

# WIPO



PCT/A/33/7

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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

**INTERNATIONAL PATENT COOPERATION UNION  
(PCT UNION)**

**ASSEMBLY**

**Thirty-Third (19<sup>th</sup> Extraordinary) Session  
Geneva, September 27 to October 5, 2004**

REPORT

*adopted by the Assembly*

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/40/1): 1, 2, 4, 14, 15, 18, 21 and 22.
2. The report on the said items, with the exception of item 15, is contained in the General Report (document A/40/7).
3. The report on item 15 is contained in the present document.
4. The meeting of the Assembly was presided over by Dr. Ian Heath (Australia), Chair of the PCT Assembly, and in the absence of the Chair and the Vice-Chairs, by the Acting Chair, Ambassador Doru Costea (Romania).

## ITEM 15 OF THE CONSOLIDATED AGENDA:

## MATTERS CONCERNING THE PCT UNION

Reform of the PCT

5. Discussions were based on document PCT/A/33/1.
6. In addition to the discussion reported below, reference should be made to the General Report (document A/40/7), under item 4.
7. The Delegation of Algeria expressed its thanks to the Secretariat for having prepared document PCT/A/33/1 which, in its view, accurately reflected the discussions at the last two sessions of the Working Group on Reform of the PCT. The Delegation recalled that the PCT reform process needed to take into account the interests of all PCT Contracting States and, in this regard, expressed the hope that the collective interest of all parties would prevail in future discussions within the Working Group. The Delegation expressed support for the work plan proposed in the document and recalled that two important items would need to be taken up in the course of the future work of the Working Group. Firstly, consideration would need to be given to requiring a declaration of the source of genetic resources and traditional knowledge in patent applications. The requirement of disclosure of the source of genetic resources and traditional knowledge in patent applications should be mandatory and, in case of non-compliance, should lead to sanctions including revocation of the patent concerned. The Delegation thanked the Delegation of Switzerland for its proposals on this matter that had been submitted to the Working Group, and stated that it would look forward with great interest to a further document to be presented by the Delegation of Switzerland to the next session of the Working Group. Secondly, while the Delegation wished to express its general support for the principle of restoration of the right of priority, it noted that such a principle was envisaged neither by the Paris Convention for the Protection of Industrial Property nor the PCT. The Delegation therefore considered it necessary, in order to allow for the restoration of the right of priority under the PCT, to amend the Treaty itself rather than the Regulations.
  8. The Assembly:
    - (a) noted the summaries by the Chair of the fifth and sixth sessions of the Working Group on Reform of the PCT contained in documents PCT/R/WG/5/13 and PCT/R/WG/6/12 and reproduced in Annexes I and II of document PCT/A/33/1; and
    - (b) unanimously approved the proposals concerning the work program in connection with reform of the PCT to be undertaken between the September 2004 and September 2005 sessions of the Assembly, subject to the availability of sufficient funds, including the matters to be considered, the convening of sessions of the Working Group and possibly the Committee, and financial assistance to enable attendance of certain delegations, as set out in paragraph 37(i) and (ii) of document PCT/A/33/1.

Proposed Amendments of the Regulations Under the PCT

9. Discussions were based on document PCT/A/33/2 and, in French only, document PCT/A/33/2 Rev.

10. The Delegation of Germany, noting that sufficient time was needed for the preparation and publication of an official German text, agreed by several countries concerned, of the Regulations under the PCT as amended, suggested that the date of entry into force of the proposed amendments of the Regulations be April 1, 2005.

11. The Assembly unanimously adopted the amendments of the Regulations under the PCT contained in the Annex to this report and decided that those amendments:

(a) shall enter into force on April 1, 2005, and shall apply to any international application whose international filing date is on or after April 1, 2005;

(b) shall not apply to any international application whose international filing date is before April 1, 2005, provided that amended Rules 13<sup>ter</sup>.2, 53.9, 68.2, 68.3 and 69.1 shall apply in relation to any international application in respect of which a demand for international preliminary examination is made on or after April 1, 2005, whether the international application is filed before, on or after April 1, 2005.

#### Status Report on PCT Information Systems

12. Discussions were based on document PCT/A/33/3.

13. In introducing the report, the International Bureau provided the Assembly with a brief update on the activities of the PCT Information Systems Division.

14. The Delegation of the Republic of Korea expressed its appreciation for the International Bureau's efforts in promoting the PCT system, in particular with respect to the launching in January 2004 of the electronic filing system for PCT applications. It informed the Assembly that the International Bureau and the Korean Intellectual Property Office had now begun joint development of a PCT receiving Office administration system called "PCT-ROAD". The PCT-ROAD system would offer PCT receiving Offices core administrative functions such as electronic receipt of PCT applications and management of bibliographic data. The successful development and dissemination of PCT-ROAD would assist receiving Offices in developing countries to modernize their internal administrative processes. The Delegation expressed its desire to continue cooperation with WIPO by offering the experience and expertise of the Office to other Member States to help them modernize their intellectual property administration systems.

15. The Assembly took note of the status report on the PCT Information Systems contained in document PCT/A/33/3.

#### Status Report on PCT and Patent Statistics Activities

16. Discussions were based on document PCT/A/33/4.

17. In introducing the report, the International Bureau provided the Assembly with a brief update on activities since the document was issued.

18. The Delegation of Japan expressed its appreciation for the work of the International Bureau in the domain of statistics and expressed its support for the proposal of the International Bureau to establish a worldwide database of industrial property statistics.

19. The Delegation of the United Kingdom noted the timeliness of the work of the International Bureau and voiced its active support. The Delegation expressed its concern about delays in the establishment of international search reports, as highlighted in the statistical report annexed to document PCT/A/33/4, and enquired whether statistics were available on this matter.

20. The International Bureau, in reply to the Delegation of the United Kingdom, stated that data had been collected by the International Bureau on the timing of the transmission of international search reports, international search opinions and international preliminary examination reports. Statistics on these matters had been shared with the International Authorities at the Meeting of International Authorities. It further stated that delayed international search reports also had adverse effects on the publication of international applications, and on applicants and third parties. So far this year, over 20,000 re-publications had had to be effected by the International Bureau as a consequence of late international search reports.

21. The Assembly took note of the status report on PCT and Patent Statistics Activities contained in document PCT/A/33/4.

#### Readjustment of the International Filing Fee

22. Discussions were based on document PCT/A/33/5.

23. In addition to the discussion reported below, reference should be made to the General Report (document A/40/7), under item 4.

24. The Delegation of Canada, speaking on behalf of Group B, indicated that there was serious concern within the Group about WIPO's general financial situation, including with respect to the new construction project. Budgetary restraint was a challenge that WIPO had not had to face in any serious way for some years. The efficient allocation of scarce resources was now a major challenge for WIPO and its Member States and some very difficult decisions had now to be made about WIPO's future priorities. Group B believed there was insufficient information and justification provided to warrant approval of the proposal to increase the PCT filing fee at the 2004 General Assembly. The Delegation stressed that any proposal for a fee increase should be included in the framework of budget discussions.

25. The Delegation of Egypt, speaking on behalf of the African Group, stated that, as was well known, PCT fees constituted the most substantial part of WIPO's income. As the Delegation had indicated in its general statement, the African Group wished to reaffirm how important it was for WIPO to have a solid and stable financial basis, thus enabling it to deliver its services and carry out its activities in accordance with the high level of performance known to all in past years. The Group welcomed and supported, in this regard, the announcement concerning the establishment of a long-term predictability system to monitor future PCT income, made by the Director General in his opening remarks in the framework of the General Assembly. In this context, the African Group wished to recall that, in the period from 1997 to 2003, PCT fees had been reduced by 40% in spite of concerns of developing countries concerning the potential negative impact of such decrease on WIPO's level of activities, particularly in its cooperation for development program. The Delegation noted that, during this period, PCT fees charged by major Patent Offices in the world had increased substantially. However, the reduction of WIPO's PCT fees had been based on a solid understanding that they could be readjusted later if needed. It was in this context that the last

sentence of paragraph 2 of document PCT/A/33/5 referred to the fact that Member States had agreed that, on the basis of consultations, the Director General “would propose a readjustment of PCT fees, if necessary next year”, meaning this year. The shortfall in the Organization’s income over the past year was being felt across the Organization and affected its ability to deliver its services and carry out its activities, taking into consideration the ever-increasing needs of developing countries, particularly African countries and the least developed countries among them, to build their capacities and infrastructure in the field of intellectual property in order to effectively use intellectual property for economic and social development. At the same time, the Organization was faced more than ever with greater challenges and expectations on a global level, necessitating a solid financial basis. As a consequence, the African Group fully supported the readjustment of PCT fees, as proposed. The Group was confident that the International Bureau had proposed such a readjustment after careful study and after having taken all other possible measures to address the financial situation of the Organization, including appropriate cost reduction measures. In respect of the possibility of using the Reserve Funds, which had been mentioned by delegations, the Group was convinced that this was contrary to the rules of financial prudence as it would negatively impact on WIPO’s assets and long term financial basis and would be contravening the Reserve targets agreed to by Member States. The Group wished to make it clear that cooperation for development was an integral part of the mission of the Organization on an equal footing with its other activities, and ultimately contributed to the consolidation of the global intellectual property system. The African Group wished also to highlight the importance it attached to promoting the use of the PCT system by developing countries. In this context, the Group requested the International Bureau to examine the possibility of extending the fee reduction of 75%—presently given to individuals—to firms whose capital was owned by one or more individuals from a country where the national revenue per inhabitant was less than 3,000 US dollars per annum. The African Group wished to seize this opportunity to highlight its full confidence in the management of WIPO and its trust in the high level of professionalism of the International Bureau. The International Bureau was exemplary in its transparency and eagerness to associate the Member States with all decisions concerning financial and administrative matters, as had been effectively witnessed in past years. In conclusion, urging all Member States to heed the call of the Director General, the African Group reiterated that the matter was of great importance for WIPO and could not be deferred, and action should be taken at this session.

