

# WIPO



WORLD INTELLECTUAL PROPERTY ORGANIZATION

UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY

## **PATENT COOPERATION TREATY**

INTERIM ADVISORY COMMITTEE FOR ADMINISTRATIVE QUESTIONS

First Session: Geneva, February 8 to 11, 1971

PREPARATORY DOCUMENT

submitted by the International Bureau

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I. Action by the Washington Conference

1. The Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970, "considering the desirability of preparing the application of the Patent Cooperation Treaty pending the entry into force of the Treaty," invited the Assembly and the Executive Committee of the International (Paris) Union for the Protection of Industrial Property and the Director General of WIPO "to adopt, direct and supervise the measures necessary for the preparation of the entry into force of the Treaty." (The quotations are from the "Resolution concerning Preparatory Measures for the Entry Into Force of the Patent Cooperation Treaty," June 17, 1970, hereinafter referred to as "the Resolution.")

2. The same Conference recommended in the same Resolution that such measures include the setting up of three Interim Committees, namely:

- (i) one for technical assistance,
- (ii) one for technical cooperation,
- (iii) one for administrative questions.

3. The Resolution also expressed the desire that the organizations of inventors, industries, and the patent profession be associated, as in the preparation of the PCT, in the preparatory work for the entry into force of the PCT.

4. The present document concerns the third committee, that is, "the Interim Advisory Committee for Administrative Questions" (hereinafter referred to as "the Interim Committee"). The Resolution provides that this Committee "should study and recommend measures on the questions which will require solutions by the national Offices and the International Bureau when the Treaty enters into force."

II. Action by the Paris Union

5. The Assembly, the Conference of Representatives and the Executive Committee of the Paris Union, in their sessions held at Geneva in September 1970:

- (i) endorsed the Resolution of the Washington Conference,
- (ii) adopted the proposals of the Director General of WIPO concerning the implementation of the Resolution, and

(iii) decided which States were members of the Interim Committee (see document AB/I/33, paragraph 99, and document AB/I/18).

6. The proposals concerning implementation comprise the following:

(i) the Executive Committee of the Paris Union may appoint additional members to the Interim Committee,

(ii) the Executive Committee of the Paris Union is "to direct and supervise the work" of the Interim Committee,

(iii) the Interim Committee has to meet at least once before the September 1971 ordinary session of the Executive Committee of the Paris Union,

(iv) the Interim Committee should suggest to the September 1971 ordinary session of the Executive Committee of the Paris Union rules of procedure and a draft program of its activities for the year 1972 and possibly beyond. Both the rules of procedure and the program will be adopted by the said session of the Paris Union Executive Committee.

7. As to membership, the September 1970 sessions of the Assembly, Conference of Representatives and Executive Committee of the Paris Union decided that all States which had signed or would sign the PCT would be members of the Interim Committee. At the time of writing the present document, the following 21 States have signed the PCT: Algeria, Brazil, Canada, Denmark, Finland, Germany (Federal Republic), Holy See, Hungary, Iran, Ireland, Israel, Italy, Japan, Norway, Philippines, Sweden, Switzerland, United Arab Republic, United Kingdom, United States, Yugoslavia. These States have been invited to the first session of the Interim Committee. Any additional State which will sign the PCT will also be invited (the PCT is open for signature until December 31, 1970).

8. The following 9 intergovernmental organizations have been invited to the first session of the Interim Committee: United Nations (UN), International Bank for Reconstruction and Development (IBRD), United Nations Development Programme (UNDP), United Nations Conference on Trade and Development (UNCTAD), United Nations Industrial Development Organization (UNIDO), Inter-Governmental Conference for the setting up of a European System for the Grant of Patents (EPC), Industrial Development Centre for Arab States (IDCAS), International Patent Institute (IIB), African and Malagasy Industrial Property Office (OAMPI).

9. The following 12 international nongovernmental organizations have been invited to the first session of the Interim Committee: Asian Patent Attorneys Association (APAA), Committee of National Institutes of Patent Agents (CNIPA), Council of European Industrial Federations (CEIF), European Industrial Research Management Association (EIRMA), Inter-American Association of Industrial Property (ASIPI), International Association for the Protection of Industrial Property (IAPIP), International Chamber of Commerce (ICC), International Federation of Inventors Associations (IFIA), International Federation of Patent Agents (FICPI), Pacific Industrial Property Association (PIPA), Union of European Patent Agents, Union of Industries of the European Community (UNICE).

