United States of America, supported by the Delegation of Japan, proposed to clarify Article 4(7)(a) by adding the words “made upon the filing of the application,” after the word “reference,”. The provision was adopted with this modification.

#### *Draft Article 5: Application*

31. *Paragraph (1)*. The International Bureau reported on the last session of the Ad Hoc Advisory Group on PCT Legal Matters, which had taken place from August 30 to September 3, 1999. Under the proposed modifications of PCT Rules 4.1 and 51*bis*, an applicant would be able to file standard declarations or statements at the time of filing the request of an international application, or at a later stage during the international phase, in order to comply with the requirements which may be imposed once the processing of an international application had started at the designated Office under the PCT. As in the draft PLT, proposed PCT draft Rule 51*bis*.1(*a-bis*) would only allow Offices to require evidence concerning these requirements where the Offices had reasonable doubt as to the veracity of the declarations or statements filed.

32. Following agreement that certain parts of paragraph (2) be moved to new draft Rule 3, and that paragraph (1)(b) and (c) be deleted in view of the adoption of new draft Article 1*bis*,

the International Bureau submitted a revised text of paragraphs (1), (2) and (6) to take account of the ongoing discussion in the framework of the PCT, in particular, with respect to the above-mentioned PCT Rules.

33. Following an intervention by the Delegation of Australia as to whether reservations under proposed draft Rule PCT 51*bis*.1(*a-ter*) with respect to the restriction on Offices from requiring evidence in every case would affect paragraph (6), the International Bureau explained that, since the modifications had not yet been adopted by the PCT Assembly, this matter could be left to the Diplomatic Conference.

34. Following an intervention of the Representative of the EPO, the International Bureau explained that paragraph (6) did not prevent a Contracting Party from requiring evidence concerning non-prejudicial disclosures and exceptions to lack of novelty, since these issues were considered to be of a substantive nature.

35. Following the above discussions, paragraphs (1), (2) and (6) were adopted as follows:

“(1) [*Form or Contents of Application*] Except where otherwise provided for by this Treaty or prescribed in the Regulations, and subject to paragraph (6), no Contracting Party shall require compliance with any requirement relating to the form or contents of an application different from or additional to:

(i) the requirements relating to form or contents which are provided for in respect of international applications under the Patent Cooperation Treaty;

(ii) the requirements relating to form or contents compliance with which, under the Patent Cooperation Treaty, may be required by the Office of, or acting for, any Contracting State of that Treaty once the processing or examination of an international application, as referred to in Article 23 or Article 40 of the said Treaty, has started;

(iii) any further requirements prescribed in the Regulations.

(2) [*Request Form or Format*] (a) A Contracting Party may require that the contents of an application which correspond to the contents of the request of an international application under the Patent Cooperation Treaty be presented on a request Form, or in a format, prescribed by that Contracting Party. A Contracting Party may also require that any further contents prescribed in the Regulations pursuant to paragraph (1)(iii) be contained in that request Form or format.

(b) Notwithstanding subparagraph (a), and subject to Article 7(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) on a request Form, or in a format, provided for in the Regulations.

...

(6) [*Evidence*] A Contracting Party may require that evidence be filed with its Office in the course of the processing of the application only where that Office may reasonably doubt the veracity of any matter referred to in paragraphs (1) and (2) or in a

declaration of priority, or the accuracy of any translation referred to in paragraph (3) or (5).”

36. *Paragraph (3)*. A proposal by one delegation to add the words “so that the translation be submitted within the time limit prescribed in the Regulations” was not supported by any other delegation. The provision was adopted as proposed.

37. *Paragraph (5)*. The provision was adopted as proposed, together with the deletion of the word “date” after the word “priority.”

38. *Paragraph (7)*. The Delegation of Japan, supported by the Delegation of the Russian Federation, proposed to replace the reference to paragraphs (1) to (5) by a reference to paragraphs (1), (2) and (4) only. This would have the effect that an Office would not be obliged to notify an applicant in cases where a translation, required in accordance with paragraph (3), or a priority document, which might be required under paragraph (5), was missing from the application. Otherwise, the Office might not be able to publish the application in time. This would work to the disadvantage of third parties and increase the administrative burden on Offices. This proposal did not find further support and was opposed by the Delegations of Australia, the United States of America, Germany, and the Representatives of the EPO, FICPI, BDI and EPI. It was pointed out by the Delegations of the United States of America, Germany and the Representative of FICPI that a priority document would not precisely indicate the coverage of the priority. For the purposes of publishing the application, it would be sufficient to inform third parties of the fact that priority was claimed. Third parties would need to consult such documents at an early stage only in very rare cases (e.g., when claiming prior art in the priority interval). The Representative of the EPO reported that the notification requirement had not created any problems in his Office with regard to the filing of translations and priority documents.

39. The Representative of OAPI indicated that the implementation of this provision might cause problems under the applicable law of his Organization because it presently provided a time limit of six months from the date of filing. A subsequent notification by the Office would only be considered as a reminder and would not start a new time limit.

40. Following this discussion, the provision was adopted as proposed. However, the words “by the Office” would not be added, as proposed, here or in any other provision where they were proposed in the same context.

41. *Paragraph (8)(a)*. This provision was adopted as proposed.

42. *Paragraph (8)(b)*. Following a suggestion by the International Bureau, this provision was adopted with the addition of the words “, subject to Article 13,” after the word “may” in the third line.

#### *Availability of Priority Documents (document SCP/3/5)*

43. The International Bureau introduced document SCP/3/5, which suggested studying the possibility of establishing a central digital library among the Member States of WIPO and the Paris Union, outside of the draft Patent Law Treaty. Such a system could involve a large number of countries, could be set up rapidly, and would not impose an undue burden on the Offices of the Member States.

44. In response to a question from the Delegation of the United Kingdom, the International Bureau stated that such a system, if it were based on a recommendation of the General Assemblies of WIPO and the Paris Union, would not be binding on Offices. It would, however, be unlikely that individual Offices refused to cooperate because, apart from the strong persuasive authority of such a recommendation, every country would benefit from such a system. The International Bureau also pointed out that a system already existed under the PCT, where the International Bureau acted as a depositary for priority documents which were then made available to Offices. Under this system, designated Offices could request such documents only from the depositary, not from applicants.

45. One delegation was of the opinion that the problem should be solved within the framework of the PLT. It proposed to amend Article 5(5) and to add text in the Regulations, so that any interested person could claim a copy of a priority document either from the Office, or, if the Office had received no copy, directly from the applicant. This proposal was not supported by any other delegation, bearing in mind that third parties might be hesitant to contact the applicant in case of potential disputes. It was therefore decided to follow the draft recommendation submitted by the International Bureau, and to further explore solutions outside of the framework of the PLT.

46. In connection with this issue, in the course of the discussion on Article 13(3), the International Bureau suggested an additional Article as follows:

*“Availability of Priority Documents*

Each Contracting Party shall undertake, where appropriate, to make available, to the applicant and to third parties upon request, copies of applications filed with its Office which serve as a basis of a priority claim, as soon as is reasonably possible, utilizing to the extent reasonably possible internationally accepted technological solutions which may be available to that Contracting Party.”

47. The Delegation of the United Kingdom noted that the text seemed to be similar to an agreed statement of the Diplomatic Conference. It thus suggested to withdraw the proposal and volunteered to submit a draft statement to the SCP members through the electronic forum in order to receive comments for a final draft to be submitted to the Diplomatic Conference. The Delegation of the Russian Federation indicated that two issues, namely the availability of priority documents and the use of technological solutions at the international level, should be considered separately, since the latter concept was not adopted yet.

48. In conclusion, the International Bureau withdrew suggested Article 13*bis*, and the SCP adopted the procedure proposed by the Delegation of the United Kingdom.