26. The Delegation of Mexico stressed that it was particularly important to put the proposal to increase the PCT filing fee into context, from the following two angles. Firstly, the increase proposed was modest compared to the overall cost of patent filings, the major component continuing to be patent agents’ fees. It was patent agents, and not necessarily applicants, who had most benefited from continued PCT fee reductions in the past, which amounted to 40% since 1997. Secondly, the main International Authorities had significantly increased the costs of PCT filings by increasing their own PCT fees this year. It was to be expected that the proposed increase would not affect PCT applicants in developing countries who would find themselves unable to pay even the reduced fees offered by some of these Authorities, which would mean that they would not be able to benefit from the advantages of the PCT system. From these two points of view, the Delegation considered that the proposal was reasonable in order to compensate for the short-fall in WIPO’s income, especially when considering that the fee increases adopted by the main PCT Authorities were, in some cases, higher than 60%, whereas the Secretariat’s proposal was for an increase of less than 5% if one took into account the basic cost of the PCT system (international filing fee and search fee). It was for these reasons that the Delegation supported the proposal. Nonetheless, the Delegation also considered that it would be necessary to adopt additional measures to ensure the financial

health of WIPO and to explore ways of rationalization that would lead to a reduction, in a fairly brief period, in the high operational costs of the Organization. It was not by hiring more people but by making better use of available resources, especially by investment in information technology, that developing countries could obtain more and better benefits from the intellectual property system and also from WIPO's cooperation activities. The Delegation expressed concern at the possibility that the financial situation might have detrimental effects on investment programs in information technologies, particularly in the PCT system. This would affect the consolidation of an interactive electronic environment for users of the system, the strengthening of which was necessary in order to provide dynamic and efficient services to the users. Finally, the Delegation noted that, in the context of electronic filing, some of the present PCT fees would have to be revised in the future, such as, for example, the fee per page charged for sheets in excess of 30. The Delegation was of the view that it was vital to set up a committee, reflecting the multilateral nature of the Organization, which would assess, from different perspectives, any proposed increase or decrease in fees before it was submitted to the Assembly. The purpose of such a committee would be to analyze the impact of the proposed measures on all PCT Member States, to suggest possible solutions with a view to maintaining the "win-win" balance, to the benefit of all involved in the system, including WIPO. The work of the committee would strengthen the PCT system and make it possible to guarantee the financial stability of the Organization in the medium and long terms. In conclusion, the Delegation reiterated its support for the proposal, its call for the adoption of rationalization measures to reduce high operational costs, and its suggestion to establish a committee to assess in advance any increase or decrease of fees which was submitted in the future to the Assembly.

27. The Delegation of Sri Lanka, speaking on behalf of the Asian Group, stated that the countries of the Asian Group had noted with particular interest the discussions on the current financial situation of WIPO, its causes as well as consequences. The Group was aware that the current situation needed redress and therefore welcomed the proposal for a readjustment of the international filing fee. It also welcomed the fact that the proposal sought to ease the burden on developing countries, and indicated that it would consider constructively any further suggestions aimed at ameliorating possible undue hardship resulting from implementation of the proposal. The Group expressed the hope that the additional income guaranteed by the proposed readjustment, combined with other measures taken to reduce expenditure, would contain the deficit in the current biennium to a marginal level while at the same time maintaining the Organization's ability to achieve its objectives.

28. The Delegation of Benin, speaking on behalf of the Least Developed Countries (LDCs) Group, referred to the statement it had made in the framework of the WIPO General Assembly in which LDCs had called for additional assistance to be provided to LDCs in all sectors. In particular, this would involve information technology, the use of technological tools, technical support and modernization of intellectual property systems. In that context, the LDCs Group recalled that, during the period 1997 to 2003, international filing fees were cut by 40% despite the many problems encountered by developing countries over those years, some of which were particularly acute for LDCs. However, understanding was reached on the fact that there would be no impact on cooperation programs, and it was also clearly understood that if the number of filings were to be reduced, then there would be a corresponding adjustment in fees. As stated in the last sentence of paragraph 2 of document PCT/A/33/5, the Member States had agreed that, on the basis of consultations, the Director General would, as required, propose a readjustment in PCT fees the following year, in other words, this year. All Member States, in particular LDCs, were now feeling the impact of the decrease in PCT income and thus on the overall strategic objectives of the Organization,

which would affect not only Member States of WIPO but also society in general. For that reason, the Delegation recalled the plea it had made in the framework of the WIPO General Assembly that intellectual property should be recognized as an instrument to bring about social, economic, educational and cultural development throughout the world, and should also be recognized as a tool to be used in developing international trade and investment and in overcoming poverty at a global level. Once again, the Delegation recalled that it had been agreed that intellectual property should be viewed in a broader context. WIPO should now undertake broader tasks as it sought to attain the Millennium Goal established by the United Nations in various areas, such as health, education and employment. The LDCs Group, composed of the fifty countries which benefited the least from intellectual property rights, was the group in the greatest need of further development, these countries having to try to establish a proper foothold in the international trade arena. Many obstacles and barriers prevented LDCs from doing so. Undoubtedly, WIPO could play an effective role in helping LDCs face those challenges but it needed to have the capacity and the will to get the necessary resources. In view of the situation and in order to ensure, in the medium and long terms, the stability of the resources of the Organization so as to allow it to perform the tasks it was required to do, the LDCs were therefore now proposing a readjustment of 20% in the PCT filing fee, not 12% as proposed by the International Bureau. Further readjustments to the PCT filing fee could be considered in future, depending on how the number of filings evolved and on the amount of income being generated. The Delegation called upon the International Bureau to inform all Member States of this proposal and of the way in which it had been discussed under this agenda item.

29. The Delegation of the Netherlands, speaking on behalf of the European Community and its Member States, was of the view that the proposal was not yet ripe for action at this stage. Having listened to the previous interventions, and after internal deliberations, the European Union (EU) was willing to continue to consider the proposal in a constructive manner in order to find an effective solution as soon as possible for the benefit of WIPO's operations, balancing costs and expenditures. With a view to preparing a draft decision for the Assembly in the coming months, the EU was willing to participate constructively in the competent bodies of the Organization in the elaboration of a soundly based financial outlook for WIPO, based on both income and expenditure, in the short and longer term perspectives. WIPO's Secretariat should make available further information and options for reducing costs in staffing and in the provision of office space. The EU believed that the program for technical assistance for developing countries should continue. On this basis, a reasonable and well-founded decision could be made by the Assembly in the coming months. The Delegation wished to share with other delegations information concerning the question of "risk", should the Assembly not take a decision at the current session to adopt the proposal. The question had been asked of the external auditor of WIPO, whose view was that a modest decrease of the Reserve Funds from the level of 95 million Swiss francs to 75 million Swiss francs would not represent a real risk to the Organization on condition that, in the coming months, the issue of the financial problem was addressed.

30. The Delegation of the United States of America expressed its strong opposition to an increase in PCT fees, in general, and now in particular, for several reasons. The July 2004 PCT statistical report, as annexed to document PCT/A/33/4, noted that "the growth rate of PCT filing of around 4% continues and appears to be sustained in 2004. This is a slight increase over the yearly growth rate of 2002-2003". Just last year, the Assembly had effectively increased the minimum PCT fee when moving from the previous designation system to the new international filing system. At that time, the Assembly agreed to the Director General's suggestion that he would consult with Member States and review the

actual usage of the new PCT arrangement. Those consultations had not taken place, especially on the matter of the actual usage of the new arrangement. The fact that PCT fees had been reduced significantly in recent years was no justification for increasing them now. As had been noted by the Delegation in its statement to the General Assembly, the fees had been set artificially high in the past to generate Reserve Funds for automation and construction projects, reaching some 350 million Swiss francs at the end of 1998. The percentage of WIPO's budget funded by PCT fee income had risen from 58% in 1994 to almost 80% today. That trend was unacceptable and needed to be addressed. There was no indication of a financial crisis supporting the need for fee increases and there had been no demonstrated effort to implement quantifiable cost saving measures in lieu of seeking a fee increase. The Delegation referred to the intervention by the Delegation of the Netherlands, which indicated that there was in fact no risk to the Organization in light of the external auditor's report. In the light of these reasons, the Delegation of the United States of America simply did not see any justification for an increase in the PCT filing fee. The Delegation proposed a thorough review of WIPO prior to the consideration of any fee adjustment. The review should examine the control and use of fees, including an evaluation of the economy, efficiency and effectiveness of WIPO's financial procedures, its accounting system, its internal financial controls, and in general the administration and management of the Organization. The review should also provide detailed information on WIPO's assets and liabilities including staffing levels (permanent posts, fixed-term posts, short-term staff, consultants, etc.), and all financial obligations, rents, contracts, etc. The review should guide WIPO and the Member States in their consideration of the draft Program and Budget for 2006-2007 that would be considered by the Program and Budget Committee in the spring of 2005. While some might see this issue as a choice between fee increases and cuts in the cooperation for development program, the issue in fact concerned the entire Organization. The Delegation stressed that it did not intend to cause, nor did it believe that it would cause, negative effects on the cooperation for development program.

