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MATTERS CONCERNING THE PCT UNION
(FIRST ADDENDUM)

Memorandum prepared by the International Bureau

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PART I – THE INTERNATIONAL BUREAU AS ALTERNATIVE RECEIVING OFFICE: PROPOSED AMENDMENTS TO THE REGULATIONS UNDER THE PCT

INTRODUCTION

1. Users of the PCT in different parts of the world often express the wish to have the possibility of filing international applications direct with the International Bureau as an alternative to filing with their national Offices as PCT receiving Offices. Such possibility cannot be made available to applicants without amendments to the Regulations[*] under the PCT. The International Bureau has therefore prepared a proposal, submitted in the present document for consideration by the Assembly, which would allow any PCT applicant to choose the International Bureau as an alternative receiving Office

2. The draft proposed amendments to the Regulations (contained in document PCT/CAL/V/2) were considered by the PCT Committee for Administrative and Legal Matters (hereinafter referred to as "the Committee") during its fifth session in May 1993. The report of the Committee is contained in document PCT/CAL/V/6.

3. The Committee approved the draft proposed amendments to the Regulations relating to the International Bureau as alternative receiving Office as contained in the Annex to the present document. For easy reference, the relevant parts of the explanation of the proposals are summarized below in paragraphs 6 to 36. The proposals received strong support from the representatives of non-governmental organizations (that is, the PCT users), which participated as observers in the Committee.

4. In each Rule proposed to be amended, underlining or footnotes indicate what is new as compared to the present text.

5. In some cases, the proposed amendment affects the text in one language only (mostly French). Such amendments are identified in the Annex to the present document.

EXPLANATION OF THE PROPOSED AMENDMENTS

General

6. The proposed amendments are intended to give applicants from all PCT Contracting States the option of filing international applications with the International Bureau as receiving Office, as an alternative to filing with competent national (including regional) Offices as receiving Offices. They have been prepared with a view to dealing with two problems, in particular, which may be faced by PCT users.

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[*] References in this document to "Articles" and "Rules" are, respectively, to those of the Patent Cooperation Treaty ("the PCT") and of the Regulations under the PCT ("the Regulations"), or to such provisions as proposed to be amended or added, as the case requires.

7. First, circumstances can arise at times in which, for unavoidable reasons, a receiving Office may experience administrative difficulties resulting in delay and inconvenience for applicants. The proposed amendments would enable applicants, in such circumstances, to choose to file their international applications with the International Bureau as an alternative receiving Office.

8. Second, it can happen at present that an international application is filed mistakenly with an Office which, under the current wording of the Regulations, is not competent to receive that application because of the residence and nationality of the applicant. The proposed amendments provide a straightforward procedure for handling such applications--namely, they would simply be date-stamped and forwarded to the International Bureau as competent receiving Office--without loss of the initial filing date.

Competence of the International Bureau as receiving Office (proposed amendments to Rules 19.1 and 19.2 and proposed new Rule 54.3)

9. The basis for the proposals is in the Treaty itself. Article 10 provides for an international application to be filed with "the prescribed receiving Office." The proposed amendments to the Regulations prescribe that the International Bureau may be used as a receiving Office.

10. The existing provisions in the Regulations link the competence of a receiving Office to the nationality and residence of the applicant: there must be an applicant who is a resident or national of the Contracting State for which the receiving Office acts. Under the proposed amendments, the International Bureau as receiving Office would be competent to receive international applications from residents and nationals of all PCT Contracting States.

11. Proposed Rule 19.1(a)(iii) would afford applicants who are residents or nationals of any Contracting State (see Article 9) the choice of filing the international application with the International Bureau as receiving Office. That choice would, of course, be entirely optional for the applicant. Most applicants will undoubtedly prefer to continue to use their national or regional Office as receiving Office, for reasons of geographical proximity and familiarity with both the procedures and the personnel. However, the possibility of using the International Bureau as receiving Office will offer a useful alternative in cases where the circumstances make it inconvenient to file with the "usual" receiving Office or where it may be simpler to file with the International Bureau. Proposed Rule 19.2(ii) would make it clear that, if there are two or more applicants, the international application may be filed with the International Bureau as receiving Office under Rule 19.1(a)(iii) if at least one of the applicants is a resident or national of a Contracting State.