### III. Rules of Procedure

10. In suggesting draft rules of procedure, the Interim Committee may wish to rely on the "General Rules of Procedure" of WIPO, which apply, inter alia, to the ad hoc committees of experts convened by the Director General of WIPO. In the terminology of the General Rules of Procedure, the Interim Committee is an ad hoc committee of experts (see Rules 1(1) and 46(1)). The Interim Committee may, on any given point, suggest that its rules of procedure be different from the General Rules of Procedure. The Director General of WIPO believes that the General Rules of Procedure could be adopted for the Interim Committee without any modification but, naturally, will submit to the Executive Committee of the Paris Union any other suggestion that the Interim Committee might wish to make. A copy of the General Rules of Procedure of WIPO (excerpt from document AB/I/34) is distributed together with the present document.

11. The Interim Committee is invited to suggest its own rules of procedure and, subject to later approval by the Executive Committee of the Paris Union, provisionally to apply them.

IV. Election of Officers

12. Rule 52 of the General Rules of Procedure provides that:

"(1) During its first meeting, the ad hoc committee of experts shall elect from among its members a Chairman and two Vice-Chairmen.

"(2) With the consent of the Director General, the ad hoc committee of experts may elect the Director General himself or another staff member of the International Bureau as Chairman."

13. The Director General would not wish that, in the present case, paragraph (2) of Rule 52 be applied.

14. The Interim Committee is invited to elect, from among its members, a Chairman and two Vice-Chairmen.

V. Tasks of the Interim Committee

15. As already stated, the Interim Committee, according to the Resolution of the Washington Conference, "should study and recommend measures on the questions which will require solutions by the national Offices and the International Bureau when the Treaty enters into force."

16. This very broadly worded mandate requires a more detailed definition, particularly in view of the draft program of the Interim Committee's activities referred to in paragraph 6(iv), above.

17. The Interim Committee is invited to interpret and define in more detail its mandate.

18. It is the wish of the Director General that the Interim Committee respond to this invitation in complete independence. At the same time, he believes that it might facilitate the task of the Interim Committee if he set forth those points which he would hope the committee would deal with, particularly when the questions relate to the International Bureau's activities under the PCT. They are points that he would

particularly like to see included among the tasks of the Committee and he would welcome the advice of the Committee on them.

19. Generally. In view of the establishment of three Interim Committees and the fact that two of them have very specific tasks, it would seem that, in a general way, the Interim Advisory Committee for Administrative Questions should be competent for all questions not within the province of the two other Interim Committees, namely, all PCT questions other than technical assistance and other than questions mainly concerning the prospective International Searching and Preliminary Examining Authorities.

20. As to national Offices. Among the questions of interest to the national Offices are the following:

(i) preparation of changes in the national legislation to implement the PCT,

(ii) preparation of changes in the Office rules in order to implement the said legislative changes and to provide for the procedures which will be applied by each of them:

- (a) as receiving Offices,
- (b) as designated Offices,
- (c) as elected Offices.

21. As to changes in the national legislations, it is proposed that the Interim Committee serve as a forum for discussing certain options allowed by the PCT. The International Bureau intends to prepare at least two documents, one on the said options and one containing draft provisions modifying its Model Law on Inventions so that it could be used by countries acceding to the PCT. The second document, in other words, would contain models of provisions implementing, in the Model Law on Inventions for Developing Countries, the PCT.

22. As to the changes in Office procedures, it is proposed that the Interim Committee study the questions which will arise in connection with the communications between:

(i) on the one hand, the receiving Office and, on the other hand, the applicant, the International Bureau, and the Searching Authority;

(ii) on the one hand, the designated or elected Office and, on the other hand, the applicant, the International Bureau, and the Searching Authority and the Preliminary Examining Authority.

23. The studies on such procedures should comprise:

- (i) the establishment of model forms,
- (ii) the drafting of the relevant parts of the Administrative Instructions,
- (iii) statistical forecasts,
- (iv) cost estimates,
- (v) suggestions as to the transmittal fees,
- (vi) suggestions as to the collection, transfer and accounting of the fees.