*Draft Article 6: Representation*

49. *Paragraph (1)*. A suggestion by the International Bureau to add the words “, as his address,” after “provide” in item (ii) was agreed. The paragraph was adopted with this change.



50. In response to queries by the Representative of JIPA as to which States permitted the appointment of a firm as a representative, as referred to in the Note 6.03, and any requirements as to the nature of such firms and the need to have a branch in the Contracting Party concerned, it was agreed that any delegation that possessed information in these matters should contact that organization.

51. *Paragraph (2)*. In addition to the delegations referred to in Note 6.10, the Delegations of Austria, Spain, the Russian Federation and Germany entered reservations on this paragraph. The Delegation of Brazil entered a reservation on items (v) and (vi). The representative of one non-governmental organization suggested that the reference to the filing of a translation under item (iv) be deleted.

52. In response to a question raised by one delegation, the International Bureau explained that the inclusion of “any procedure referred to in Article 4” was not inconsistent with the limitation “after the filing date” in the introductory words, since certain procedures under Article 4, for example the filing of missing drawings, could be effected after the filing date. In response to the question of another delegation, the International Bureau further explained that item (v), if adopted at the Diplomatic Conference, would permit the Assembly to add and/or to delete any procedure prescribed in the Regulations under that Article. In response to the query of a third delegation, the International Bureau confirmed that the words “receipt or notification” in item (vi) were intended so that the item applied to both the issue of receipts and the issue of notifications.

53. *Paragraph (4)*. In response to a query by one delegation, it was agreed that Article 6 did not preclude a Contracting Party from requiring that two or more co-applicants be represented by a common representative, and that this should be stated in the Notes. This provision was adopted as proposed.

54. *Paragraph (5)*. A suggestion by the International Bureau to add the words “by the Contracting Party” after “applied” was agreed. This paragraph was adopted with the agreed change.

#### *Draft Article 7: Communications; Addresses*

55. *Paragraph (1)(a)*. The replacement of the words “and (c)” by the words “to (d)” in subparagraph (a), consequential to the addition of new subparagraph (d) was agreed. The provision was adopted with this change.

56. *Paragraph (1)(b)*. This provision was adopted as proposed.

57. *Paragraph (1)(d)*. The International Bureau explained that the inclusion of subparagraph (d), together with amendments to Rules 8(1) and 22, would safeguard the rights of applicants by allowing them to meet a time limit by filing a response on paper, even when an Office had introduced a completely paperless filing system after the transition period foreseen in draft Rule 8(1). In response to a question from the Delegation of Sweden, the International Bureau explained that the content of the paper filing would of course have to meet the requirements for which the time limit was imposed. Thus, an applicant who was required by an Office to convert his earlier communication on paper into electronic format within a further time limit could not comply with that latter time limit by filing a further communication on

paper. After some discussion, this paragraph was adopted as proposed, subject to a reservation by the Delegation of Japan.

58. *Paragraph (3)*. A proposal by the Delegation of the Russian Federation that, for the sake of clarity, the words “in respect of such a communication” be added after “Model International Format” was agreed. The paragraph was adopted as proposed, together with this modification.

59. *Paragraph (7)*. This paragraph was adopted with the addition of the words “by the Contracting Party” after “Where one or more of the requirements applied” as suggested by the International Bureau.

#### *Draft Article 8: Notifications*

60. *Paragraph (1)*. The International Bureau suggested to delete, in the third line of this paragraph, the phrase “or in any other address provided for in the Regulations for the purpose of that provision” because reference was made to Article 7(6), and item (iii) of that Article contained an identical provision. Two delegations responded that the additional addresses provided for under Article 7(6) could be for very different purposes than that of Article 8(1). The Delegation of the United States of America suggested that perhaps a Rule was needed in relation to Article 7(6) and Article 8(1), as it might become necessary to provide for e-mail addresses which were not currently included in either one of the Articles.

61. Following this discussion, the International Bureau suggested the insertion of the words “at least” after “Office,” and the withdrawal of the suggestion, as indicated in the text, to change “this provision” to “that provision.” It also observed that the Notes could be amplified to indicate that sufficient notification could occur in other situations. One delegation observed that a Contracting Party may have to send a notification to “indications allowing the applicant to be contacted by the Office” referred to in Article 4(1)(a)(ii). Another delegation observed that there were no Regulations under Article 7(6) for the purpose of Article 8(1), and proposed that the words “for correspondence or address ... provision” be replaced by “indicated under Article 7(6) or, when there is no such address, to any other indication received by the Office allowing the applicant, owner or other interested person to be contacted by the Office.” After some discussion, it was agreed that no additional changes should be made to the proposed text, and that the words “this provision” should be retained, as previously adopted. The paragraph was adopted with this modification.

#### *Draft Article 9: Validity of Patent; Revocation*

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

#### *Draft Article 10: Relief in Respect of the Non-Compliance With a Time Limit*

63. *Paragraphs (1) and (2)*. The International Bureau suggested that the words “, and all of the requirements in respect of which the time limits for the said action applied are complied with,” be inserted after the word “made” in paragraph (1), item (ii).

64. The basic concept of draft Article 10 providing certain relief without specifying its mechanism was supported in general. However, some delegations preferred to accommodate both requests filed before and after the expiration of the time limit. In particular, the Delegation of France, supported by the Delegation of China, stated that it preferred to separately regulate the concept of continued processing, and to require the Office to notify the applicant if he did not comply with the time limit, as in an earlier draft. The Delegation of France indicated that, if a requirement for notification was not included in the Article, it would have to enter a reservation. The representative of one non-governmental organization also indicated that a notification by the Office should be required under draft Article 10.

65. One delegation, supported by another delegation, indicated that applicants should be given more possibilities of relief, and suggested that a new provision comparable to draft Article 5(1)(b) could be added as new Article 10(7). It was agreed that a general provision that any Contracting Party be more user-friendly be included in the Treaty in new draft Article 1*bis*.

66. Another delegation suggested to modify the phrase “at the option of the Contracting Party” to “at the option of the applicant” with a view to increasing user-friendliness.

67. In response to a suggestion by one delegation to include a mention of failure to comply with a time limit in the introductory words, the International Bureau explained that a Contracting Party could allow an extension of a time limit from one month before to one month after the expiration of the time limit.

68. The International Bureau clarified, in response to a query from the Delegation of Costa Rica, that, if a Contracting Party allowed a request for an extension of a time limit to be made before expiration of the time limit under the applicable law pursuant to draft Article 10, the contents of such requests would be subject to the provisions of Rule 12.

69. The Delegation of France suggested that the term “répit” be replaced by “sursis” in the French text.

70. The proposal by one delegation that Article 10 be amended to require Contracting Parties to accept at least one extension based on a request made prior to the expiration of a time limit set by the Office was opposed by two delegations. The Chair noted that the discussion during the previous session of the SCP indicated that there was not a consensus for such a requirement.

71. Based on the above discussion, the International Bureau presented a revised text for consideration by the Committee, as follows:

*“Article 10  
Relief in Respect of Time Limits*

(1) [*Extension of Time Limits*] A Contracting Party may provide for the extension, for the period prescribed in the Regulations, of a time limit fixed by the Office for an action in a procedure before the Office in respect of an application or a patent, if a request to that effect is made to the Office in accordance with the

requirements prescribed in the Regulations, and the request is made, at the option of the Contracting Party:

- (i) prior to the expiration of the time limit; or
- (ii) after the expiration of the time limit, and within the time limit prescribed in the Regulations.