12. It should be noted that no change is proposed to Rule 19.1(b). It is envisaged that the International Bureau would continue to act as receiving Office instead of the national Office for those Contracting States with which there are agreements to that effect under Rule 19.1(b)(Barbados, OAPI member States, Sri Lanka).

13. As a consequential amendment, the provision proposed as Rule 54.3 would be necessary in order to ensure that it is possible to satisfy the requirements of Article 31(2)(a) in cases where the international application

is filed with the International Bureau as receiving Office under Rule 19.1(a)(iii). Article 31(2)(a) requires, inter alia, that an applicant may make a demand for international preliminary examination only if "the international application has been filed with the receiving Office of or acting for" a Contracting State bound by Chapter II of the PCT. Proposed Rule 54.3 would provide that, where the international application is filed with the International Bureau as receiving Office under Rule 19.1(a)(iii), the International Bureau shall, for the purposes of Article 31(2)(a), be considered to be acting for the Contracting State of which the applicant is a resident or national.

Filing with a "non-competent" receiving Office and transmittal of the international application to the International Bureau (proposed new Rule 19.4)

14. Proposed new Rule 19.4 would provide that, where an international application is filed with a national Office which is a receiving Office under the PCT but which is not competent to receive an international application from the applicant having regard to his residence and nationality (see Rules 19.1(a)(i) and (ii) and 19.2(i) as proposed to be amended), the international application would be considered to have been received by that Office on behalf of the International Bureau as receiving Office and would, unless prescriptions concerning national security prevent it from being transmitted (see Article 27(8), and Rule 22.1(a) in relation to transmittal of the record copy by the receiving Office), be transmitted by that national Office to the International Bureau. In those circumstances, the international application would be considered to have been received by the International Bureau as receiving Office under Rule 19.1(a)(iii) on the date of actual receipt by the "non-competent" Office. Provided that the language requirements for filing with the International Bureau were met (as well as other requirements under Article 11), that date of receipt would then be accorded as the international filing date. The only burden involved for the "non-competent" Office would be to stamp the date of receipt on the international application and transmit it to the International Bureau, without allocating a PCT application number. Also, if the fee which could be required under proposed new Rule 19.4(b) was not paid to the "non-competent" Office, the international application would not need to be transmitted to the International Bureau.

15. The proposal for forwarding of an international application to the International Bureau by an Office which is not competent to receive it, without loss of filing date, constitutes part of the prescription of receiving Offices contemplated by Article 10. As stated above, the "non-competent" Office can be regarded, in effect, as acting on behalf of the International Bureau in such cases. Rule 19.4 would be an invaluable safeguard for applicants, and would remove what is perhaps the last "trap" for inexperienced users of the PCT.

16. Even though the Committee generally felt, in relation to the procedure established by proposed Rule 19.4, that there was no need for the request by the applicant referred to in proposed Rules 4.1(c)(iii) and 19.4(b),--namely, the request that the international application be forwarded to the International Bureau--several delegations indicated that they wished to study further the need for such a request. Therefore, it was agreed that the text concerned in both Rules should be shown in square brackets. The International Bureau is of the view that such a special request would be an unnecessary

formality which would reduce the benefit of the proposed new procedure. There should be no need for additional conditions to be fulfilled, apart from the requirement that at least one applicant be from a Contracting State and that the required fee, if any, be paid, before the transmittal of the international application by the "non-competent" receiving Office to the International Bureau could take place. The International Bureau, therefore, proposes that the text in square brackets be omitted.

Decisions on the questions of residence and nationality (proposed amended Rules 18.1, 18.2 and 54.1)

17. Questions concerning residence and nationality are, under existing Rule 18.1, decided by the receiving Office. In case of doubt, the International Bureau as receiving Office would not be in a position to decide such questions. It is therefore proposed that, in the exceptional cases where a doubt arose, the national Office of, or acting for, the Contracting State concerned would, upon request by the International Bureau, decide the question (for example, where the residence or nationality indicated by the applicant refers to a territory and it is not clear that such residence or nationality constitutes residence or nationality of a Contracting State). The International Bureau would refer the question to the national Office of the Contracting State concerned rather than to the national Office acting for that State (for example, a question as to residence or nationality of Denmark would be directed to the Danish Patent Office rather than to the European Patent Office), except in the cases where the Contracting State concerned did not maintain its own national Office but relied on another national Office (or a regional Office) to act for it. In the latter case, the International Bureau would refer the question to that other Office (for example, to the Swiss Federal Intellectual Property Office in the case of questions concerning Liechtenstein and to OAPI in the case of questions concerning a member State of OAPI). Consultation with the said Office would, depending on the circumstances, take place either before or after notification of the applicant under Article 11(2) that Article 11(1)(i) had not been complied with. The decision of the said Office relating to residence or nationality would be binding for the International Bureau as receiving Office.