31. The Delegation of the Republic of Korea was of the view that, at first glance, the proposed readjustment of the international filing fee might seem appropriate from the point of view of resolving WIPO's shortfall in PCT income. However, the Delegation was concerned that increasing the filing fee would financially burden applicants and result in a reduction in the use of the PCT. Given that the current budgetary problem was due to a slowdown in the growth rate of PCT filings, increasing the filing fee might backfire and cause the growth rate to slow down even further. The Delegation considered it desirable, therefore, to act prudently before increasing the international filing fee, and was of the view that more discussion was needed on the cause and effect of any fee increase in the framework of the Program and Budget Committee and the Working Group on Reform of the PCT. It suggested that the reasons for the slowdown of the growth rate in PCT filing be first analyzed and that measures aimed at increasing the use of the PCT be considered.

32. The Delegation of the Republic of Moldova, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European States, said that the Group had examined the issue of whether to increase the PCT filing fee from all possible angles, and had listened carefully to the positions and opinions of all the countries and groups that had spoken on the problem. The Group's viewpoint was based on the fact that the interests of all the Organization's Member States would be served through the continuation of its activities according to all the principles laid down in the Program. Based on the general interest of providing the necessary conditions for the sustainable development of WIPO's activities, the Group supported the proposal to increase the PCT filing fee. In addition, it acknowledged that to be a forced

measure and shared the opinion expressed regarding the need to provide more detailed information on the accounts and other measures used to reduce expenditure.

33. The Delegation of Indonesia indicated that, for the last decade, Indonesia had received great assistance from WIPO, such as training programs, seminars and preparation of draft government regulations dealing with intellectual property. For that reason, the Delegation supported the readjustment of the international filing fee and hoped that the additional income would contribute to WIPO's program of assistance to Member States, especially developing countries and least developed countries, in modernizing their intellectual property systems.

34. The Delegation of Morocco stated that, for decades, WIPO had been a source of pride to all of its Member States and also a source of pride to all its staff, the first reason being that WIPO had always been considered as the richest organization within the United Nations system and the second reason being that it had always been considered as a particularly efficient and effective organization. Indeed, WIPO had always been seen as a perfect example in that regard. In recent years, it had run into a few problems, but, looking at the dynamism and professionalism of the staff, there had been no falling off in the cause for pride. The question now posed was how to deal with the drop in income. The budgetary implications of the current situation could be readily seen. All those who had spoken previously had stated that this drop in income was not due to mismanagement, nor to any kind of "mega-budget" that had been decided upon; rather, it was something being caused by conditions that were more or less beyond the control of WIPO, that is, the rate of filing of applications under the PCT system. The dilemma was how to act to save the Organization, to save the efficiency and effectiveness of the Organization, and to maintain its technical cooperation programs at their existing levels. Should the Assembly act now or wait until a number of points could be clarified? The Delegation indicated that it had been pleased to listen to the Delegation of the Netherlands which had indicated that many countries had asked about what was the risk if no decision was taken now. There was a risk in not accepting the proposal for a 12% fee increase. The next question then was whether Member States were willing to accept that risk. The Delegation was of the view, like most countries and particularly developing countries, that the Organization could not afford the luxury of such a risk, that is to say, the risk of seeing its programs collapse, the risk of seeing its financial management compromised by a precarious budget, the risk of no longer enjoying budgetary predictability. Money was needed before actually launching any kind of international program. The Delegation endorsed what had been said by the representative of the African Group and indeed by other regional groups, and strongly supported the adoption of the International Bureau's proposal. If, however, there was a wish to have a more in-depth discussion of the matter, the Delegation was willing to participate in such a discussion, but there had to be some time limit for addressing the issue so as not to allow the Organization to run a more serious risk as time went on. Indeed, the longer it took to reach a positive response on the matter, the greater the problems for WIPO, the more its budget might shrink, and the more difficult the financial management might become. The Delegation appealed for the dialogue to continue within the Program and Budget Committee and within the Working Group on Reform of the PCT. What was important was to give a dynamic impetus to the discussion and not to over-complicate the work that had to be done, which might compromise the very objectives of the exercise. These objectives were ambitious indeed, but nonetheless they were the objectives of the Member States which needed to set up an agenda or plan of action now, taking into account the existing imperatives, in order to resolve the problem as soon as possible.

35. The Delegation of China expressed support in principle for the proposal by the International Bureau to increase the PCT filing fee. The Delegation recalled that, at the Assembly's session in 2003, it had approved a resolution to reduce the PCT fees. But, as had been pointed out in that session by some delegations, the reduction in PCT fees should not affect WIPO's work, including its cooperation with, and support for, developing countries and LDCs. Reviewing WIPO's work and activities in the past year, the Delegation felt that the reduction of the fees as decided at the 2003 session did, to some extent, affect WIPO's work. The Delegation was in principle in favor of taking measures for adjusting the PCT filing fee so that WIPO would have enough resources to carry out its planned work and better help the various countries, including assisting developing and least developed countries to establish and perfect their intellectual property systems. At the same time, the Delegation urged WIPO to ensure effective management of its finances so as to further promote the sound development of the international intellectual property system.

36. The Delegation of the Russian Federation supported the statement made by the coordinator of the Group of Central Asian, Caucasus and Eastern European States. It also supported the proposal to increase the PCT filing fee based upon the financial situation of the Organization and the desire to ensure that WIPO did not run into a budgetary deficit, because that would be very much to the detriment of operational activities of the Organization. The Delegation wished in particular to underscore its concern as to whether the Organization would be able to continue to carry out its activities in all areas of its programs, carefully observing a balance of the interests of all parties. It supported the proposal on the basis that it was a necessary measure, a measure that Member States were forced to take. It wished to stress that the measure could be looked at as a temporary measure which had to be taken because of an urgent need. The Delegation believed that, in increasing the PCT filing fee, consideration should be given to the need for maintaining the Reserve Funds as well as to how to make the Organization operate even more efficiently. This would concern all areas including construction projects and management of overheads. In other words, there should be careful monitoring of indicators on the part of Member States. The Delegation stated that the question of the financial status of the Organization and of possible changes to PCT fees were matters that had been looked at during the previous session of the Assembly after careful consideration within the Program and Budget Committee, and that was an appropriate way in which to continue in future.

37. The Delegation of the Democratic People's Republic of Korea stated that it had considered carefully the proposed readjustment of the international filing fee. As the Delegation of Sri Lanka had mentioned on behalf of the Asian Group, the issue of readjusting the international filing fee was considered to be necessary in the circumstances that the Organization was now facing. Last year, the Organization had proposed amendments to the Schedule of Fees by fixing the new international filing fee and by decreasing the handling fee, which aimed at making the PCT system more economic and profitable. But this year, the income of the Organization generated by the PCT had decreased, which had an impact on several of the Organization's activities including technical assistance to developing and least developed countries. To overcome this financial situation, it was important to adopt a flexible policy in respect of the activities planned and budgeted. But the most important thing was to strengthen international cooperation among Member States and to find the necessary financial resources. Therefore, the Delegation supported the proposal of the Director General on the readjustment of the international filing fee.

38. The Delegation of Barbados expressed its support for the proposed increase in the PCT filing fee. While mindful of the need for efficiency in the Organization, it had to be

recognized that WIPO was not immune to external pressure exerted by worldwide economic trends. The Delegation supported the increase in order to facilitate the funding of cooperation for development activities. While other Member States were well able to fund their own intellectual property development programs, Barbados had slender fiscal resources and could not draw on the benefits of economies of scale. For Barbados, the benefits of the PCT regime lay as much in the funding of development planning as in the promotion of accessible streamlined patent application processes. The Delegation asked those delegations that were skeptical about the need for the increase in the PCT filing fee to bear in mind the needs of the developing countries that relied on WIPO for support deriving from funds generated by the PCT. There was a balance whereby the holders of rights could exploit their intellectual property rights within smaller countries in which cooperation for development programs had aided the establishment of robust intellectual property protection systems and laws working to the benefit of all patent holders.

39. The Delegation of Trinidad and Tobago associated itself with the statement made by the Delegation of Barbados and expressed support for the proposal of the Director General for an increase in the PCT filing fee. Trinidad and Tobago, which joined the PCT in 1994, had since experienced a fair percentage growth in application filings by the local inventive community and an increase in PCT filings with its national office. This growth continued to contribute positively to economic growth and development. While the Delegation felt that WIPO had to explore other avenues to address its present financial shortfall, it also believed that the Member States had an obligation to support the proposal. Trinidad and Tobago relied heavily on the expertise which resided within WIPO and on WIPO's financial support for intellectual property activities, as Trinidad and Tobago continued to develop its intellectual property system. The Delegation believed that the proposed increase in fees would allow WIPO to operate more comfortably with its work in the area of development, particularly for small Offices, like the Office of Trinidad and Tobago, and would also allow the Organization to continue to retain the expertise of its consultants, without whom continued development might be hampered. The Delegation was not willing to take that risk. If Member States were to develop robust intellectual property systems, which were felt to be important for continued growth, but also because such was required as an integral part of every trade agreement which the country had signed so far, and particularly with the developed countries, the approval of the proposal was felt to be critical for the continued development experienced so far, while working with WIPO in previous years. The Delegation concluded by reiterating its support for the fee increase as proposed by the Director General.

