

# WIPO



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## WORLD INTELLECTUAL PROPERTY ORGANIZATION GENEVA

### PATENT COOPERATION TREATY

#### INTERIM COMMITTEE FOR TECHNICAL COOPERATION

Seventh Session

Geneva, October 12 to 17, 1977

#### REPORT

##### INTRODUCTION

1. The PCT Interim Committee for Technical Cooperation (hereinafter referred to as "the Interim Committee") held its seventh session in Geneva from October 12 to 17, 1977.
2. The members of the Interim Committee are those States--44 in number--which have signed, or acceded to, the Patent Cooperation Treaty (PCT), and, pursuant to a decision of the Executive Committee of the Paris Union, any other country which pledges a special contribution to the PCT budget. There are three States, Australia, Cuba and Spain, which have qualified under the latter criterion. The following 20 States were represented: Austria, Brazil, Canada, Denmark, Egypt, Finland, France, Germany (Federal Republic of), Hungary, Japan, Madagascar, Netherlands, Norway, Senegal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom and United States of America. The following 24 States were not represented: Algeria, Argentina, Australia, Belgium, Cameroon, Central African Empire, Chad, Congo, Cuba, Gabon, Holy See, Iran, Ireland, Israel, Italy, Ivory Coast, Luxembourg, Malawi, Monaco, Philippines, Romania, Syrian Arab Republic, Togo and Yugoslavia.
3. Three intergovernmental organizations, the Interim Committee of the European Patent Organisation (EPO), the International Patent Institute (IIB) and the Organization of American States (OAS), were represented by observers.
4. The following eight non-governmental organizations were represented by observers: International Association for the Protection of Industrial Property (AIPPI), Inter-American Association of Industrial Property (ASIPI), Council of European Industrial Federations (CEIF), European Federation of Industrial Property Representatives of Industry (FEMIPPI), International Federation of Inventors Associations (IFIA), International Federation of Patent Agents (FICPI), Union of Industries of the European Community (UNICE), and Union of European Professional Patent Representatives (UNION).
5. Representatives of the International Patent Documentation Center (INPADOC) participated in the discussion of item 4(a)(iii) on the agenda of the Interim Committee (paragraphs 16 to 29 of this report), and representatives of the Institution of Electrical Engineers (INSPEC) participated in the discussion of item 4(a)(ii) on the agenda (paragraphs 30 to 35 of this report).

6. The number of participants was approximately 55 . The list of participants is annexed to this report.

#### OPENING OF THE SESSION

7. The session was opened by Mr. F. A. Sviridov, Deputy Director General of WIPO, who welcomed the participants on behalf of the Director General of WIPO.

#### OFFICERS OF THE INTERIM COMMITTEE

8. The Interim Committee unanimously elected Mr. J. Dekker (Netherlands) as Chairman and Mr. S. Lewin (Sweden) and Mr. L. Komarov (Soviet Union) as Vice-Chairmen.

9. Mr. J. Franklin, Head, PCT Technical Section, WIPO, acted as Secretary of the Interim Committee.

#### AGENDA

10. The Interim Committee adopted the agenda as contained in document PCT/TCO/VII/1.R.

#### INTERNATIONAL SEARCH

##### Minimum Documentation

The state of completeness of the search files of the prospective International Searching Authorities in respect of the national patent documents to be included in the minimum documentation under PCT Rule 34.1(c)(i) to (v)

11. Discussions were based on document PCT/TCO/VII/3.

12. The Interim Committee noted the contents of the document, particularly Annex Q thereof containing a summary of updated information on the state of completeness of the search files of the prospective International Searching Authorities with respect to the national patent documents specified in PCT Rule 34.1(c)(i) to (v) and published from January 1, 1920 to December 31, 1976, other than patent documents of Japan and the Soviet Union.

13. The Delegation of the Federal Republic of Germany reported on requests from prospective International Searching Authorities received by the German Patent Office for those of its country's patent documents which were missing from the search files of such Authorities. The Delegation also reported on steps being undertaken to meet these requests.

14. The Delegation of the Soviet Union reported on steps undertaken and the progress achieved by the State Committee for Inventions and Discoveries of the USSR Council of Ministers towards filling gaps in its search files in relation to the patent documents of France, Germany (Federal Republic of), the United Kingdom and the United States of America. The Delegation expressed its appreciation, in particular, of the cooperation afforded by the German Patent Office and also stated the readiness of the State Committee itself to cooperate with any prospective International Searching Authority which might have a need to complete its search files with respect to the patent documents of the Soviet Union. The Delegation noted that measures might also be required by prospective International Preliminary Examining Authorities in order to acquire or complete the minimum documentation referred to in PCT Rule 63.1(ii) and offered its cooperation also to such Authorities.