18. Similarly, as regards questions of residence and nationality arising in connection with the demand for international preliminary examination, neither the International Preliminary Examining Authority nor, where the international application was filed with the International Bureau as receiving Office, the International Bureau would be in a position to decide such questions. For the exceptional case where a doubt arose, proposed Rule 54.1(b) would provide that the national Office of, or acting for, the Contracting State concerned would decide the question, if so requested by the International Preliminary Examining Authority.

19. In ordinary cases, the International Bureau, like any other receiving Office, or the International Preliminary Examining Authority would accept what is indicated in the request or demand, respectively, without looking behind the indications concerning residence and nationality made by the applicant.

20. In order to avoid complex drafting, it is proposed to amalgamate the wording of existing Rules 18.1(a) and 18.2(a) and to add a new paragraph 18.1(c) dealing with the case where the International Bureau is receiving Office. The overriding provisions in existing Rules 18.1(b) and 18.2(b) are proposed to be combined and retained as proposed paragraph (b)(i) and (ii) of Rule 18.1. Consequent on those changes, Rule 18.2 is proposed to be deleted.

Competence of International Searching Authorities and International Preliminary Examining Authorities (proposed new Rules 35.3 and 59.1(b))

21. The competence of International Searching Authorities and International Preliminary Examining Authorities to search and examine international applications filed with the International Bureau as receiving Office is proposed to be established by the Regulations (that is, through a decision of the Assembly) without the need for special declarations by the International Bureau as receiving Office (such declarations are presently required from all receiving Offices under Rules 35.1, 35.2 and 59.1). Where there are two or more applicants from different Contracting States, they would in some cases have a wider choice of International Searching Authority and International Preliminary Examining Authority than at present, since the competence of Authorities would depend on the State of residence or nationality of any of the applicants rather than on the fact that the international application was filed with a particular receiving Office.

22. Proposed new Rules 35.3 and 59.1(b) are drafted in such a way that the competence of an International Searching Authority and of an International Preliminary Examining Authority for carrying out international search and international preliminary examination, respectively, would follow the readiness of the Authority to act in relation to residents and nationals of Contracting States, as specified in the respective agreements under Articles 16(3)(b) and 32(3). However, the competence of an International Searching Authority and of an International Preliminary Examining Authority in cases where the international application is filed with the International Bureau as receiving Office would be linked directly to the residence and nationality of the applicant instead of to the particular receiving Office with which the international application is filed. Thus, the International Bureau would, in such cases, be considered to be acting for the Contracting States for which the International Searching Authorities and the International Preliminary Examining Authorities are prepared to act in accordance with the terms of the applicable agreements under Articles 16(3)(b) and 32(3), and would be considered to have specified each International Searching Authority and each International Preliminary Examining Authority as competent for the searching and examination, respectively, of international applications filed with the International Bureau by residents and nationals of the Contracting States specified in the applicable agreements.

23. Proposed new Rules 4.1(b)(vi) and 4.14bis would require the choice of International Searching Authority to be made in a formal way by including an indication in the request itself since, under proposed new Rule 35.3, several International Searching Authorities may be competent in a particular case, especially where there are two or more applicants having different residences and/or nationalities. It is to be noted that proposed new Rules 4.1(b)(vi) and 4.14bi*s* would apply not only where the International Bureau is the receiving Office but also where a national Office is the receiving Office.

24. When approving the proposed amendments referred to in the preceding paragraph, the Committee agreed that, for those cases where the applicant's choice of International Searching Authority could not be established, the invitation under Rule 16*bis* to pay missing fees would be complemented by asking the applicant to make his choice of International Searching Authority within the same time limit as that fixed in the invitation. Such a procedure would guarantee that there would be no more delay than there could be at present in the transmittal of the search copy to the International Searching Authority.