40. The Delegation of Antigua and Barbuda strongly supported the proposed readjustment of the international filing fee and emphasized that this readjustment should be implemented by January 1, 2005. The Delegation supported the statements made by other Caribbean delegations and could also identify with the concerns expressed over the current and projected financial status of WIPO. The cooperation for development program was of utmost importance to Antigua and Barbuda and the Caribbean region as a whole. The period from October 2003 to September 2004 saw a reduction in activities rather than the increase that had been envisaged under the Cooperation for Development Agreement signed by the Caribbean countries and WIPO last November. This was mainly due to the fact that the budget for the Economic Development Bureau for Latin American and Caribbean had been severely cut by approximately 67% as a result of WIPO's financial shortfall. The Delegation was convinced that the fee change adopted during the last session of the Assembly had not delivered the desired results, and therefore adequate measures should be devised to reduce, if not eradicate, the deficit. The Delegation felt that a modest increase in fees would certainly not be a deterrent to applicants wanting to file PCT applications. The Delegation reiterated that it

would support any initiatives geared towards the eradication of the financial deficit so long as such initiatives did not further reduce the programs or decrease the number of activities to be implemented in the developing and least developed countries. These countries had received invaluable assistance from WIPO through its cooperation for development program in activities that had resulted in the strengthening of their intellectual property regimes and an increase in awareness of intellectual property issues among stakeholders and interested parties.

41. The Delegation of Dominica supported the statements made by the other Caribbean States. It recognized the demands placed on the Organization in meeting its objectives, including making intellectual property a useful tool for economic growth in all small developing countries. The Delegation therefore endorsed the proposed increase in the PCT filing fee.

42. The Delegation of Cuba indicated that it had taken note of the Director General's proposal and of the measures that had been taken to contain expenditure under the operational budget of the Organization. The Delegation considered that the matter was important, and supported the Director General's proposal to redress the financial situation by increasing the PCT filing fee. The Delegation also recognized that WIPO had to make efforts so as not to adversely affect the budget for the cooperation for development program.

43. The Delegation of Colombia acknowledged the efforts made by the Organization to reduce unnecessary expenditure. The Delegation hoped that these measures would contribute to striking a financial and budgetary balance. It believed that austerity policies aimed at reducing unnecessary expenditure should continue in the Organization in the short and medium terms. To be able to achieve that, it was necessary to implement the budget by defining priorities, using the available resources in a strategic and efficient manner. In this context, the Delegation believed that it was absolutely essential to financially strengthen the Organization to overcome the deficit it was now facing, thus making viable the programs and activities provided for in the Program and Budget for this biennium, thereby strengthening the Program and Budget to be drawn up for the coming biennium. The Delegation attached great importance to activities and programs for development cooperation. It was essential that they be strengthened and extended in 2005, with the expectation that this would have a positive impact in developing and least developed countries. Minimum reserve levels should not be affected but should be maintained according to what was established in the Reserve Funds policy. The Delegation was fully aware that the slowdown in growth in PCT filings for 2004 and the similar trend for the years to come, which was an unforeseen situation, had a negative effect on the Organization's budget, in particular the cooperation for development budget. Therefore, the Delegation considered that an adequate PCT fee level for next year, as suggested in document PCT/A/33/5, would contribute to solving the deficit situation the Organization was currently in. Therefore, the Delegation supported the proposal for the readjustment of the PCT filing fee.

44. The Delegation of Sudan endorsed the statement made by the Delegation of Egypt on behalf of the African Group and supported the increase in the PCT filing fee having regard to WIPO's present situation, with a view to allowing WIPO to continue to provide assistance to countries which needed it. It noted that there were many people, including students and workers in Sudan, who needed such support. The Delegation emphasized that the fee increase proposal had been endorsed by the responsible Minister of its Government.

45. The Delegation of Nicaragua expressed its conviction that intellectual property contributed to the economic, social and cultural development of countries and was an effective tool for economic development and wealth creation. The Delegation stressed that Nicaragua had made great efforts to show that protection and enforcement of intellectual property rights were vital to achievements of the country's objective of improving the standard of living of its citizens. The Delegation stressed that Nicaragua had made major steps in intellectual property issues, thanks to the support of WIPO and other organizations, such as the Secretary for Central American Economic Integration, the European Patent Office (with the LATIPAT project, format 32), the Spanish Patent and Trademark Office, the Mexican Institute of Industrial Property, the Mexican Institute of Copyright, the United States Patent and Trademark Office, and UPOV, among others. The Delegation emphasized that Nicaragua wished to progress further and demystify intellectual property so that entrepreneurs, workers, consumers, researchers and others could enjoy the added value offered by intellectual property. The Delegation emphasized that Nicaragua was fully committed to its new obligations to extend the protection of intellectual property rights. These obligations had been generated through new international commitments which had stemmed from the opening up of trade with Nicaragua's main trading partners. Nicaragua had felt the impact of WIPO's financial health problems, which had had a drastic effect on the country, meaning a drop of practically 60% percent in cooperation programs for Nicaragua, affecting important projects that would have benefited mostly intellectual property right holders, this figure being very high for a country which needed a lot of support. Given this percentage drop plus the need to complete regional projects in the area of intellectual property, Nicaragua supported the readjustment of the PCT filing fee as there was no other solution. However, the increase was needed as a temporary measure in order to allow, amongst other things, the reactivation of development cooperation activities which had been interrupted because of WIPO's financial situation. The Delegation requested that new cooperation activities be undertaken. It also recommended that the Director General implement urgent austerity and rationalization measures that should not affect cooperation for development.

46. The Delegation of India expressed its extreme concern about the precarious financial situation of WIPO. It therefore supported the proposal put to the Assembly by the Director General. It believed that the 12% increase proposed was a modest one, given that WIPO had followed in the past, and Members States had supported, a policy of a balanced budget. There seemed to be no alternative but to increase the fees, just as in surplus years, the Assembly had reduced fees so that the Reserve Funds did not become too large. The Delegation believed that a uniform practice of adjusting fees should be devised so as not to have a situation where there were substantial deficits in one year and substantial surpluses in another. There had been a revision of the fee structure last year. But as it was now understood and was understood then, it was always assumed that there could be a fine tuning if that was indeed what the practical situation demanded and, in the Delegation's view, that was exactly what was being seen today. The projections of PCT income and the expenditure of the Organization led to the inescapable conclusion that, unless the desire was to throttle the Organization, something needed to be done about increasing the fees just as something needed to be done to cut costs wherever possible. The Delegation acknowledged the Director General's intention to meet the deficit, in part, by cutting costs, while noting that an increase in the PCT filing fee was unavoidable. The Delegation stated that the view had been expressed, and the sentiment had been conveyed before and repeated today, that somehow PCT applicants were entitled to a scheme in which there were no charges other than operating costs, that should be levied on the income from PCT fees and that the PCT system should be run essentially as a "no loss no gain" system. It was probably useful to try to understand the

reasons that might underpin such an approach. Was development cooperation an unnecessary and undesirable charge on PCT income? That seemed to be a sentiment that had been articulated before, and there were also references to the disproportionate increase in the development cooperation budget. The Patent Offices in many of these countries also adjusted their fees to meet their expenditure. However, even if they did not do that, even if Member States wished to have a subsidized Patent Office, one where income from other parts of the government subsidized the Patent Office, it might make sense given that, in that particular country, the society might believe that the need to promote innovation was so great and the benefits to society so huge that the subsidy provided to Patent Offices through lower-than-cost application fees to patent applicants would achieve a desirable social objective. However, what was true of a national regime did not necessarily apply internationally. The Delegation pointed to the fact that the profits made by the intellectual property right holders might indeed have a positive impact on society, for example, by increasing job opportunities, investments, etc. These considerations did not apply across borders, and therefore, the idea of a subsidy or a less than fully funded Patent Office did not apply to what was essentially an international regime, for the simple reason that there were no cross-border benefits that accrued under this international system. Indeed, it could quite cogently be argued that the PCT fee system should be revenue maximizing. In other words, one could consider charging the highest PCT fees that would generate the largest revenue to the Organization for the simple reason that lower PCT fees benefited intellectual property right holders, an overwhelmingly large number of whom were in the developed countries, enabling them to secure monopoly rights in developing countries without any reverse flow of resources into developing countries. Not doing that and instead following a different system where the only additional charge expected to be borne by PCT applicants was to support a development cooperation system was, in fact, a very generous policy. WIPO could have instituted a much higher fee structure and, given the relative fee inelasticity of PCT applications, a huge increase in the revenue of WIPO would probably have been seen. The Delegation believed that the first claim on that added revenue would have been by developing countries. That added revenue was truly the income that should have flown to developing countries, given the fact that developing countries provide monopoly protection to the patent applicants of developed countries without getting very much in return. Wherever there was a system of monopolies, it was good policy to extract as much of the profit that monopolists would gain as possible by levying high fees. The Delegation stated that that was what was happening, for example, at the Federal Communications Commission in the United States of America which, in licensing the spectrum, would try to extract the maximum amount of revenue from those who sought to use certain parts of the spectrum, which of course was for the common good. Similarly, it would not have been altogether inappropriate for WIPO to have followed such a policy. But of course, given the fact that the power structure in today's world was very asymmetric, that might be an unrealistic thing to seek. However, at the very least, the development cooperation program of WIPO should be funded with substantial increases from year to year, from surpluses to be generated by the PCT system, given the fact that the PCT system was indeed a cut-price system as far as PCT applicants were concerned. The Delegation wished to dismiss once and for all the impression that development cooperation somehow represented an undeserving charge on PCT income and that every attempt should be made to cut development cooperation so that PCT applicants could get the benefit of lower fees. The Delegation was of the view that, by increasing the PCT fees significantly, the Member States would be able to strengthen the development cooperation sector of the Organization and perhaps reorient it along the lines discussed under Items 4 and 12 of the consolidated agenda of the Assemblies of the Member States of WIPO, so that benefits to developing countries from a fair global intellectual property system were realized. The Delegation recognized the difficult task before the International Bureau. It recognized the

pressures coming from the developed countries. The Delegation urged for recognition that the development cooperation sector was not an unnecessary charge on the system and that the hands should be strengthened of these officers responsible for giving good technical advice and for helping developing countries build a good legislative system and adopt good policies which were in their best interests.