(2) [*Continued Processing*] Where an applicant or owner has failed to comply with a time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office in respect of an application or a patent, and that Contracting Party does not provide for extension of a time limit under paragraph (1)(ii), the Contracting Party shall [notify the applicant or owner, and] provide for continued processing with respect to the application or patent and, if necessary, re-instatement of the rights of the applicant or owner with respect to that application or patent, if:

- (i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;
- (ii) the request is made, and all of the requirements in respect of which the time limit for the action concerned applied are complied with, within the time limit prescribed in the Regulations.”

72. As regards paragraph (1), The Delegations of the United States of America, Japan, Germany, Australia, France, Canada, China and the Czech Republic supported the text suggested by the International Bureau. The Representatives of CIPA, FICPI and BDI were in favor of replacing “may” by “shall.”

73. Concerning paragraph (2), a proposal by the Delegation of Germany, supported by the Delegations of Belgium, Austria and Switzerland, to delete the words “[notify the applicant or owner, and]” in view of new Article 1*bis*(1) was adopted. The Delegation of France, supported by the Representative of WASME, opposed this proposal and, after some discussion, paragraph (2) was adopted with the modification agreed, subject to a reservation by the Delegation of France concerning the lack of a notification requirement in this paragraph.

74. *Paragraphs (3) to (6)*. These paragraphs were adopted as proposed, with the consequential modification to replace the words “paragraph (1)” by “paragraph (1) or (2)” in each paragraph.

*Draft Article 11: Continued Processing and Re-instatement of Rights Without a Finding of Due Care by the Office*

75. This Article was deleted, consequential to the amendment of Article 10.

*Draft Article 12: Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office*

76. *Paragraph (1)*. The Delegation of Australia suggested the deletion of the word “direct” in the introductory words to avoid the possibility that this paragraph might be construed too restrictively. The International Bureau noted that the limitation to a “direct consequence” might be appropriate, for example to exclude cases where the loss of the priority right indirectly resulted in the rejection of an application.

77. The Representative of JIPA observed that the Offices should consider that a failure to comply with a time limit because of a flaw in a computer program for handling applications be considered to comply with the requirement in item (iv).

78. The Representative of CIPA suggested that, as a consequence of the deletion of Article 11, the “all due care” requirement should be deleted from item (iv). The Delegation of the United Kingdom reserved its position on item (iv) pending further consideration with respect to the issue raised by the Representative of CIPA. After some discussion, this paragraph was adopted as proposed, with a reservation by the Delegation of the United Kingdom concerning the “due care” requirement of item (iv).

79. *Paragraph (4)*. This paragraph was adopted as proposed, subject to the change of “(iv)” to “(iii)” consequential to the change in paragraph (1).

*Draft Article 13: Correction or Addition of Priority Claim; Restoration of Priority Right*

80. *Paragraph (1)*. A suggestion by the International Bureau to correct two typographical errors, namely, to change the word “may” in the introductory words to “shall” and the word “office” in item (i) to “Office”, was adopted. A suggestion by the International Bureau that the words “Except where otherwise prescribed in the Regulations” be added to the beginning of paragraph (1) to provide authority for the new provision suggested under Rule 15 was also adopted. Following a question raised by the Delegation of Germany, a suggestion by the International Bureau to replace the word “earlier” by “earliest” in paragraph (1)(iii) to accommodate multiple priority claims was agreed. After some discussion, the paragraph was adopted with these modifications.

81. *Paragraph (2)*. In response to a suggestion by one delegation that a provision along the lines of new Rule 15(1) be added to cover the situation in which the applicant had made a request for early publication or for expedited or accelerated processing, the International Bureau observed that, since a Contracting Party could require that a request for restoration of a priority claim be made within a time limit of two months from the filing date of the application, such a request for restoration would not be expected to conflict with a request for early publication or for expedited or accelerated processing. After some discussion, during which reservations in addition to those indicated in Note 13.06 were entered by the Delegations of Belgium, the Netherlands and India, and a previous reservation was withdrawn by the Delegation of the United Kingdom, this paragraph was adopted as proposed.

82. *Paragraph (3)*. Suggestions by the International Bureau that the words “that Article” in the introductory words be replaced by “Article 5”, and that a new item (ii) which read “the request is made within the time limit for filing the copy of the earlier application prescribed in

the Regulations pursuant to Article 5;” be added with consequential re-numbering, were adopted.

83. In response to a suggestion by one delegation that this subparagraph should oblige Offices to provide copies of earlier applications as soon as possible, it was agreed that the International Bureau should draft, for consideration by the SCP, a separate draft Article 13*bis* to this effect, taking into account the decision of the SCP on the proposals in respect of the availability of priority documents contained in document SCP/3/5. After some discussion, paragraph (3) was adopted as proposed, with the above-mentioned modifications.

84. *Paragraphs (4) and (5)*. These paragraphs were adopted as proposed, together with the deletion of the former paragraphs as proposed.

*Draft Articles 14 to 21: Final and Administrative Clauses*

85. The Delegation of the United States of America proposed that the SCP decide to modify the final and administrative clauses contained in Articles 14 to 21, where appropriate, in conformity with the relevant provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, signed on July 6, 1999, in Geneva, and stated that, if there was general support for this proposal, it might not be necessary to discuss each provision. The Chair suggested that, instead of discussing those changes at the present meeting, the International Bureau could be authorized to make the appropriate changes in conformance with the Geneva Act. The Delegation of Australia expressed its support for this proposal, but raised the concern that the modifications made not be of substance. The Delegation of South Africa expressed support for the proposal, with the qualification mentioned. The Delegation of the Russian Federation said that it supported the proposal in principle, but expressed its concern about the risk of introducing changes to provisions that had been discussed and settled by the SCP. The Delegation of the United States of America responded that its proposal related to matters not expressly addressed by the SCP, for example, with respect to rules for establishing a quorum.

86. 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.

*Draft Article 14: Regulations*

87. *Paragraph (1)(a)(i)*. This provision was adopted as proposed.
88. *Paragraph (1)(c)*. This provision was adopted as proposed.
89. *Paragraph (3)(b)*. A proposal by the Delegation of Australia to delete the words “list of” was adopted. The provision was adopted as proposed with this modification.

*Draft Article 16: Assembly*

90. *Paragraph (1)(b)*. This provision was adopted as proposed.
91. *Paragraph (1)(c)*. The International Bureau noted, for the information of the SCP, that the second sentence of paragraph (1)(c) might be removed from this provision in the basic proposal, since the same text was removed from the final text of the Geneva Act of the Hague Agreement at the Diplomatic Conference that had adopted that Act.
92. *Paragraph (3)(b)*. This provision was adopted as proposed.