25. Information as to which International Searching and Preliminary Examining Authorities are competent for international applications filed with the International Bureau as receiving Office by residents and nationals of the various Contracting States would be published in the PCT Gazette and in Volume I of the PCT Applicant's Guide.

26. For the cases where the International Bureau acts as receiving Office instead of the national Office of a Contracting State pursuant to an agreement under Rule 19.1(b), the International Bureau would continue, as at present, to specify competent International Searching Authorities under Rules 35.1 and 35.2 and competent International Preliminary Examining Authorities under proposed amended Rule 59.1(a)(present Rule 59.1).

Admitted languages for filing of international applications

27. Admitted languages for filing with the International Bureau as receiving Office would be all seven publication languages under the PCT. In any particular case, the language in which the applicant would have to file the international application would depend on the language(s) accepted by the International Searching Authority which is, or Authorities which are, competent to search the international application. Correspondence between the applicant and the International Bureau as receiving Office would be in English or French.

Questions of national security

28. The right of applicants to file international applications with the International Bureau would not preclude any Contracting State from applying restrictions for reasons of national security, etc., under the provisions of Article 27(8). No express provision needs to be included in the Regulations, however, since the provisions of Article 27(8) are overriding in nature. Existing provisions restricting the freedom of applicants to file patent applications with foreign patent Offices (including the European Patent Office) would apply also to the filing of international applications with the International Bureau as receiving Office. Compliance with such provisions would continue to be the responsibility of applicants and agents wishing to file international applications with the International Bureau as receiving Office, just as for any other filing abroad. The International Bureau is not in a position to enforce national security provisions, noting particularly that Article 30 prohibits disclosure of any international application by the receiving Office to any Office which is not a designated Office. It should be noted that, under the European Patent Convention, the European Patent Office does not undertake any examination as to whether national provisions regarding national security have been complied with and that this system, to the knowledge of that Office, has never caused any problem.

Agents (proposed amended Rules 83.1*bis* and 90.1(a) and (d)(i))

29. Proposed new Rule 83.1*bis*(a) would accord the right to practice as agents before the International Bureau as receiving Office under proposed Rule 19.1(a)(iii) to persons having the right to practice before the national Office of, or acting for, a Contracting State of which the applicant (or, if there are two or more applicants, any of the applicants) is a resident or National--that is, in effect, to persons who would have been entitled to represent the applicant if the international application had been filed with that national Office.

30. It should be noted that it is envisaged that the International Bureau, for the cases where it acts as receiving Office instead of the national Office of a Contracting State pursuant to an agreement under Rule 19.1(b), would continue, as at present, to specify who may be appointed as agent before it in relation to international applications filed with it in that capacity.

31. Proposed new Rule 83.1bis(b) parallels Article 49. It would ensure that any person having the right to practice before the International Bureau when acting as receiving Office (under either proposed Rule 19.1(a)(iii) or Rule 19.1(b)) can also represent the applicant before the International Searching Authority and the International Preliminary Examining Authority. Such a provision is necessary because Article 49 does not cover the case where the international application is filed with the International Bureau as receiving Office, since the International Bureau does not fall within the meaning of "national Office" as defined in Article 2(xii).

32. Although the International Bureau as receiving Office would not check systematically whether a person designated as agent in fact has the right to practice before a national Office, it would, in those exceptional cases where there is a doubt as to a person's right to practice, be able under the existing wording of Rule 83.2 to request the national Office concerned to inform it whether the person concerned has the right to practice.

33. In practice, then, applicants would have the same choice of agents available to them as they have at present. Where, for a given international application, there are different applicants with different residences and/or nationalities, the same choice of agent would be available, if the international application is filed with the International Bureau as receiving Office, as if the international application had been filed with another receiving Office which would have been competent to receive that international application under the present Regulations.

International Bureau as "receiving Office"

34. No amendment to the Regulations appears to be necessary to deal with the general question of the application of the Treaty, Regulations and Administrative Instructions where the International Bureau acts in its capacity as receiving Office. Clearly, references to "receiving Office" would include the International Bureau when acting in that capacity.