24. As to the International Bureau. Several of the above studies also involve the procedures of the International Bureau. But there are in addition other procedures which ought to be studied, particularly with regard to the contacts between:

- (i) the applicant and the International Bureau,
- (ii) the International Bureau and the Searching and Preliminary Examining Authorities,
- (iii) the International Bureau and the general public (publication of the international application and the Gazette; furnishing of copies of cited documents).

25. Here, too, the studies ought to comprise the points mentioned in paragraph 23, above.

#### VI. Program for 1972 and Beyond

26. As stated above (paragraph 6(iv)), the Executive Committee of the Paris Union expects the Interim Committee to adopt a draft program of its activities for the year 1972 and possibly beyond.

27. The Interim Committee is invited to draw up such a draft program.

28. Again, it is the wish of the Director General that the Interim Committee respond to this invitation in complete independence.

29. Among the questions to be considered in this connection are the following:

(i) what tasks the Interim Committee proposes to carry out,

(ii) what the priorities are among the tasks,

(iii) what the timetable for each task should be,

(iv) to what extent the Interim Committee wishes to receive assistance from the International Bureau, particularly in the way of preparatory studies and documents,

(v) how many times, for how many days each time, and when, the Interim Committee wishes to meet in 1971 and 1972.

30. The suggested program will be reported to the September 1971 session of the Executive Committee of the Paris Union. The extent of the involvement of the International Bureau will mainly depend on the amount of the special PCT contributions of the member States of the Paris Union, the programs of the other two Interim Committees, and the priorities that the Executive Committee of the Paris Union will fix.

#### VII. Publications of the International Bureau

31. The International Bureau has recently published, or is preparing to publish, a certain number of documents concerning the PCT. These documents are intended for the following purposes:

(i) to facilitate the understanding of the aims, advantages and provisions of the PCT,

(ii) to assist in the preparation of proposals for ratification or accession,

(iii) to assist in the preparation of regional or national treaty, legislative and regulatory measures to implement, and take full advantage of, the PCT,

(iv) to assist in the preparation of scholarly or practical commentaries on and translations of the PCT.



32. So far the following four documents have been published ("PCD" stands for "post-Conference document"):

- (i) Document PCT/PCD/1 outlines the history of the negotiations leading to the conclusion of the PCT. In particular, it lists the main preparatory meetings and the States and Organizations which participated in each of them and identifies the main documents, including the various drafts of the Treaty and the Regulations.
- (ii) Document PCT/PCD/2 summarizes the main provisions of the Treaty and the Regulations. It also enumerates the main advantages of the PCT system.
- (iii) Document PCT/PCD/3 sets out the main differences between the 1969 Drafts, on the one hand, and the Treaty and the Regulations as adopted, on the other hand.
- (iv) Document PCT/PCD/4 consists of annotations on each Article of the Treaty. The notes refer, under each paragraph of each Article, to those other provisions of the Treaty and to those Rules in the Regulations which complete the paragraph in question or which have to be taken into consideration for the understanding of all its implications.

33. The above documents were communicated to the Governments of the member countries of the Paris Union and the Organizations which participated in the Washington Conference. Further copies are available on request, free of charge. They exist in English and French, and PCT/PCD/2 exists also in Spanish.

34. It is planned to issue at least two more documents in the PCT/PCD series. One will consist of annotations on each Rule of the Regulations. It will parallel the document containing the annotations on the Articles of the Treaty. The other document will be a catchword index to the Articles and Rules.

35. A printed volume on the Washington Diplomatic Conference (for the time being in English only) is in course of preparation. It will contain the documents issued before, during and after the Conference, as well as the summary minutes of the Plenary meetings and the meetings of the two Main Committees.

36. The text of the Treaty and the Regulations, in English and French, has been published so far in three forms: in the August 1970 issue of Industrial Property and La Propriété industrielle; as a reprint of the above under the title "Principal Documents issuing from the Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970"; and in the form of an A/5 pamphlet (WIPO publication number 274(E) and 274(F)).

37. Translations of the Treaty and the Regulations into German, Japanese, Portuguese, Russian and Spanish have either been started or will probably be started early in 1971. It is expected that most of these translations will be published in the course of 1971.

38. The Interim Committee is invited to comment on the above publication program.

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