*Draft Article 19: Eligibility for Becoming Party to the Treaty*

93. *Paragraphs (2) and (3)*. The International Bureau introduced these provisions by stating that paragraph (2), item (i), was intended to allow intergovernmental organizations which did not themselves grant patents, such as the European Union, to become party to the Treaty once certain conditions were met. Paragraph (2), item (ii) covered the more typical case of regional patent organizations which did grant patents, such as EAPO, the EPO, ARIPO and OAPI.
94. Concerning paragraph (2), item (i), the Delegation of the United States of America proposed that the words “the grant of patents” be inserted before the words “matters covered by the Treaty” in order to clarify that an intergovernmental organization which did not grant patents could only join the Treaty once an instrument providing for the grant of a unitary patent came into force.
95. The Delegation of Finland, on behalf of the European Community and its member States, reserved its position concerning the modification suggested by the Delegation of the United States of America. The Delegation of Finland, supported by the Representative of the EPO, supported the text of the item as proposed in the documents.
96. After some discussion as to the legal status and degree of administrative or legislative competence of the regional patent organizations in relation to their member States, the International Bureau suggested that the order of items (i) and (ii) of paragraph (2) be reversed for clarity.
97. The Representative of the EPO pointed out the difficulty of obtaining a declaration authorized by its Administrative Council before the Diplomatic Conference, and suggested

the deletion of the words “in the Diplomatic Conference” in paragraph (3). As an alternative, the International Bureau suggested to delete the following language at the end of the introductory words of paragraph (2): “it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty and that”. The Delegation of the Russian Federation and the Representatives of OAPI and EAPO expressed their concerns about this deletion on the grounds that most intergovernmental organizations required authorization by their administrative councils or similar authorization by their member States before they could join treaties. The International Bureau clarified that the proposal did not suggest that intergovernmental organizations could act without following their internal procedures as required under Article 21(2)(iii); it rather provided that they would not have to declare that fact to the Assembly. The proposal by the International Bureau to delete the phrase “that has adopted this Treaty” in paragraph (3) was opposed by the Delegation of Australia, as in its view this phrase clarified the term “Diplomatic Conference”. The Delegation of Costa Rica further suggested to add the word “exceptionally” after the word “Treaty,” to insert a comma at the end of the text, and then to add the phrase “without the need to be ratified by the Assembly”. After some discussion regarding the relationship between paragraphs (2) and (3), it was agreed to keep draft paragraph (3) as proposed.

98. The Delegation of the United States of America expressed its concern on naming particular organizations in the Treaty, since the qualifications of those organizations with respect to paragraph (2) might change in future.

99. In conclusion, paragraph (2) was adopted as proposed in the documents, with the further deletion of text and change in the order of items (i) and (ii) suggested by the International Bureau, and subject to a reservation by the Delegation of the United States of America concerning re-numbered item (ii), and paragraph (3) was adopted as proposed in the documents.

*Draft Article 21bis: Application of the Treaty to Existing Applications and Patents*

100. In response to a proposal by the Delegation of Australia that the words “before the Office” in paragraph (2) be inserted after the words “procedures and proceedings” as in Article 1(xiv), the International Bureau explained that the proposed words had not been included, as this Article was intended to apply also to proceedings before courts.

101. In the course of discussing a suggestion by the Delegation of Australia that the provisions of Article 21bis apply to abandoned or withdrawn applications or to lapsed patents, the Delegations of the United States of America, France and Georgia and the Representative of the EPO supported the suggestion, while the Delegations of Argentina, Bolivia, China and the Russian Federation and the Representative of EAPO preferred to leave the matter to each Contracting Party. The Delegation of France, supported by the Delegation of Georgia, suggested that the Treaty be applicable only to applications or patents which had been “abandoned” or “lapsed” within a limited period before entry into force of the Treaty in the Contracting Party. The Delegation of Argentina reflected that the proposal by the Delegation of Australia could be contrary to Article 70.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).



102. In response to a statement by the Delegation of Egypt that the Treaty should not apply to applications which were filed before the date on which the Treaty bound a Contracting Party, the International Bureau explained that such a mechanism would be burdensome for the Offices, since they would be required to maintain two different sets of procedures for more than 20 years.

103. Based on the discussion, the International Bureau suggested a revised text of Article 21*bis* as follows:

*“Article 21bis  
Application of the Treaty to Existing Applications and Patents*

(1) [*Principle*] [(a)] Subject to paragraph (2), a Contracting Party shall apply the provisions of this Treaty and the Regulations, other than Articles 4 and 5, to applications which are pending, and to patents which are in force, on or after the date on which this Treaty binds that Contracting Party under Article 21.

[(b) A Contracting Party shall apply Article 12 and related Regulations to patents which lapsed, or which were revoked or invalidated, prior to the date on which this Treaty binds that Contracting Party under Article 21].

(2) [*Procedures*] No Contracting Party shall be obliged to apply the provisions of this Treaty and the Regulations to any procedure [in proceedings] with respect to applications and patents referred to in paragraph (1) [during the pendency of those applications or the period in which those patents are in force], if such procedure commenced before the date on which this Treaty binds that Contracting Party under Article 21.”

104. *Paragraph (1)(a)*. The Delegation of Australia, supported by the Delegations of the Russian Federation and the United States of America, expressed its concern that the reference to the whole of Article 5 would be too broad. After some discussion, it was agreed to replace “Articles 4 and 5” by “Article 4 and Article 5(1) and (2)”. The International Bureau noted that the term “pending”, used in paragraph (1)(a), was used in the same context in Article 70.7 of the TRIPS Agreement. This paragraph was adopted with those modifications.

105. *Paragraph (1)(b)*. A number of delegations and the representative of an intergovernmental organization questioned the terms “lapsed,” “abandoned” and “withdrawn” in relation to applications and patents. Following a proposal by the Delegation of Sweden, the International Bureau suggested that the words “to patents which lapsed, or which were revoked or invalidated” be replaced by the words “even where the failure to comply with a time limit occurred.”

106. The Delegations of Argentina, Bolivia, China, Egypt, India, Japan and Morocco and the Representatives of EAPO and JIPA favored deletion of the provision, on the grounds that the applications or patents in question had fallen into the public domain. In view of the lack of consensus on this matter, paragraph (1)(b) was maintained in square brackets, and was adopted with the modification suggested by the International Bureau.

107. *Paragraph (2)*. The International Bureau explained that, in order to clarify the scope of this provision, two alternative suggestions were presented in square brackets. After some discussion, this provision was adopted with the deletion of the brackets around “in proceedings” and the deletion of “[during the pendency of those applications or the period in which those patents are in force].”

*Draft Article 22: Reservations*

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

109. *Paragraph (4)*. A proposal by the Delegation of Cameroon to delete this paragraph was not supported. The International Bureau explained that this provision was intended to prohibit additional reservations only after the conclusion of the Treaty.

*Draft Article 23: Denunciation of the Treaty*

110. This Article was adopted as proposed.

*Draft Article 24: Languages of the Treaty*

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

*Draft Rule 2: Details Concerning Filing Date Under Article 4*

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

113. *Paragraph (4), items (iv) and (v)*. The International Bureau suggested, in consequence to the changes adopted in Article 4(6)(b), to replace the words “at the time of filing” in item (v) by “at the date on which one or more elements referred to in Article 4(1)(a) were first received by the Office”. These provisions were adopted with the modification suggested.

114. *Paragraph (5)(a)*. This provision was adopted as proposed.

115. *Paragraph (5)(b), introductory words*. These words were adopted with the modification to replace the words “Rule 4” by “Rule 4(3)”.

116. *Paragraph (5)(b)(ii)*. The Delegation of Japan, supported by another delegation, stated that it was not necessary to provide a different time limit than in Rule 2(5)(b)(i) and proposed the deletion of this provision. After some discussion, during which the International Bureau explained that this provision was included because it often took more time to obtain a certified copy than the two months provided by Rule 2(5)(b)(i), the concern of the Delegation of Japan was met by agreeing to delete the words “where the priority of the previously filed application is claimed, in accordance with Article 5(5), or, where the priority of the previously filed application is not claimed,”. The provision was adopted with this modification.

117. *Paragraph (6)*. After some discussion, a proposal by one delegation, supported by another delegation and the representative of an intergovernmental organization, to add a new item (iii) to cover a case which was accepted by the Offices of those delegations, was adopted as follows:

“(iii) applications by new applicants determined to be entitled to an invention contained in an earlier application.”

118. The paragraph was adopted as proposed with this modification.

*Rule 3: Additional Permitted Requirements Under Article 5(1)*

119. This Rule was deleted consequential to the changes adopted for Article 5.

*New Draft Rule 3: Details Concerning the Application Under Article 5(1) and (2)*

120. Following the introduction by the International Bureau of a suggested text for new draft Rule 3, it was agreed, after the intervention of one delegation, that an Office should be allowed to require the filing date of the earlier application in the cases of both divisional and entitlement applications.