Language of filing and correspondence

35. The International Bureau as an alternative receiving Office would prescribe as admitted languages, pursuant to Rule 12.1, those languages that the competent International Searching Authorities accept for search and that are languages of publication (that is, Chinese, English, French, German, Japanese, Russian and Spanish). Provision would be made for Chinese and Spanish as filing languages for international applications filed with the International Bureau in the expectation that China will become bound by the PCT on January 1, 1994, and that the Spanish Patent and Trademark Office will be appointed by the Assembly as an International Searching Authority (see document PCT/A/XXI/3). Accordingly, no change is proposed to Rule 12.1(a).

36. It should be noted that the existing text of Rule 92.2(d) and (e) would require correspondence between the applicant and the International Bureau to be in English or French. Those provisions do not apply to the language of filing of the international application itself (see Rule 12.1). No amendment is proposed to Rule 92.2.

PART II – RULE 91.1 OF THE REGULATIONS UNDER THE PCT (OBVIOUS ERRORS IN DOCUMENTS)

37. Following a proposal by the United Kingdom to amend Rule 91.1, the Assembly decided at its twentieth session in September 1992 (see the report of that session, document PCT/A/XX/5, paragraphs 36 to 47) that the Committee should study the proposal. The Committee considered a revised proposal presented by the United Kingdom (see document PCT/CAL/V/3) as well as a proposal by France (see document PCT/CAL/V/5) restricted to the rectification of errors in the request or demand.

38. Although the proposals of both the United Kingdom and France received some support, no agreement was reached concerning them. A number of delegations expressed sympathy for the general spirit of the proposals, which aimed to expand the possibilities for correction of errors made by applicants in the request or demand which might cause loss of rights. However, several delegations felt that it would be better to provide particular remedies for specific kinds of errors in other parts of the Regulations, by improving already existing specific remedies for the correction of indications in the request or demand, outside Rule 91.1.

39. In respect of errors in the indications of applicants' residence and nationality, reference was made to Section 329 of the Administrative Instructions and to proposed Rule 19.4 which would provide a further safeguard for applicants in this respect. As far as the correction of errors in designations was concerned, the existing possibility under Rule 4.9(b) and (c) of confirming a precautionary designation within 15 months from the priority date was felt to largely take care of such errors. The omissions or errors in priority claims could be corrected, in certain circumstances, under the existing provisions of Rule 4.10(b).

40. The Committee was in general agreement that possibilities for further improvements in specific remedies should be studied. However, a relaxation of the general conditions for rectification of obvious errors in Rule 91.1 was not agreed to by the Committee.

41. The Committee invited the Delegation of the United Kingdom to pursue the matter further and to attempt to seek different solutions for the correction of errors, taking into account the comments made during the session, in particular with regard to an amendment to Rule 4.10. The Delegations of Japan, the United Kingdom and the United States of America invited the International Bureau, after the meeting of the Committee, to propose appropriate amendments to Rule 4.10(b). It is envisaged that such amendments be prepared for the next session of the Committee to which other changes in the Regulations would be submitted.

42. An apparent error in the wording of the English text of Rule 91.1(e) was uncovered during the discussion and the Committee agreed that the word "and" at the end of item (iii) should be deleted. A proposed amendment to the English text of Rule 91.1(e) is accordingly contained in the Annex to the present document.

PART III– RULE 34.1 OF THE REGULATIONS UNDER THE PCT (CUT-OFF DATE OF PCT MINIMUM DOCUMENTATION)

43. Pursuant to the decision of the Assembly at its twentieth session in September 1992 (see the report of that session, document PCT/A/XX/5, paragraphs 15 to 18), the PCT Committee for Technical Cooperation studied the desirability of revising Rule 34 during its fifteenth session in May 1993 and concluded that the cut-off date of 1920 should not be changed.

44. The relevant paragraphs, or the relevant parts thereof, of the report of the PCT Committee for Technical Cooperation (document PCT/CTC/XV/4) are reproduced below.