47. The Delegation of Tajikistan expressed support for the statement made by the Delegation of Moldova on behalf of the Group of Central Asian, Caucasus and Eastern European States, as well as that by the Delegation of the Russian Federation. The Delegation noted that WIPO, at the very beginning of its work, had set out on the path of giving assistance to all countries concerned with intellectual property issues, and it had pursued that path until this day. However, in the light of the circumstances and for a number of reasons, there were now changes in the way in which WIPO was having to operate and there had been changes in its financial situation. It was clear from the Director General's report that, in order to enjoy sustainable development in the future, WIPO would be obliged to increase fees as proposed in document PCT/A/33/5. However, looking at the balance between expenditure and income, the rate of PCT filings had to be borne in mind as well as the overall objectives of WIPO. The Delegation felt that, that being so, it could be argued that a 40% fee increase would be required, while what was being proposed was a 12% increase. The Delegation was of the view that the proposed increase was economically justified and it was in the interests not only of WIPO but also of the sustainable development of intellectual property issues in all countries of the world. The Delegation concluded by supporting the proposal.

48. The Delegation of Japan stated that it was against the proposal. First of all, there was no substantial explanation in document PCT/A/33/5 of why the PCT international filing fee had to be revised. The document merely stated that "the international filing fee [...], if not readjusted now, would result in a significant shortfall of the PCT income." Member States did not know from this to what extent PCT income would decrease. The Delegation noted that the International Bureau had provided some data in the context of exchanges between the International Bureau and Group B. Although the Delegation appreciated the efforts made by the International Bureau in compiling that data, it was not satisfied with the way this had been done so far, from the procedural point of view. According to the explanation given in the course of consultations between the International Bureau and Group B, the Delegation had understood that the deficit in year 2005 would be 20 million Swiss francs even after the International Bureau proceeded to some expenditure reduction. It further understood that the International Bureau had proposed the increase in the PCT filing fee, in order to fill the deficit in the year 2005. The Delegation stated that the International Bureau had not done enough so far to persuade the Delegation to approve the proposal. Firstly, the Delegation wondered whether the International Bureau had made efforts to increase the number of PCT applications, such as, for example, by promotion activities, so that the deficit might become smaller. There were many actions that WIPO could take for applicants to use the PCT system. Secondly, although the Delegation noted the International Bureau's efforts to cut expenditure, yet more expenditure should be cut. For example, about half of the expenditure was for staff costs. If the administrative work was more streamlined, the number of staff might decrease. Thirdly, even if those two actions—namely trying to increase the number of PCT applications and trying to further reduce expenditure—were not enough, the Reserve Funds could be used to cover the deficit. The purpose of the Reserve Funds was to cover deficits (see document A/35/6). Although the level of the Reserve Funds would drop below their target if they were used at this stage, the Delegation believed that this should be accepted in this urgent and exceptional situation. The Delegation fully recognized that the income from the PCT system constituted the major part of WIPO's income. In such circumstances, it

was quite natural that the decrease of PCT income following the decrease in the number of PCT applications would hamper the smooth execution of WIPO's programs. However, the present situation in which WIPO's income depended on PCT income meant that the activities of WIPO depended on PCT users. The Delegation believed that, should WIPO think that the increase was inevitable in order for it to carry out its activities smoothly, WIPO should convince the PCT users that the increase of the international filing fee was necessary. However, the Delegation pointed out that there was no convincing explanation in document PCT/A/33/5 directed towards PCT users. The Delegation recalled that major users of the PCT system, represented by the Union of Industrial and Employers' Confederations of Europe (UNICE), the Japan Intellectual Property Association (JIPA), the Intellectual Property Owners Association (IPO) and the American Intellectual Property Association (AIPLA), had expressed their strong opposition to the proposal, by saying in a letter addressed to the Director General that "without a convincing justification, they must oppose the proposal for increasing the international filing fee at this time". This fact showed that WIPO had not succeeded in explaining the situation to PCT users. In the medium and long terms, the Delegation strongly hoped that WIPO would establish means to make accurate forecast of both the number of PCT applications and the level of PCT income. Furthermore, WIPO should streamline PCT administrative work more by computerizing processes. Finally, in the course of discussion on the Program and Budget for the next biennium, the appropriate level of PCT fees should be discussed, taking into consideration the extent of computerizing of processes and the introduction of business accounting methods which the Delegation had asked WIPO to consider.

49. The Delegation of Ghana endorsed the statement made by the Delegation of Egypt, on behalf of the African Group, and strongly supported the proposal for an increase of 12% in the PCT filing fee. Ghana considered the request as an urgent appeal by the Organization for funds to enable it to implement its programs. It was common knowledge that many excellent managers had not been able to implement their programs because of budgetary constraints. Many initiatives had been stifled for lack of resources. It was for this simple reason that the Delegation was proposing that this urgent appeal from the Organization be considered as a short-term measure to secure the resources enabling the Organization to continue with its good work while other solutions were found to put the Organization on a sound financial footing. Other solutions should be considered as medium and long-term measures.

50. The Delegation of Canada expressed support for a sound financial basis for WIPO and the continuation of its services and programs. However, at this stage, the Delegation could not support a fee increase. The difficulty was that the current documentation lacked the financial information that would allow a transparent discussion to take place on the issue. The Delegation supported referring the matter to the Program and Budget process, as had been suggested by other delegations.

51. The Delegation of Kyrgyzstan recalled the discussions on the present point which were held in connection with item 4 of the Consolidated Agenda of the Assemblies of the Member States of WIPO, and wished once again to express support for the Director General and the International Bureau on the issue of increasing the PCT filing fee as described in document PCT/A/33/5. The Delegation also supported the view put forward by the Delegation of Moldova on behalf of the Group of Central Asian, Caucasus and Eastern European States as well as the view that had been taken by the Industry Council of the Commonwealth of Independent States on this particular issue. The Delegation believed that, given the fact that there were fluctuations in the level of PCT fees, a fee increase was required in order to ensure that WIPO was able to undertake all of its work. The Delegation noted that, at present,

because of market circumstances, the number of PCT applications had fallen. But it had to be understood that such fluctuations were not something that would always occur. In terms of the overall strategy for PCT fee setting in future, the Delegation was of the view that this matter should be looked at within the Program and Budget Committee of WIPO in order to determine a long-term strategy for these fees. The Delegation did, however, believe that the proposed adjustment was required and should be introduced as soon as possible in order to ensure that the budgetary deficit was eliminated as soon as possible for the financial health of the Organization.

52. The Delegation of Spain supported the statements made by the Delegation of Canada, on behalf of Group B, and by the Delegation of the Netherlands, on behalf of the European Community and its Member States. The Delegation commented that it would be useful to take some of the drama out of this debate. The discussions were not about highly political issues, but were more prosaic. As in many organizations, the budget approved last year for WIPO needed to be adjusted to reality. It had been approved on the basis of variables, and reality had not played out as predicted. Therefore, there was a deficit which could be faced up to in two ways, either by increasing income or by reducing expenditure. In the Delegation's opinion, it would be necessary to do both things. The Delegation believed that the intention as a whole did recognize that need. However, some delegations considered that the specific proposal was isolated and outside the broader context, and required further justification. The Delegation therefore believed that the most logical solution was that the proposal, together with other proposals dealing with expenditure, be submitted through the normal budgetary procedure. They could then be studied together with other options prepared by the International Bureau in the normal budgetary process which, given the seriousness of the situation, might be brought forward.

53. The Delegation of Zambia, referring to the past reports of the Assembly concerning reductions in PCT fees, had been impressed by the consistency of the trend. Almost all of the reports concerning fee decreases stated that the Assembly had unanimously adopted the reduction of the fees. Nowhere was there any recommendation to take the proposals to the Program and Budget Committee, nor to the next session of the Assembly. Again, nowhere in the past reports concerning reductions did the Assembly subject a proposal to the stringent preconditions now being discussed. Having listened to all the delegations who had spoken, the Delegation noted that there had been many more expressing views in favor of the proposal by the International Bureau than opposing it, and urged all those who had raised reservations to go along with the larger part of the membership which supported the proposal.

54. The Delegation of Switzerland stated that, even though it wished to see the Organization in good financial health, it had found, like many other delegations, that it was not in a position to take a decision on this at this time. The information that would be required to take such a decision was not available and the Delegation wished to continue to engage in this discussion at a later stage.

55. The Delegation of Saint Vincent and the Grenadines expressed concerns on the current financial situation of WIPO and the negative impact that this had had on several areas of WIPO's work, including its cooperation for development activities. The Delegation considered that a positive decision on the proposal was absolutely critical to the development of intellectual property systems in small developing countries such as Saint Vincent and the Grenadines. The Delegation considered that those who welcomed benefits in any sphere should embrace corresponding responsibilities. The PCT filing system provided an opportunity unparalleled in efficacy for innovators to widely protect and commercially exploit

the product of their efforts. Opportunities for the strengthening of the intellectual property systems that served these innovators must be no less pervasive. For this reason the Delegation fully supported the proposed readjustment of the international filing fee.