121. Following an intervention by the Delegation of Australia to make amendments to the Regulations prescribed pursuant to Article 5(1)(iii) subject to a special majority, the Delegation of Germany proposed to make such changes subject to unanimity. This proposal was supported by several delegations. The Delegation of the Russian Federation supported the proposal, but pointed out that only paragraph (1) should be subject to such requirement. This proposal was adopted, resulting in modification of Rule 22(1), to also cover Rule 3(1).

122. In response to various interventions as to whether additional items should be added to new draft Rule 3, the International Bureau explained that a number of matters were already covered in the draft Treaty by incorporation by reference of the provisions of the PCT. Since there were ongoing discussions on possible amendments to the Regulations under that Treaty, the International Bureau would follow those discussions closely and take appropriate action as to their possible repercussions on the draft PLT at the forthcoming Diplomatic Conference.

123. Following this discussion, Rule 3 was adopted as follows:

“*Rule 3*  
*Details Concerning the Application Under Article 5(1) and (2)*”

(1) [*Further Requirements Under Article 5(1)(iii)*] (a) A Contracting Party may require that an applicant who wishes an application to be treated as a divisional application under Rule 2(6)(i) indicate:

- (i) that he wishes the application to be so treated;
- (ii) the number and filing date of the application from which the application is divided.

(b) A Contracting Party may require that an applicant who wishes an application to be treated as an application under Rule 2(6)(iii) indicate:

- (i) that he wishes the application to be so treated;
- (ii) the number and filing date of the earlier application.

(2) [*Request Form or Format Under Article 5(2)(b)*] A Contracting Party shall accept the presentation of the contents referred to in Article 5(2)(a):

(i) on a request Form, if that request Form corresponds to the Patent Cooperation Treaty request Form with any modifications under Rule 21(1)(b);

(ii) on a Patent Cooperation Treaty request Form, if that request Form is accompanied by an indication to the effect that the applicant wishes the application to be treated as a national application, in which case the request Form shall be deemed to incorporate the modifications referred to in item (i);

(iii) on a Patent Cooperation Treaty request Form which contains an indication to the effect that the applicant wishes the application to be treated as a national application, if such a request Form is available under the Patent Cooperation Treaty;

(iv) in a format, if that format corresponds to the Model International Request Format under Rule 21(2).”

*Draft Rule 4: Availability of Earlier Application Under Article 5(5) and Rule 2(4) and (5)(b)*

124. *Paragraphs (1) to (3).* These paragraphs were adopted as proposed.

125. *Paragraph (4).* The Delegation of the Russian Federation expressed its opposition to the restriction under which an Office would be permitted to require a translation only in cases where the validity of a patent was at issue. It stated that Offices should be able to require translations in all cases where third parties had a legitimate interest in knowing the contents of a priority document. This provision was adopted as proposed, subject to reservations by, in addition to the delegations referred to in Note R4.05, the Delegations of the Russian Federation, India and Portugal.

*Draft Rule 6: Time Limits Concerning the Application Under Article 5*

126. This Rule was adopted as proposed with the replacement of the words “Article 5” in the title by “Article 5(7) and (8)” as suggested by the International Bureau.

*Draft Rule 7: Details Concerning Representation Under Article 6*

127. *Paragraph (2)*. This paragraph was adopted with the addition of the words “Under Article 6(3)” in the title and the replacement of the words “that person’s” in item (i) by “the applicant’s” as suggested by the International Bureau.

128. *Former paragraph (3)*. This paragraph was deleted as proposed, with consequential renumbering.

129. *Paragraphs (4) and (6)*. These paragraphs were adopted as proposed.

*Draft Rule 8: Filing of Communications Under Article 7(1)*

130. *Paragraph (1)*. A suggestion by the International Bureau that the words “Article 7(1)(d)” be replaced by “Articles 4(1) and 7(1)(d)” was agreed.

131. The Delegation of Cameroon expressed concern that inventors in its country lacking the technical means for electronic filing and the financial means for the appointment of a patent agent might be excluded from the international patent system. The Delegation therefore proposed to oblige Offices to accept the filing of communications on paper without subjecting this obligation to a time limit, and to delete the second sentence of this paragraph. In response, the International Bureau explained that the time limit would only start after the entry into force of the Treaty which, together with the 10 year transition period, would add up to a period of about 15 years. During these years, WIPO expected to provide assistance to developing countries so that the Offices and, at least, the patent agents in these countries would, in particular under the PCT, be better able to participate in systems of electronic filing. The International Bureau also pointed out that no country would be obliged to introduce an electronic filing system and that in the beginning only a small number of industrialized countries would probably choose to do so. Furthermore, the introduction of electronic filing systems would probably result in a reduction of patent costs, thus facilitating access also for inventors in developing countries. As to the proposed deletion of the second sentence of Rule 8(1), the International Bureau explained that this sentence formed part of the compromise and had been added to avoid that the prohibition against the introduction of a paperless filing system could be reinstated by a three-fourths majority vote in the Assembly after the lapse of the 10 year transitory period.

132. The Delegation of the Russian Federation stated that it did not agree with the compromise proposal put forward by the International Bureau, and proposed instead to divide Rule 8(1) into two subparagraphs. Subparagraph (a) would contain the transition period, subparagraph (b) would provide for the right of countries to refuse paper communications after the end of the transition period, and Rule 22(1) would be amended to refer only to subparagraph (a), whereas subparagraph (b) could be changed by a three-fourths majority vote. Countries should, furthermore, only be able to refuse paper communications filed by their nationals.

133. The Delegation of the Philippines, supported by the Delegation of Australia, proposed to amend the beginning of the first sentence of Rule 8(1) to read “ During a period deemed

appropriate by the Contracting Party”, in order to give countries more flexibility to assess the appropriate time for the introduction of a completely paperless filing system.

134. After some discussion, during which the Delegations of the United States of America, Bolivia, Brazil, Cuba, Kenya and Morocco expressed their support for the draft as it appeared in the document, this provision was adopted with the proposed modification and the removal of the square brackets, subject to a reservation by the Delegation of Cameroon.

135. *New paragraph (1)(b)*. The International Bureau recalled that, at its last session, following an intervention by the Delegation of the United States of America, the SCP agreed to clarify in the Notes that a Contracting Party could require a particular format for communications filed on paper (see paragraph 182 of document SCP/2/13). The International Bureau suggested that this clarification should have a basis in the Regulations and thus proposed to add a new subparagraph (b), which was adopted with the following text:

“(b) Subject to Article 7(3), a Contracting Party may require that a communication on paper be filed on a Form, or in a format, prescribed by that Contracting Party”.

136. This proposal was adopted with the consequential re-numbering of paragraph (1) as paragraph (1)(a).

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

138. *Paragraph (2)(b)*. This provision was adopted with the consequential modification to replace the word “languages” by “texts”, as had been adopted in Article 24(1).

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

*Draft Rule 9: Details Concerning the Signature Under Article 7(4)*

140. *Paragraphs (2) to (4)*. These paragraphs were adopted as proposed.

141. *Paragraph (5)(a)*. Following an intervention by the Delegation of Australia as to whether it would be more appropriate, in the fifth line of this paragraph, to change “as received by the Office” to “as sent by the applicant”, the International Bureau explained that it would be difficult for the Office to determine the contents of the communication when it was sent by the applicant. The provision was adopted as proposed in the document.

142. *Paragraph (5)(b)*. With the modification, suggested by the International Bureau, to replace the words “that Office” in the penultimate line by “the Office of that Contracting Party”, this provision was adopted as proposed.