> "15. Discussion was based on document PCT/CTC/XV/2, ...
>
> "16. The [PCT] Committee [for Technical Cooperation] noted that the studies undertaken by a number of offices had shown that recent search reports contained a significant number of citations of documents which had been published prior to 1940, particularly in certain technical fields. Some delegations would have favored a later cut-off date for the PCT minimum documentation than 1920, as presently specified in PCT Rule 34.1(c). However, the majority of the [PCT] Committee [for Technical Cooperation] believed that a change to a later date would reduce the quality of search reports and that therefore no change should be made to the present cut-off date.
>
> "17. The [PCT] Committee [for Technical Cooperation] also noted that certain International Searching Authorities were against a change to a later cut-off date. It would therefore, in any event, be difficult to satisfy the requirements of PCT Rule 88.3(i) in relation to an amendment of Rule 34. In conclusion, the [PCT] Committee [for Technical Cooperation] agreed that the question of changing the cut-off date should not be further pursued and that the Assembly of the PCT Union should be informed accordingly."

PART IV – RULE 84.1 OF THE REGULATIONS UNDER THE PCT (EXPENSES OF ELEGATIONS)

45. Rule 84.1 provides that "[t]he expenses of each Delegation participating in any organ established by or under the Treaty shall be borne by the Government which has appointed it."

46. In the course of the nineteenth session of the Assembly in September-October 1991, following a discussion of the possibility of amending Rule 84 to allow the PCT Union to bear the expenses of delegates from each Contracting State of the PCT Union to participate in PCT meetings, the Assembly agreed that the International Bureau and the Contracting States should consider the matter of a possible amendment to Rule 84 with a view to possibly presenting a concrete proposal to one of the next sessions of the Assembly (see the report of that session, document PCT/A/XIX/3, paragraphs 43 to 48).

47. In this context, it is recalled that for the other major Fee-financed Union administered by WIPO, namely the Madrid Union, the Madrid Agreement Concerning the International Registration of Marks provides that, for the sessions of the Assembly of the Madrid Union, the travel and subsistence expenses of one delegate for each member State are paid from the funds of the Madrid Union (see Article 10(1)(c) of the Madrid Agreement. Furthermore, the Assembly of the Madrid Union decided in 1989 that the Madrid Union would also pay the travel and subsistence expenses of one representative of each State member of the Working Group on the Application of the Madrid Protocol of 1989 for the sessions of that Working Group (see documents MM/A/XXI/2, paragraph 10, and MM/A/XXI/3, paragraph 18(iv)).

48. For the PCT Union, the corresponding bodies are the Assembly of the PCT Union and the PCT Committee for Administrative and Legal Matters (PCT/CAL). Altogether, those bodies meet, on average, a total of three times each biennium, for a total duration of about 23 days.

49. The cost of paying the travel and subsistence expenses of one delegate for each PCT Contracting State to the three meetings in the 1994-95 biennium is estimated to amount to about 1,200,000 francs.

50. The financial situation of the PCT Union for the 1994-95 biennium is expected to be able to accommodate that additional cost. It cannot, however, be known at this time what its financial situation would be for subsequent bienniums.

51. It is therefore proposed that the Assembly suspend the application of Rule 84 in relation to its own sessions and the sessions of PCT/CAL, to the extent that the travel and subsistence expenses of one delegate of each PCT Contracting State for the sessions of those bodies be paid from the budget of the PCT Union. If such suspension could not be continued any time beyond 1995 because of lack of sufficient funds, the Director General will make proposals
to end the suspension.

INVITED DECISIONS

52. The Assembly is invited

(i) to adopt the amendments to the Regulations under the PCT which are contained in the Annex to the present document (see paragraphs 1 to 36 and 42, above) ,

(ii) to decide that those amendments will enter into force on January 1, 1994,

(iii) to note the conclusions of the PCT Committee for administrative and Legal Matters concerning obvious errors in documents (see paragraphs 37 to 41, above),

(iv) to note the conclusions of the PCT Committee for Technical Cooperation concerning the changing of the cut-off date of the PCT minimum documentation (see paragraphs 43 and 44, above), and

(v) to adopt the proposal contained in paragraph 51, above.

[Annex follows]

ANNEX

TEXT OF PROPOSED AMENDMENTS TO THE REGULATIONS

Rule 4

The Request (Contents)

4.1 Mandatory and Optional Contents; Signature

(a) [No change]

(b) The request shall, where applicable, contain:

(i) to (iv) [No change]

(v) a reference to a parent application or parent patent,

(vi) an indication of the applicant's choice of competent International Searching Authority.