56. The Delegation of Chile stated that, even though Chile was still not a member of the PCT Union, given the importance of the PCT now in funding the activities of WIPO, it felt entitled to intervene in this debate, especially because Chile was very concerned with the current financial health of the Organization. The PCT fees had become the main source of income of the entire WIPO budget. Therefore, an increase or decrease in PCT fees had a direct impact on the funding of all activities carried out by the Organization. That was why the Delegation supported the proposal made by the Director General, taking into account that it was both a very modest and very serious proposal.

57. The Delegation of the United Kingdom expressed support for the statements made by the Delegation of Canada on behalf of Group B and by the Delegation of the Netherlands on behalf of the European Community and its Member States. However, the Delegation felt that it needed to respond to some of the comments made during the debate. It had been said that a fee increase was inevitable if development work was not going to suffer; it had also been said that it was acceptable to increase PCT fees at will and that this would not affect demand. None of that was correct. Resources had to be used effectively before taxes were levied on industry. The information needed to make the assessment was not available but needed to be made available. The Delegation was confident that development related work could be maintained by using the Reserve Funds without risking the future of the Organization. The Delegation therefore supported what had been said on behalf of Group B and the European Union.

58. The Delegation of Haiti supported the view that had been previously expressed by Caribbean countries. Despite the fact that Haiti was not as yet a member of the PCT Union, the Delegation believed that the International Bureau's proposal for readjustment of the PCT filing fee deserved whole-hearted support. Given the fact that cooperation programs that were of benefit to the least developed countries in particular made intellectual property a real tool for development, the Delegation felt that the Assembly should not allow this particular tool to suffer from a lack of resources.

59. The Delegation of El Salvador recalled that El Salvador was not yet a member of the PCT Union but was making all efforts and taking concrete action so as to become a member in the near future. The Delegation took a very positive view of the proposed fee increase. For El Salvador, it was very important to stress the positive impact that an increase of the PCT filing fee would have on funding for the development cooperation activities of the Organization. The negative impact on such activities caused by the shortfall experienced was already being felt. The Delegation also felt, however, that serious austerity measures and expenditure reduction in areas which were not priority areas for the Organization had to be considered.

60. The Delegation of Monaco expressed support for the statements made on behalf of Group B, and by the Delegation of the Netherlands on behalf of the European Community and its Member States, and by other delegations. It approved the idea of having a sound financial basis for the Organization but, at present, because of a lack of necessary information, it could not approve an increase in fees. For that reason the Delegation believed that this matter should be discussed further.

61. The Delegation of Iran (Islamic Republic of) was also of the opinion that the proposal made by the Secretariat for a PCT fee increase was a positive step and that it should be supported.

62. The Representative of AIPPI recalled that AIPPI represented the community of users from industry, including small and medium-sized industries, and also their representatives. The Representative first stressed that the PCT was a means for patent applications filing that was appreciated by applicants. The Representative stated that AIPPI was happy with the services which were obtained from the staff of the Office of the PCT. A telephone call to the staff was always a great help when problems arose and it was hoped that things would remain that way. It followed that AIPPI was particularly sensitive to any change in the PCT system and in particular to changes in fees. AIPPI members would have to explain to applicants why a fee increase was taking place. While they would show understanding if good reasons were given, for instance, based on increases in staff costs, or the introduction of new technical measures, industry applicants were nowadays looking very strongly at reducing costs. Filing under the PCT cost more than filing under the traditional Paris Convention route. Additional costs were often unavoidable but were sometimes welcome, such as, for example, in connection with the extended 30-month time limit for entry into the national phase. However, the Representative expressed a warning that any significant fee increase might result in a certain reluctance by applicants to use the PCT system. The Representative reported on the results of a questionnaire which had been distributed to the members of AIPPI, the replies to which had been 99% negative; indeed, there was only one country, India, in which a majority of attorneys voting had been in favor of the fee increase. Until more information was available as to why the fee increase was necessary, the Representative was unable to agree to the proposal and asked for discussion on the matter to be deferred.

63. The Representative of AIPLA recalled that AIPLA had more than 15,000 members representing independent and employed inventors in the United States of America and over 30 other countries. AIPLA had long been a strong supporter of WIPO and its development cooperation program, a significant portion of which was supported by the fees paid by applicants from the United States of America who represented 36% of the total number of applicants. AIPLA did not object to the use of PCT fee income to support development activities, but there were limits as to how much PCT applicants should have to support these and other non-PCT related activities of WIPO. The Director General had said that the failure to increase the PCT filing fee would cripple WIPO, yet no analysis or explanation of why this was the case had been presented. The lack of transparency of the WIPO budget made it impossible to determine whether the proposed PCT increase was necessary or justified. In connection with the 2004-2005 biennium, Table 7 of document WO/PBC/7/2 revealed that the total PCT fee income would be 505 million Swiss francs. However, Table 9.3 of that document showed that only 125 million Swiss francs would go directly to funding the costs of operating the PCT. Undoubtedly there were other costs associated with PCT operations not reflected in Table 9.3, but the Representative was unable to determine what those costs were. Similarly, no information was available as to how the remainder of the PCT fee income was being used. The Representative stressed that the fees concerned were fees paid by the clients of AIPLA members and the latter were not able to explain to the former where their fees were going. Until and unless there was an adequate explanation and justification as to where the remaining 375 million Swiss francs were going, AIPLA urged the PCT Assembly to defer the proposed fee increase.

64. The Secretariat noted that the present situation was basically due to a difference between the projections that were made in connection with the Program and Budget for the

biennium 2004-2005 and the reality being faced now. This difference was mainly due to certain projections made in respect of the PCT. Compared to the number of applications which were budgeted for in the Program and Budget approved by Member States last September, according to the latest estimates on PCT, it was expected that in this biennium there would be 30,000 PCT applications fewer than projected. Furthermore, based on data now available, the average fee that applicants would pay in this biennium would be well below the average that was approved in the context of approving the Program and Budget and which was taken as a reference for all the underlying financial assumptions. A further factor was that last year, at the previous session of the Assembly, the international filing fee had been proposed to be fixed at 1,450 Swiss francs but the fee then fixed had been 1,400 Swiss francs, that is, 50 Swiss francs less, which introduced a further shortfall in the budget of about 12 million Swiss francs. The combined shortfall caused by the above three factors was about 70 million Swiss francs. Referring to the intervention by the Delegation of Japan, the Secretariat clarified that, if the Organization were to implement its activities as approved by Member States, it would face a deficit of 70 million Swiss francs, which was not sustainable. If the Organization had to recover this income shortfall only by raising fees, the adjustment needed would not be a 12% increase but about 20%, if it had taken effect on January 1, 2004.

65. The Secretariat observed that, since the authorized level of the budget expenditure could not be sustained in view of the income shortfall, a number of very severe costs saving measures would need to be taken. In reply to some observations which were made in several interventions, the Secretariat confirmed that, due to these cost saving measures, programs all over the Organization were being affected, including development cooperation, and the level of delivery was well below that which had been possible during the past biennium.

66. The Secretariat also recalled that the level of Reserve Funds had been established by the Member States in a decision in 2001. In the view of the Secretariat, if the Reserve Funds were depleted beyond a certain limit, there would be a risk for the Organization, which the Member States needed to appreciate. There were also longer-term avenues which had been and would continue to be explored, but the measure being considered now was a short-term measure necessary in order to maintain a minimum level of operations for the Organization, so as not to disrupt programs and not to take financial risks. The Secretariat underlined that, in spite of these measures, even if the income could be adjusted in 2005 through this proposed adjustment of 12% in the PCT fee, it would still be necessary to continue a severe program of budgetary restraint and further rationalization of the work of the Organization.

67. The Secretariat added that postponement by a few months of a decision on the question would indeed allow more time for the Organization to address the matter and to refine its predictions of income and expenditure. However, a decision on the level of PCT fees was not one for the Program and Budget Committee, as several delegations had pointed out, but for the PCT Assembly. It was noted that convening an extraordinary session of the Assembly would cost approximately 900,000 Swiss francs for delegates' travel expenses, according to the established rules. The Assembly needed to choose between deciding now on an increase of 12% to be effective from January 1, 2005, and deferring a decision to the next scheduled session of the Assembly which would delay implementation by one year. The Secretariat noted that the opinion of the external auditors requested by Group B had indicated that there was no immediate risk. It was of course a matter for the Member States to assess the risks. The Secretariat reiterated that the proposed 12% of the PCT filing fee did not represent an increase in the budget nor an increase in Member States contributions. It would not be a precedent for other international organizations. Rather, the fee increase would be shared

among applicants, who had in fact benefited from some 40% reduction during the past few years.

68. The Secretariat noted that the proposed 12% adjustment should bring in approximately 20 million Swiss francs in income which would apply together with savings of about 30 million Swiss francs in operational expenditures in the current biennium. These proposals could be implemented at the same time as efforts would be continued to refine budgetary predictions.

69. In response to a question from the Delegation of the United States of America, the Secretariat clarified that, at the 2003 session of the Assembly, the amount of the international filing fee had been fixed at 1,400 Swiss francs, which was 50 francs less than what had been proposed by the International Bureau. It was somewhat difficult to compare the level of fees payable before and after that change, because the overall fee structure itself had changed at the same time. However, it could be said that applicants on average would have to pay a slightly higher filing fee in 2004 than in 2003, although some applicants would pay less.

70. The Assembly adopted the following decision:

(a) Consideration of the proposal on the adjustment of PCT fees should be continued beyond the 2004 WIPO Assemblies to reach a conclusion.