143. *Paragraph (6)*. The Delegation of the United States of America proposed, in the third line, to replace the word “means” by “process”. The paragraph was adopted with this modification.

*Draft Rule 10: Details Concerning Indications Under Article 7(5) and (6)*

144. *Title.* Following a suggestion by the International Bureau, it was agreed that the title should read “Details Concerning Indications Under Article 7(5), (6) and (8).”

145. *Paragraph (1)(a).* The International Bureau suggested the insertion of a new item (i), which would read: “(i) indicate the name and address of the applicant, owner or other interested person;” together with the consequential renumbering of former items (i) and (ii) and the substitution of “an” with “the” in newly renumbered item (iii). In response to the comment of one delegation, the International Bureau explained that the name and address in the proposed new item (i) identified the party to the proceedings, and thus served a different purpose than the addresses for correspondence or legal service that could be required under Article 7(6). It also explained that the inclusion of the proposed new provision in the draft Regulations rather than the draft Treaty was consistent with the corresponding provisions in the PCT Regulations. Further, in response to a query by the Delegation of Georgia, the International Bureau stated that an “other interested person” might be, for example, a potential opposer or an applicant for revocation. There was no support for a proposal by one delegation that Rule 10(1)(a) be amended so that a Contracting Party may require that all communications indicate the name and address of the sender, and, where applicable, the name of the person on whose behalf the communication was sent. The modifications suggested by the International Bureau were supported by three delegations. After some discussion, paragraph (1)(a) was adopted with these modifications.

146. *Paragraphs (2) to (4).* These paragraphs were adopted as proposed.

*Draft Rule 12: Details Concerning Relief in Respect of the Non-Compliance With a Time Limit Under Article 10*

147. *Paragraphs (1) and (2).* In accordance with discussions on Article 10(1) and (2), the International Bureau suggested that these paragraphs be redrafted as paragraphs (1) to (4) as follows:

“(1) [*Requirements Under Article 10(1)*] (a) A Contracting Party may require that a request referred to in Article 10(1):

- (i) be signed by the applicant or owner;
- (ii) contain an indication to the effect that extension of a time limit is requested, and an identification of the time limit in question.

(b) Where a request for extension of a time limit is filed after the expiration of the time limit, a Contracting Party may require that all of the requirements in respect of which the time limit for the action concerned applied be complied with at the same time as the request is filed.

(2) [*Period and Time Limit Under Article 10(1)*] (a) The period of extension of a time limit referred to in Article 10(1) shall be not less than two months from the date of the expiration of the unextended time limit.

(b) The time limit referred to in Article 10(1)(ii) shall expire not earlier than two months from the date of the expiration of the unextended time limit.

(3) [*Requirements Under Article 10(2)(i)*] A Contracting Party may require that a request referred to in Article 10(2):

(i) be signed by the applicant or owner;

(ii) contain an indication to the effect that relief in respect of non-compliance with a time limit is requested, and an identification of the time limit in question.

(4) [*Time Limit for Filing a Request Under Article 10(2)(ii)*] The time limit referred to in Article 10(2)(ii) shall expire not earlier than two months from the date of the expiration of the unextended time limit.”

148. Following some discussion, the above paragraphs were adopted as proposed, subject to replacement, in paragraph (4), of the words “unextended time limit” by the words “time limit that was not complied with”, and the consequential renumbering of paragraph (3) as paragraph (5), with amendment of the references to “Article 10(1)” to “Article 10(1) or (2)” throughout that paragraph.

149. *Paragraph (3)(a), item (i)*. In response to a query from the Representative of CIPA, the International Bureau explained that, under this provision, an Office could refuse to provide additional relief after the expiration of a time limit, if relief had already been granted upon a request filed before the expiration of an unextended time limit, although the Office may allow to provide any subsequent relief.

150. The Delegations of Australia and the United States of America proposed to remove the square brackets, while the Delegation of the Russian Federation was in favor of deleting the text together with the square brackets. Since no consensus could be reached on this matter, this item was adopted with the square brackets.

151. *Paragraph (3)(a), item (ii)*. The Delegations of Australia, the United States of America and the Russian Federation and the Representative of FICPI suggested to maintain this item without square brackets. This item was adopted, without square brackets, with the replacement of the words “under Articles 10(1) and 12(1)” by “for relief under Article 10(1) or (2) or a request for re-instatement under Article 12(1)”, as suggested by the International Bureau.

152. *Paragraph (3)(a), item (iii)*. Following the suggestion by the Delegations of Australia, the United States of America and the Russian Federation and the Representative of FICPI, this item was adopted without square brackets.

153. *Paragraph (3)(a), item (iv)*. This item was adopted without square brackets, together with a suggestion by the International Bureau to change “Article 13(1) to (3)” to “Article 13(1), (2) or (3).”

154. *Paragraph (3)(a), item (v)*. The Delegation of Australia, supported by the Delegations of the United States of America, Japan and the Russian Federation, proposed that the text be



retained without square brackets. However, the Delegation of Canada, supported by the Representatives of FICPI and JPAA, proposed the deletion of this item, together with the surrounding square brackets. Since there was no consensus, this item was adopted with the square brackets.

155. *Paragraph (3)(a), item (vi)*. The Delegation of Australia, supported by the Delegations of the United States of America and the Russian Federation, proposed that this item be maintained without the square brackets. The Representatives of FICPI and JPAA were in favor of the deletion of this item. The item was adopted without the square brackets.

156. *Paragraph (3)(a), item (vii)*. A number of delegations and representatives of an intergovernmental organization and several non-governmental organizations proposed the deletion of this item in its entirety, while one delegation opposed deletion. As there was no consensus, this item was adopted with the square brackets.

157. *Paragraph (3)(a), items (viii) and (ix)*. Following suggestions by a number of delegations and representatives of intergovernmental organizations and non-governmental organizations, these items were deleted.

158. *Paragraph (3)(b)*. The Delegation of Australia, supported by the Delegation of the United States of America, proposed to replace the words “for the grant of a patent” with “of a procedure before the Office”, to replace the words “a procedure” with “that procedure”, and to delete the words “before the Office”, so that this provision would also apply to the maximum statutory time limit for a specific procedure within the overall proceedings for the grant of patents. After some discussion, this item was adopted with those modifications.

*Draft Rule 13: Details Concerning Continued Processing and Re-instatement of Rights Without a Finding of Due Care by the Office Under Article 11*

159. This Rule was deleted in consequence of the deletion of Article 11.

*Draft Rule 14: Details Concerning Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12*

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

161. *Paragraph (3), item (i)*. A proposal by the Delegation of Canada to delete this item, supported by the Delegation of Germany and the Representatives of JPAA and FICPI, was opposed by the Delegation of Japan. Since this item had already been adopted at the previous session and there was no consensus for modification, this item was adopted as proposed.

162. *Paragraph (3), item (ii)*. The Delegations of the United States of America, Canada, Switzerland, Australia, France, the United Kingdom, Germany, the Russian Federation and Egypt and the Representatives of ABA, FICPI and JIPA proposed deletion of this item in its entirety, while the Delegations of China, the Republic of Korea and Japan opposed such deletion. The Delegation of Australia said that, as the Committee adopted a maximum time limit of 12 months for filing a request under Rule 14(2)(ii), it would cover a six-month period of grace for the payment of maintenance fees under Article 5*bis* of the Paris Convention.

Since this item had been adopted at the previous session and there was no consensus for modification, this item was adopted as proposed.

163. *Paragraph (3), item (iii)*. A proposal by the Delegation of Germany to delete this item was not supported.