(c) The request may contain:

(i) [No change]

(ii) a request to the receiving Office to transmit the priority document to the International Bureau where the application whose priority is claimed was filed with the national Office or intergovernmental authority which is the receiving Office [,

(iii) the request referred to in Rule 19.4(b)][#].

[#] See paragraph 16 of Part I of the present document.

[Rule 4,1, continued]

(d) [No change]

4.2 to 4.14 [No change]

4.14bis Choice of International Searching Authority

If two or more International Searching Authorities are competent for the searching of the international application, the applicant shall indicate his choice of International Searching Authority in the request.

4.15 to 4.17 [No change]

Rule 18

The Applicant

18.1 Residence and Nationality*

(a) Subject to the provisions of paragraphs (b) and (c), the question whether an applicant is a resident or national of the Contracting State of which he claims to be a resident or national shall depend on the national law of that State and shall be decided by the receiving Office.

(b) In any case,

(i) possession of a real and effective industrial or commercial establishment in a Contracting State shall be considered residence in that State, and

(ii) a legal entity constituted according to the national law of a Contracting State shall be considered a national of that State.

(c) Where the international application is filed with the International Bureau as receiving Office, the International Bureau shall, in the circumstances specified in the Administrative Instructions, request the national Office of, or acting for, the Contracting State concerned to decide the question referred to in paragraph (a). The International Bureau shall inform the applicant of any such request. The applicant shall have an opportunity to submit arguments directly to the national Office. The national Office shall decide the said question promptly.

* The title has been amended to read “Residence and Nationality” instead of “Residence.”

18.2 [Deleted]

18.3 and 18.4 [No change]

Rule 19

The Competent Receiving Office

19.1 Where to File

(a) Subject to the provisions of paragraph (b), the international application shall be filed, at the option of the applicant,

(i) with the national Office of or acting for the Contracting State of which the applicant is a residents

(ii) with the national Office of or acting for the Contracting State of which the applicant is a national, or

(iii) irrespective of the Contracting State of which the applicant is a resident or national, with the International Bureau.

(b) and (c) [No change]

19.2 Two or More Applicants

If there are two or more applicants:

(i) the requirements of Rule 19.1 shall be considered to be met if the national Office with which the international application is filed is the national Office of or acting for a Contracting State of which at least one of the applicants is a resident or nationals

(ii) the international application may be filed with the International Bureau under Rule 19.1(a)(iii) if at least one of the applicants is a resident or national of a Contracting State.

19.3 [No change]

19.4 Transmittal to the International Bureau as Receiving Office

(a) Where an international application is filed with a national Office which acts as a receiving Office under the Treaty by an applicant who is a resident or national of a Contracting State, but that national Office is not competent under Rule 19.1 or 19.2 to receive that international application, that international application shall, subject to paragraph (b), be considered to have been received by that Office on behalf of the International Bureau as receiving Office under Rule 19.1(a)(iii).

(b) Where, pursuant to paragraph (a), an international application is received by a national Office on behalf of the International Bureau as receiving Office under Rule 19.1(a)(iii), that national Office shall, [if so requested by the applicant and][#] unless prescriptions concerning national security prevent the international application from being so transmitted, promptly transmit it to the International Bureau. Such transmittal may be subjected by the national Office to the payment of a fee, for its own benefit, equal to the transmittal fee charged by that Office under Rule 14. The international application so transmitted shall be considered to have been received by the International Bureau as receiving Office under Rule 19.1(a)(iii) on the date of receipt of the international application by that national Office.

[#] See paragraph 16 of Part I of the present document.

Rule 35

The Competent International Searching Authority

35.1 and 35.2 [No change]

35.3 When the International Bureau Is Receiving Office Under Rule 19.1(a)(iii)

(a) The International Bureau in its capacity as receiving Office under Rule 19.1(a)(iii) shall, for the purposes of any agreement referred to in Article 16(3)(b), be considered

(i) to be acting for those Contracting States for which the International Searching Authority is prepared to act in accordance with the terms of the agreement, and

(ii) to have specified the International Searching Authority as competent for the searching of international applications filed by residents or nationals of those States,

and the International Bureau shall publish information accordingly.

(b) Where two or more International Searching Authorities are competent under paragraph (a), the choice shall be left to the applicant.

(c) Rules 35.1 and 35.2 shall not apply to the International Bureau as receiving Office under Rule 19.1(a)(iii).