(b) The PCT Assembly recommends to the WIPO General Assembly that, as soon as possible, there should be a session of the Program and Budget Committee that should analyze, *inter alia*, any readjustment of PCT fees.

(c) An extraordinary session of the PCT Assembly should be convened, if needed, to consider any proposal on the adjustment of PCT fees. In order to minimize the cost of such an extraordinary session, Rule 84.1 of the Regulations Under the PCT should be applied in this particular instance.

(d) The PCT Assembly takes note of the concerns expressed regarding the possible impact of any delay in decision making on adjustment of PCT fees on the implementation of WIPO's program activities, in particular, on its cooperation for development programs.

(e) The PCT Assembly was informed that in order to maintain its present level of technical and development assistance, WIPO will have to draw on its reserves.

71. The Delegation of Egypt, speaking on behalf of the African Group, stated that the Group would have preferred that the outcome of the discussions be the adoption of the readjustment of fees in order to enable the Organization to maintain the level of its activities, in particular its cooperation for development activities. Nevertheless, the Group accepted the decision of the Assembly and, in doing so, wished to thank in particular all those delegations which had expressed understanding with respect to the importance for the Group that the decision reflect the concerns of the Group.

72. The Delegation of Morocco expressed its support for the statement made by the Delegation of Egypt, on behalf of the African Group in respect of the International Bureau's proposal relating to an increase in PCT fees, and regretted that the Assembly could not adopt the proposal. Adoption of the proposal would have contributed to the enhancement to the

work of the Organization in every program and activity. The Delegation declared itself unsatisfied with the results in view of the fact that other delegations could not accept the proposal. It hoped also that a decision on the proposal would be taken as soon as possible.

73. The Acting Chair emphasized that the decision of the Assembly precisely focused on the concerns expressed by the Delegation of Morocco, in highlighting the Organization's commitment to improve the way in which resources were spent and used. This was also a confirmation of the statements made by the Director General and by other members of the Secretariat in the course of the discussion on this matter. The Acting Chair reiterated that the adopted decision was proof of the common desire to improve the activities of the Organization.

74. The Secretariat stated that, following the decision adopted by the Assembly on the question of the proposed readjustment of PCT fees, and pending the holding of the session of the Program and Budget Committee referred to in that decision, the International Bureau wanted to put on record that, in view of the estimated income shortfall of about 70 million Swiss francs in the 2004-2005 biennium, pending any adjustment of PCT fees, even after postponing the new construction and reducing its operational expenditure of 5%, in order to maintain the present level of delivery of its programs, including its cooperation for development programs, the International Bureau would have to deplete its reserve by an estimated amount of 40 million Swiss francs. In proposing to the Assembly, through document PCT/A/33/5, a 12% adjustment of PCT fees as of January 1, 2005, the International Bureau had actually chosen a different solution, which would have permitted to contain the current budgetary imbalance within, and therefore limit depletion of the reserve by an estimated amount of 20 million Swiss francs. In the current circumstances and in view of the policy on reserve adopted by Member States in the year 2002, the International Bureau believed that such limited depletion of the reserve would have represented more prudent financial management. In this connection, the International Bureau also recalled that the Report on the Auditing of the Accounts of the World Intellectual Property Organization (WIPO), for the 2002-2003 biennium, dated July 15, 2004, and forwarded to Member States in July 2004, contained the following recommendation: "I consider the Reserve Funds to be a matter of sufficient concern for WIPO to be encouraged to monitor their levels with all due care, and also to take all appropriate action with a view to restoring budgetary balance on the one hand and on the other hand the levels of the Reserve Funds in such a way as to allow them, should the need arise, to perform the function for which they were constituted".

75. The Acting Chair thanked the Secretariat for clearly setting out again the budget situation for the period to come, as well as for reminding the Assembly that the Organization would be much more careful in how resources were spent.

76. The Delegation of the United States of America stated that, having heard the International Bureau's analysis of the situation, it wished to note for the record that the Delegation did not agree with that analysis and that it looked forward to examining further the financial situation in the Program and Budget Committee. As the Delegation had noted during informal consultations, the figures quoted by the International Bureau were based on a budget that did not comport with the fee level that had been established, last year by the Assembly. The Delegation concluded by saying that it looked forward to working on this issue constructively.

Report on the Quality Management System for International Authorities Under the PCT

77. Discussions were based on document PCT/A/33/6.

78. The Delegation of the United Kingdom recalled that it had played an instrumental role in the introduction of the quality framework set out in the PCT International Search and Preliminary Examination Guidelines and very much welcomed the “Stage 1” report in the Annex to document PCT/A/33/6. The report showed that there had been good progress on the matter and commitment on the part of the Meeting of International Authorities under the PCT (PCT/MIA). The Delegation requested that, as part of the “Stage 2” reporting process under which the International Authorities would report results annually to PCT/MIA, the PCT/MIA transmit an overview of the Stage 2 reports to the Assembly. The International Bureau indicated that it would request the PCT/MIA to provide such a report.

79. The Assembly noted the contents of the report contained in the Annex to document PCT/A/33/6.

80. The Delegation of Egypt expressed its appreciation to the Director General and the staff of the Organization and, particularly, the Economic Development Bureau for Arab Countries, for their support and assistance to modernize industrial property offices in the Arab world and in particular the Egyptian Patent Office. The Delegation emphasized the need for WIPO to have adequate and sufficient funding to carry out its activities, and thus supported the readjustment of PCT fees suggested by the International Bureau. The Delegation reported that the Egyptian Patent Office had become a PCT receiving Office and that operations had been successful from the outset. In addition to individuals, an increasing number of local companies and firms were filing PCT applications with the Office. In that respect, the Delegation requested that the possibility of extending the 75% reduction of certain PCT fees currently applying to individuals from developing countries to companies of such countries, so as to further encourage PCT filings, be examined. The Delegation underlined the increasing importance granted to intellectual property protection in Egypt at all levels, and in particular among decision-makers. In this context, the Delegation emphasized the priority given by Egypt to the modernization of its intellectual property system and to continue benefiting from WIPO’s assistance in this regard. In this context, the Delegation reported that the Egyptian Patent Office was in the final stages of establishing an electronic network linking it with all relevant national industrial and scientific research institutions, in order to facilitate patent filings. In addition, the Delegation reported that the Egyptian Patent Office operated now with a precise electronic system, which contributed to efficient internal patent processing, and ensured that the processing period within the Office had become comparable to that in the most advanced Patent Offices. The Delegation emphasized the importance it attached to the use of the electronic filing system under the PCT and requested that the Egyptian Patent Office be included in the PCT-ROAD project in order to facilitate filing procedures for companies and research institutions. As the Delegation had stated at the previous session of the Assembly in 2003, Egypt attached great importance to Arabic becoming an international publication language in the PCT, in the context of the preparations of the Egyptian Patent Office to present a request in the future to the Organization to be designated as an International Searching and Preliminary Examining Authority under the PCT for PCT applications filed in the Arabic language, taking into consideration the significant investments in human resources and automation tools already made by the Office in order to perform such a task. The Delegation reiterated the commitment of the Egyptian Patent Office to continue its cooperation with WIPO in relation to the training of personnel in Arab Industrial Property Offices in the Arab world. Finally, the Delegation wished to inform the

meeting that the ninth meeting of Arab Ministers of Higher Education and Scientific Research took place earlier this year in Damascus and recommended the establishment of a single Patent Office in the Arab world, with the Egyptian Patent Office being at the core of such an Office. In this context, the Delegation asked for continued support and assistance from WIPO.

[Annex follows]

ANNEX

AMENDMENTS OF THE REGULATIONS UNDER THE PCT  
(to enter into force on April 1, 2005<sup>1</sup>)

**Rule 3**  
**The Request (Form)**

3.1 and 3.2 [No change]

3.3 *Check List*

(a) The request shall contain a list indicating:

(i) [No change]

(ii) where applicable, that the international application as filed is accompanied by a power of attorney (i.e., a document appointing an agent or a common representative), a copy of a general power of attorney, a priority document, a sequence listing in electronic form, a document relating to the payment of fees, or any other document (to be specified in the check list);

(iii) [No change]

(b) [No change]

3.4 [No change]

**Rule 4**  
**The Request (Contents)**

4.1 to 4.5 [No change]

4.6 *The Inventor*

(a) Where Rule 4.1(a)(iv) or (c)(i) applies, the request shall indicate the name and address of the inventor or, if there are several inventors, of each of them.

(b) and (c) [No change]

4.7 to 4.18 [No change]

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<sup>1</sup> See paragraph 11 of the main body of this report for details concerning entry into force and transitional arrangements.

**Rule 13ter**  
**Nucleotide and/or Amino Acid Sequence Listings**

*13ter.1 Procedure Before the International Searching Authority*

(a) Where the international application contains disclosure of one or more nucleotide and/or amino acid sequences, the International Searching Authority may invite the applicant to furnish to it, for the purposes of the international search, a sequence listing in electronic form complying with the standard provided for in the Administrative Instructions, unless such listing in electronic form is already available to it in a form and manner acceptable to it, and to pay to it, where applicable, the late furnishing fee referred to in paragraph (c), within a time limit fixed in the invitation.

(b) Where at least part of the international application is filed on paper and the International Searching Authority finds that the description does not comply with Rule 5.2(a), it may invite the applicant to furnish, for the purposes of the international search, a sequence listing in paper form complying with the standard provided for in the Administrative Instructions, unless such listing in paper form is already available to it in a form and manner acceptable to it, whether or not the furnishing of a sequence listing in electronic form is invited under paragraph (a), and to pay, where applicable, the late furnishing fee referred to in paragraph (c), within a time limit fixed in the invitation.