164. In response to a query by the Delegation of the United States of America, the International Bureau explained that reference to Article 10(1) was necessary since, in cases where relief was applicable under both Articles 10 and 12, a period of extension could be prolonged by way of filing a request under Article 10 and, subsequently, filing a request under Article 12. After some discussion, this item was adopted with consequential modifications as follows:

“(iii) for making a request for relief under Article 10(1) or (2) or a request for re-instatement under Article 12(1);”

165. *Paragraph (3), item (iv)*. A proposal by the Delegation of Germany for deletion of this item was not supported. This item was adopted, with the consequential modification to delete “(a)” after “(3)”.

166. *Paragraph (3), item (v)*. The Delegation of Australia, supported by the Delegations of the United States of America, Canada and Germany and the Representatives of the EPO, FICPI and JPAA, proposed that this item be deleted, since Rule 12(3)(viii) was deleted. However, the Delegation of the Russian Federation, supported by the Delegations of Greece and Japan, opposed deletion, since the counterbalancing provision of Rule 12(3)(b) was not provided for in Rule 14. In conclusion, this item was adopted in square brackets.

167. *Paragraph (3), item (vi)*. The Delegation of Australia, supported by the Delegations of the United States of America, Canada and Germany and the Representatives of the EPO, FICPI and JIPA, proposed that this item be deleted, since Rule 12(3)(ix) was deleted. However, the Delegation of the Russian Federation, supported by the Delegation of Japan, opposed deletion since the counterbalancing provision of Rule 12(3)(b) was not provided for in Rule 14. The Delegation of Belgium reserved its position as to deletion.

168. Since this item had already been adopted in square brackets at the previous session and there was no consensus for modification, the item was retained in square brackets.

169. *Paragraph (3), item (vii)*. The Delegation of Germany, supported by the Representatives of JPAA and FICPI, suggested deletion of this item, while the Delegation of Japan opposed deletion. Since this item had already been adopted at the previous session and there was no consensus for modification, the item was retained.

*Draft Rule 15: Details Concerning Correction or Addition of Priority Claim and Restoration Under Article 13*

170. *Title*. The title was adopted as proposed.

171. *New paragraph (1)*. In response to a suggestion by the Delegation of Japan that a provision along the lines of PCT Rule 26bis.1(b) be added in respect of the situation in which

the applicant had made a request for early publication or for expedited or accelerated processing, the following new provision suggested by the International Bureau was adopted, with the consequential renumbering of paragraphs:

“(1) [*Exception Under Article 13(1)*] No Contracting Party shall be obliged to provide for the correction or addition of a priority claim under Article 13(1), where the request referred to in Article 13(1)(i) is received after the applicant has made a request for early publication or for expedited or accelerated processing, unless that request for early publication or for expedited or accelerated processing is withdrawn before any technical preparations for publication of the application have been completed.”

172. *Paragraphs (1) and (2)*. These paragraphs were adopted as proposed.

173. *Paragraph (3)*. The International Bureau suggested that the word “expire” in subparagraph (b) be modified to “expires”. A proposal by one delegation, supported by another delegation, that, to ensure legal certainty for third parties, the time limit in subparagraph (a) should be “two months” instead of “not less than two months” was opposed by two delegations. This paragraph was adopted as proposed with the modification suggested by the International Bureau.

174. *Paragraph (4)*. This paragraph was adopted as proposed.

175. *Paragraph (5)*. One delegation proposed that the time limit under subparagraph (b)(ii) should only apply where the applicant had been notified of the requirement to file a copy of the earlier application after the expiration of the time limit referred to in the introductory words of Article 13(3). This proposal, which was supported by the representative of one non-governmental organization, was opposed by one delegation and was not adopted in the absence of support from any other delegation. After some discussion, this paragraph was adopted as proposed, together with the consequential deletion of former paragraph (4).

176. *Paragraph (6)*. This paragraph was adopted with the consequential renumbering of “Article 13(3)(ii)” to “Article 13(3)(iii)”.

*Draft Rule 16: Request for Recordal of Change in Name or Address*

177. *Former paragraph (2)*. This paragraph was deleted as proposed.

178. *Paragraph (2)*. This paragraph was adopted as proposed.

179. *Paragraph (5)*. This paragraph was adopted as proposed, with the amendments of “this Treaty” to “the Treaty” and “the Regulations” to “these Regulations.”

180. *Paragraph (6)*. This paragraph was adopted with the International Bureau’s suggestion to add the words “by the Contracting Party” after “applied”.

181. *Paragraph (7)*. This paragraph was adopted as proposed.

182. *Paragraph (8)*. The International Bureau withdrew the suggestion for modification contained in the document, with the consequence that the words “Paragraphs (1) to (7)” would appear at the beginning of the paragraph. The paragraph was adopted with this modification.

*Draft Rule 17: Request for Recordal of Change in Applicant or Owner*

183. *Former paragraph (2)*. This paragraph was deleted as proposed.

184. *Paragraph (2)*. The International Bureau suggested to add a comma in the fourth line after “Contracting Party” and to add, in the sixth line, after “owner,]” the words “that it”. The provision was adopted as proposed, with these modifications.

185. *Paragraphs (3), (4) and (6)*. These paragraphs were adopted as proposed.

186. *Paragraph (7)*. This paragraph was adopted as proposed, with the amendments of “this Treaty” to “the Treaty” and “the Regulations” to “these Regulations.”

187. *Paragraph (8)*. This paragraph was adopted as proposed.

*Draft Rule 18: Request for Recordal of a Licensing Agreement or Security Interest*

188. *Paragraph (1)(a), item (i)*. This provision was adopted as proposed.

189. *Paragraph (1)(a), new item (vi)*. A suggestion by the Delegation of Japan, supported by the Delegation of the United States of America, to add the following new item (vi) was adopted:

“(vi) the name of a State of which the licensee is a national if he is the national of any State, the name of a State in which the licensee has his domicile, if any, and the name of a State in which the licensee has a real and effective industrial or commercial establishment, if any;”

190. *Paragraph (1)(b), item (iii)*. In response to a proposal by the Delegation of the Russian Federation to reinsert the words “of a Contracting Party” on the grounds that those words had been retained in the same context in other parts of the text, the International Bureau withdrew its suggested deletion of those words. The provision was adopted with this modification. It was also agreed that the term “national law” would be amended to “applicable law” wherever it appeared in the draft Treaty.

191. *Former paragraph (2)*. This paragraph was deleted as proposed.

192. *Paragraphs (3) and (4)*. These paragraphs were adopted as proposed.

193. *Paragraph (7)*. This paragraph was adopted as proposed, with the amendments of “this Treaty” to “the Treaty” and “the Regulations” to “these Regulations.”

194. *Paragraph (8)*. This paragraph was adopted as proposed.

*Draft Rule 19: Request for Correction of a Mistake*

195. *Former paragraph (2)*. This paragraph was deleted as proposed.

196. *Paragraph (5)*. This paragraph was adopted as proposed, with the amendments of “this Treaty” to “the Treaty” and “the Regulations” to “these Regulations.”

*Draft Rule 20: Manner of Identification of an Application Without Its Application Number*

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

*Draft Rule 21: Establishment of Model International Forms and Formats*

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

*Draft Rule 22: Requirement of Unanimity for Amending Certain Rules Under Article 14(3)*

199. *Paragraph (1)*. In response to a query by the Delegation of the United States of America, the International Bureau explained that the wording of the provision was intended to insure that abstentions were not to be taken into account when determining unanimity. In connection with the discussion of Rule 8, the Delegation of the Russian Federation, supported by the Delegation of Cameroon, proposed that the scope of Rule 22(1) be not extended to Rule 8(1)(a), second sentence.

200. This provision was adopted with the consequential modification of the reference to “Rule 8(1)” to “Rules 3(1) and 8(1)(a).”