Rule 54

The Applicant Entitled to Make a Demand

54.1 Residence and Nationality

(a) Subject to the provisions of paragraph (b), the residence or nationality of the applicant shall, for the purposes of Article 31(2), be determined according to Rule 18.1(a) and (b).

(b) The International Preliminary Examining Authority shall, in the circumstances specified in the Administrative Instructions, request the receiving Office or, where the international application was filed with the International Bureau as receiving Office, the national Office of, or acting for, the Contracting State concerned to decide the question whether the applicant is a resident or national of the Contracting State of which he claims to be a resident or national. The International Preliminary Examining Authority shall inform the applicant of any such request. The applicant shall have an opportunity to submit arguments directly to the Office concerned. The Office concerned shall decide the said question promptly.

54.2 [No change]

54.3 International Applications Filed with the International Bureau as Receiving Office

Where the international application is filed with the International Bureau as receiving Office under Rule 19.1(a)(iii), the International Bureau shall, for the purposes of Article 31(2)(a), be considered to be acting for the Contracting State of which the applicant is a resident or national.

54.4 [No change]

Rule 59

The Competent International Preliminary Examining Authority

59.1 Demands Under Article 31(2)(a)

(a) For demands made under Article 31(2)(a), each receiving Office of or acting for a Contracting State bound by the provisions of Chapter II shall, in accordance with the terms of the applicable agreement referred to in Article 32(2) and (3), inform the International Bureau which International Preliminary Examining Authority is or which International Preliminary Examining Authorities are competent for the international preliminary examination of international applications filed with it. The International Bureau shall promptly publish such information. Where several International Preliminary Examining Authorities are competent, the provisions of Rule 35.2 shall apply mutatis mutandis.

(b) Where the international application was filed with the International Bureau as receiving Office under Rule 19.1(a)(iii), Rule 35.3(a) and (b) shall apply mutatis mutandis. Paragraph (a) of this Rule shall not apply to the International Bureau as receiving Office under Rule 19.1(a)(iii).

59.2 [No change]

Rule 83

Right to Practice Before International Authorities

83.1 [No change]

83.1bis Where the International Bureau Is the Receiving Office

(a) Any person who has the right to practice before the national Office of, or acting for, a Contracting State of which the applicant or, if there are two or more applicants, any of the applicants is a resident or national shall be entitled to practice in respect of the international application before the International Bureau in its capacity as receiving Office under Rule 19.1(a)(iii).

(b) Any person having the right to practice before the International Bureau in its capacity as receiving Office in respect of an international application shall be entitled to practice in respect of that application before the International Bureau in any other capacity and before the competent International Searching Authority and competent International Preliminary Examining Authority.

83.2 [No change]

Rule 90

Agents and Common Representatives

90.1 Appointment as Agent

(a) A person having the right to practice before the national Office with which the international application is filed or, where the international application is filed with the International Bureau, having the right to practice in respect of the international application before the International Bureau as receiving Office may be appointed by the applicant as his agent to represent him before* the receiving Office, the International Bureau, the International Searching Authority and the International Preliminary Examining Authority.

(b) and (c) [No change]

(d) An agent appointed under paragraph (a) may, unless otherwise indicated in the document appointing him, appoint one or more sub-agents to represent the applicant as the applicant's agent:

* The amendment consists in deleting, before the words "the receiving Office," the words "that Office acting as."

[Rule 90.1(d), continued]

(i) before the receiving Office, the International Bureau, the International Searching Authority and the International Preliminary Examining Authority, provided that any person so appointed as sub-agent has the right to practice before the national Office with which the international application was filed or to practice in respect of the international application before the International Bureau as receiving Office, as the case may be;

(ii) [No change]

90.2 to 90.6 [No change]

Rule 91

Obvious Errors in Documents

91.1 Rectification

(a) to (d) [No change]

(e) No rectification shall be made except with the express authorization:

(i) and (ii) [No change]

(iii) of the International Preliminary Examining Authority if the error is in any part of the international application other than the request or in any paper submitted to that Authority,[+]

(iv) [No change]

(f) to (g-quater) [No change]

[End of Annex and of document]

[+] The amendment, which consists in deleting, at the end of the item, the word "and," is to the English text only.