(c) The furnishing of a sequence listing in response to an invitation under paragraph (a) or (b) may be subjected by the International Searching Authority to the payment to it, for its own benefit, of a late furnishing fee whose amount shall be determined by the International Searching Authority but shall not exceed 25% of the international filing fee referred to in item 1 of the Schedule of Fees, not taking into account any fee for each sheet of the international application in excess of 30 sheets, provided that a late furnishing fee may be required under either paragraph (a) or (b) but not both.

(d) If the applicant does not, within the time limit fixed in the invitation under paragraph (a) or (b), furnish the required sequence listing and pay any required late furnishing fee, the International Searching Authority shall only be required to search the international application to the extent that a meaningful search can be carried out without the sequence listing.

(e) Any sequence listing not contained in the international application as filed, whether furnished in response to an invitation under paragraph (a) or (b) or otherwise, shall not form part of the international application, but this paragraph shall not prevent the applicant from amending the description in relation to a sequence listing pursuant to Article 34(2)(b).

(f) Where the International Searching Authority finds that the description does not comply with Rule 5.2(b), it shall invite the applicant to submit the required correction. Rule 26.4 shall apply *mutatis mutandis* to any correction offered by the applicant. The International Searching Authority shall transmit the correction to the receiving Office and to the International Bureau.

*13ter.2 Procedure Before the International Preliminary Examining Authority*

Rule 13ter.1 shall apply *mutatis mutandis* to the procedure before the International Preliminary Examining Authority.

*13ter.3 Sequence Listing for Designated Office*

No designated Office shall require the applicant to furnish to it a sequence listing other than a sequence listing complying with the standard provided for in the Administrative Instructions.

**Rule 16bis**  
**Extension of Time Limits for Payment of Fees**

*16bis.1 Invitation by the Receiving Office*

(a) Where, by the time they are due under Rules 14.1(c), 15.4 and 16.1(f), the receiving Office finds that no fees were paid to it, or that the amount paid to it is insufficient to cover the transmittal fee, the international filing fee and the search fee, the receiving Office shall, subject to paragraph (d), invite the applicant to pay to it the amount required to cover those fees, together with, where applicable, the late payment fee under Rule 16bis.2, within a time limit of one month from the date of the invitation.

(b) *[Remains deleted]*

(c) Where the receiving Office has sent to the applicant an invitation under paragraph (a) and the applicant has not, within the time limit referred to in that paragraph, paid in full the amount due, including, where applicable, the late payment fee under Rule 16bis.2, the receiving Office shall, subject to paragraph (e):

(i) and (ii) [No change]

(d) and (e) [No change]

*16bis.2* [No change]

**Rule 23**  
**Transmittal of the Search Copy, Translation and Sequence Listing**

*23.1 Procedure*

(a) and (b) [No change]

(c) Any sequence listing in electronic form which is furnished for the purposes of Rule 13ter but submitted to the receiving Office instead of the International Searching Authority shall be promptly transmitted by that Office to that Authority.

**Rule 40**  
**Lack of Unity of Invention**  
**(International Search)**

40.1 *Invitation to Pay Additional Fees; Time Limit*

The invitation to pay additional fees provided for in Article 17(3)(a) shall:

(i) specify the reasons for which the international application is not considered as complying with the requirement of unity of invention;

(ii) invite the applicant to pay the additional fees within one month from the date of the invitation, and indicate the amount of those fees to be paid; and

(iii) invite the applicant to pay, where applicable, the protest fee referred to in Rule 40.2(e) within one month from the date of the invitation, and indicate the amount to be paid.

40.2 *Additional Fees*

(a) The amount of the additional fees due for searching under Article 17(3)(a) shall be determined by the competent International Searching Authority.

(b) The additional fees due for searching under Article 17(3)(a) shall be payable direct to the International Searching Authority.

(c) Any applicant may pay the additional fees under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fees is excessive. Such protest shall be examined by a review body constituted in the framework of the International Searching Authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fees. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the designated Offices together with the international search report. The applicant shall submit any translation thereof with the furnishing of the translation of the international application required under Article 22.

(d) The membership of the review body referred to in paragraph (c) may include, but shall not be limited to, the person who made the decision which is the subject of the protest.

(e) The examination of a protest referred to in paragraph (c) may be subjected by the International Searching Authority to the payment to it, for its own benefit, of a protest fee. Where the applicant has not, within the time limit under Rule 40.1(iii), paid any required protest fee, the protest shall be considered not to have been made and the International Searching Authority shall so declare. The protest fee shall be refunded to the applicant where the review body referred to in paragraph (c) finds that the protest was entirely justified.

40.3 [Deleted]

**Rule 43bis**  
**Written Opinion of the International Searching Authority**

*43bis.1 Written Opinion*

(a) Subject to Rule 69.1(b-*bis*), the International Searching Authority shall, at the same time as it establishes the international search report or the declaration referred to in Article 17(2)(a), establish a written opinion as to:

(i) and (ii) [No change]

The written opinion shall also be accompanied by such other observations as these Regulations provide for.

(b) and (c) [No change]

**Rule 44**  
**Transmittal of the International Search Report, Written Opinion, Etc.**

*44.1 Copies of Report or Declaration and Written Opinion*

The International Searching Authority shall, on the same day, transmit one copy of the international search report or of the declaration referred to in Article 17(2)(a), and one copy of the written opinion established under Rule 43bis.1 to the International Bureau and one copy to the applicant.

44.2 and 44.3 [No change]

**Rule 53**  
**The Demand**

53.1 to 53.8 [No change]

*53.9 Statement Concerning Amendments*

(a) [No change]

(b) If no amendments under Article 19 have been made and the time limit for filing such amendments has not expired, the statement may indicate that, should the International Preliminary Examining Authority wish to start the international preliminary examination at the same time as the international search in accordance with Rule 69.1(b), the applicant wishes the start of the international preliminary examination to be postponed in accordance with Rule 69.1(d).

(c) [No change]

**Rule 68**  
**Lack of Unity of Invention**  
**(International Preliminary Examination)**

68.1 [No change]

68.2 *Invitation to Restrict or Pay*

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses to invite the applicant, at his option, to restrict the claims or to pay additional fees, the invitation shall:

(i) specify at least one possibility of restriction which, in the opinion of the International Preliminary Examining Authority, would be in compliance with the applicable requirement;

(ii) specify the reasons for which the international application is not considered as complying with the requirement of unity of invention;

(iii) invite the applicant to comply with the invitation within one month from the date of the invitation;

(iv) indicate the amount of the required additional fees to be paid in case the applicant so chooses; and

(v) invite the applicant to pay, where applicable, the protest fee referred to in Rule 68.3(e) within one month from the date of the invitation, and indicate the amount to be paid.

68.3 *Additional Fees*

(a) The amount of the additional fees due for international preliminary examination under Article 34(3)(a) shall be determined by the competent International Preliminary Examining Authority.

(b) The additional fees due for international preliminary examination under Article 34(3)(a) shall be payable direct to the International Preliminary Examining Authority.

(c) Any applicant may pay the additional fees under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fees is excessive. Such protest shall be examined by a review body constituted in the framework of the International Preliminary Examining Authority which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fees. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the elected Offices as an annex to the international preliminary examination report.

(d) The membership of the review body referred to in paragraph (c) may include, but shall not be limited to, the person who made the decision which is the subject of the protest.

(e) The examination of a protest referred to in paragraph (c) may be subjected by the International Preliminary Examining Authority to the payment to it, for its own benefit, of a protest fee. Where the applicant has not, within the time limit under Rule 68.2(v), paid any required protest fee, the protest shall be considered not to have been made and the International Preliminary Examining Authority shall so declare. The protest fee shall be refunded to the applicant where the review body referred to in paragraph (c) finds that the protest was entirely justified.

68.4 and 68.5 [No change]

### **Rule 69**

#### **Start of and Time Limit for International Preliminary Examination**

##### *69.1 Start of International Preliminary Examination*

(a) Subject to paragraphs (b) to (e), the International Preliminary Examining Authority shall start the international preliminary examination when it is in possession of all of the following:

(i) and (ii) [No change]

(iii) either the international search report or the declaration by the International Searching Authority under Article 17(2)(a) that no international search report will be established, and the written opinion established under Rule 43*bis*.1;

provided that the International Preliminary Examining Authority shall not start the international preliminary examination before the expiration of the applicable time limit under Rule 54*bis*.1(a) unless the applicant expressly requests an earlier start.

(b) and (c) [No change]

(d) Where the statement concerning amendments contains an indication that the start of the international preliminary examination is to be postponed (Rule 53.9(b)), the International Preliminary Examining Authority shall not start the international preliminary examination before whichever of the following occurs first:

(i) and (ii) [No change]

(iii) the expiration of the applicable time limit under Rule 46.1.

(e) [No change]

69.2 [No change]

**Rule 76**  
**Translation of Priority Document;**  
**Application of Certain Rules to Procedures Before Elected Offices**

76.1, 76.2 and 76.3 *[Remain deleted]*

76.4 [No change]

76.5 *Application of Certain Rules to Procedures Before Elected Offices*

Rules 13<sup>ter</sup>.3, 22.1(g), 47.1, 49, 49<sup>bis</sup> and 51<sup>bis</sup> shall apply, provided that:

(i) to (v) [No change]

[End of Annex and of document]