*Proposal by the Delegation of Colombia concerning Protection of Biological and Genetic Resources (document SCP/3/10)*

201. The Delegation of Colombia proposed the introduction of a new Article in the draft Treaty, based on its proposal contained in document SCP/3/10.

202. The Delegation noted that the Convention on Biological Diversity and Decision 391 (Common Regime on Access to Genetic Resources) of the Commission of the Cartagena Agreement provided for the protection of biological and genetic resources. Supplementary provisions of that community standard refer to intellectual property rights in relation to genetic resources, their derived products or synthetic products based on those products, and the criteria of legality and conservation of biodiversity. Andean Community members intend to modify their common legislation on industrial property rights contained in Decision 344 (Common Provisions on Industrial Property) of the Cartagena Agreement to deal with the protection of genetic and biological resources, as well as their legal acquisition.

203. The purpose of its proposal, which was based on an initiative by the Andean Community, was to provide for the consideration, by the Standing Committee, of the

procedural or formal aspects of such protection, which was an issue of great concern to many countries represented in the Standing Committee.

204. The Delegations of Bolivia, Paraguay, China, Namibia, Cameroon, Mexico, South Africa, Chile, Cuba, India, Kenya, Costa Rica and Barbados expressed their support of the proposal. The Delegation of Germany, supported by the Delegations of the United States of America, Japan, France, the Republic of Korea, Romania and Finland (speaking on behalf of the European Community and its member States), was of the opinion that the proposal related to issues of substantive law and was therefore not appropriate for inclusion in the draft Treaty.

205. The Delegation of OAPI referred to the need to encourage the dissemination of knowledge that formed part of a country's biological and generic heritage, and observed that it would be undesirable to create a new system of protecting such knowledge outside of the patent system.

206. The International Bureau recalled that the WIPO Program and Budget for the current biennium contained items relating to issues of biodiversity and biotechnology. These items included the convening of a Working Group on Biotechnological Inventions, involving experts from both industrialized and developing countries, on November 8 and 9, 1999. That group would discuss a number of intellectual property related issues concerning biotechnology and biodiversity that could be addressed under the auspices of WIPO in the coming years. The Working Group would be composed of experts in biological and genetic resources and intellectual property.

207. Following informal consultations, the SCP agreed to make the following invitation to the International Bureau:

“Recognizing the importance of biological and genetic resources, the SCP invites the International Bureau to include on the agenda of the Working Group on Biotechnological Inventions, to be convened at WIPO in November, 1999, the issue of protection of biological and genetic resources. The SCP further invites the International Bureau to take steps to convene a separate meeting involving a larger number of Member States early in 2000, to consider that issue.”

208. The Delegations of Colombia, Bolivia, Mexico and Cuba expressed their hope that financing would be forthcoming from the International Bureau to allow experts from developing countries to attend the proposed separate meeting of Member States. The International Bureau responded that this request would be given full consideration within the constraints of the WIPO budget. In response to questions of delegations with respect to the terms of reference of the separate meeting and, in particular, whether it would reach conclusions that could be submitted to the Diplomatic Conference for the PLT, the International Bureau indicated that the meeting would determine its own terms of reference, and any decision on how to proceed further would be a matter for that meeting to decide.

#### Agenda Item 4: Information concerning fee reductions by the Offices

209. The discussion was based on documents SCP/3/6 (Fee Reductions by the Offices) and SCP/3/6 Add. (Additional Information Concerning Fee Reductions by the Offices).

210. The Delegations of Germany and Sweden, supported by the Representative of CIPA, expressed concern with regard to a general and wide-ranging approach such as the one proposed in the document. The recommendation should leave room for alternative approaches of assisting inventors based on an individual assessment of the inventors' ability to pay the fees and to bear the cost of a patent agent. Particularly in those countries where Offices were financed exclusively by fees, fee reductions for particular categories of inventors would have to be subsidized either by higher fees for other categories of applicants or by taxes. Such a general approach to fee reductions would, however, leave ample room for circumventions. The Delegation of Japan stated that, while it was not generally against the concept of fee reductions, the issue should be left to each country's discretion as a matter of national public policy.

211. The Delegation of Sudan reminded the Committee that the work of inventors was crucial to WIPO, as an intellectual property organization. The Delegation preferred that the discussions go forward on the basis of its original proposal, as set out in document SCP/2/10 and reflected in document SCP/3/6. It considered whether its proposal could be referred to another forum within WIPO.

212. The Delegation of India pointed out that its government has adopted a system of reductions of 60% to 80% for individual applicants, depending on their circumstances. It believed that fee reductions were most important for applicants who wished to obtain protection abroad. The Delegation supported the position of the Delegation of Sudan, which was further supported by the Delegations of Egypt, Kenya, Jordan, China, Argentina, South Africa and Cameroon.

213. The Representatives of IFIA and WASME expressed their strong support for the approach contained in document SCP/3/6, namely, a system of fee reductions for independent inventors regardless of nationality and income, which would constitute a real help for applicants from certain countries. At least 25 countries were currently applying the system for fee reductions advocated by the Delegation of Sudan. The Representative of IFIA added that his organization was currently carrying out a survey of the countries providing fee reductions of 50% or more in favor of independent inventors, and that the results of that survey would be posted twice a year on IFIA's website in order to encourage countries and organizations to adopt a new system of fee reduction and to inform inventors worldwide.

214. After further discussion and informal consultations, the Delegation of Sudan observed that it appeared that a number of delegations in the SCP did not have the authority to adopt a policy on this matter, and that therefore there did not seem to be a possibility within the present Standing Committee of reaching a consensus, which would be desirable in light of the importance of the issue. Therefore, the Delegation proposed to refer the issue for informal consultations.

215. In conclusion, it was agreed to refer the issue for informal consultations.

## CONCLUSION OF THE MEETING

### Agenda Item 5: Future work

216. With respect to the preparation of the documents for the Diplomatic Conference, the International Bureau indicated that the decisions of the SCP would be included in a provisional basic proposal which would be placed on the electronic forum for comment. The texts in the various languages would be posted on the electronic forum as they become available. In November 1999, invitations and documents for the Diplomatic Conference would be mailed. The International Bureau reminded the delegations that written proposals may be submitted by any government prior to and during the Diplomatic Conference. These would be translated and distributed as formal documents for the Diplomatic Conference.

217. With regard to the procedure concerning the explanatory Notes to the draft PLT, the SCP agreed that the International Bureau would revise the Notes contained in document SCP/3/3 based on the discussions at this session and any comments received informally from delegations. The International Bureau would then circulate the provisional document on the SCP electronic forum, and incorporate the comments received, where appropriate, before submitting a final text to the Diplomatic Conference.

218. The International Bureau indicated that it intended to conduct regional consultations regarding the draft PLT between November 1999 and May 2000. Delegations would be informed and invited to attend the relevant consultation. The Diplomatic Conference would convene in Geneva on May 11, 2000, and continue through June 2, 2000.

219. The International Bureau indicated that the SCP would not meet again until after the Diplomatic Conference, in the second half of 2000. The Agenda of that meeting would be based on the WIPO Program and Budget for the 2000-2001 biennium. In response to a statement by the Delegation of Japan that certain issues of substantive harmonization be considered after the conclusion of the PLT, the International Bureau noted that such issues were within the terms set forth in the draft Program and Budget for the 2000-2001 biennium.

220. Mr. Shozo Uemura, Deputy Director General, offered thanks to all of the delegates and representatives and others who contributed to the success of this meeting, and expressed satisfaction that a successful result could be reported to the General Assembly of WIPO. He further stated his strong desire for the Diplomatic Conference to be convened and for the Treaty to be adopted.

[Annex follows]



ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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