15. The Interim Committee noted with appreciation the offer made by the Delegation of the Soviet Union. The Interim Committee decided, furthermore, to ask the International Bureau to prepare, at suitable intervals, updated versions of the survey contained in the said Annex Q.

English language abstracts of the patent documents of Japan and the Soviet Union

16. Discussions were based on documents PCT/TCO/VII/7, 7 First Supplement and 12.
17. The Representative of the IIB drew to the attention of the Interim Committee his Organization's reply (Annex to document PCT/TCO/VII/7 First Supplement) to Circular No 2853 of the International Bureau. With reference to this Annex, the Representative emphasized that his Organization considered the abstracts of Japanese patent documents contained in "Chemical Abstracts" as important as a search tool as the Derwent abstracts, if not more so.
18. The International Bureau, with reference to paragraph 6 of document PCT/TCO/VII/7, stated that a machine readable data base containing inventories of all English language abstracts of Japanese and Soviet Union patent documents published by Derwent from January 1970 to August 1977 had been obtained from Derwent, that a COM printout of the inventories was available for each of the prospective International Searching Authorities present, that part of the data base as a paper printout could be inspected and that copies of the data base on magnetic tape could be obtained at cost. The International Bureau further pointed to the content of the letter from Derwent regarding conditions (price and presentation) for providing English language abstracts of patent documents of Japan and the Soviet Union which Derwent has published since 1962 contained in the Annex to document PCT/TCO/VII/12.
19. The Delegation of Japan, with reference to paragraphs 7 to 10 of document PCT/TCO/VII/7, stated that English language abstracts of unexamined published patent applications would be published in 1977 in its Abstracts Bulletin "Patents Abstracts of Japan": 16,000 in the chemical field, 28,000 in the general and mechanical field and 46,000 in the electrical and physical field, all such applications having been filed by Japanese nationals. It was further stated that the Japan Institute of Invention and Innovation, acting as the sole sales agent for the said publication, was studying at present the publication of the Abstracts Bulletin on microfilm, and also the publication of Indices. 114 countries and organizations which had received sample copies of "Patents Abstracts of Japan" had been requested to answer a questionnaire. The results of this questionnaire were not yet known.
20. The Representative of the IIB congratulated the Japanese Patent Office on its most impressive achievement and offered some preliminary comments on the quality of "Patents Abstracts of Japan," based on a sample of 100 abstracts in the mechanical field circulated among the examiners of the IIB. On the basis of this sample, the IIB had established that the abstracts were undoubtedly useful for search purposes, that they should not be shorter than at present and that the quality of the drawings and more particularly of the reference numbers in the drawings should be carefully monitored. The Representative of the IIB further suggested that consideration be given by the Japanese Patent Office to printing the Abstracts Bulletin using only one side of each page.
21. The International Bureau also congratulated the Japanese Patent Office and stressed the importance of this Abstracts Bulletin in facilitating access to the technological content of Japanese patent documents.
22. The Delegation of the Soviet Union said that the State Committee for Inventions and Discoveries of the USSR Council of Ministers had studied the question of publication of English language abstracts of patents and inventors' certificates issued by the Soviet Union (mainly for the period before the start of the publication of such abstracts by Derwent), taking into account the availability of information concerning the needs of the prospective users. It was mentioned that up to now no information had been received from the prospective users including prospective International Searching Authorities concerning their possible needs for such abstracts. The Delegation stated that the State Committee was ready to return to the study of this question upon receipt of the necessary information.
23. The Chairman then proposed to discuss further the question of English language abstracts of patent documents of Japan and the Soviet Union in two parts: the question of abstracts of past documents, on the one hand, and the question of available abstracts of current documents on the other hand. The Interim Committee agreed with this proposal.

English language abstracts of backlog patent documents published by Japan and the Soviet Union

24. With ten Delegations voting in favor, no Delegation voting against, and four Delegations (Austria, Spain, Sweden and Switzerland) abstaining, the Interim Committee decided that the Derwent abstracts of Japanese and Soviet Union patent documents were generally available and hence that those patent documents for which such abstracts had been prepared should be considered part of the PCT minimum documentation in the sense of PCT Rule 34.1(e). In taking this decision, the Interim Committee noted the importance of the abstracts published also in "Chemical Abstracts" and the need for having reliable inventories of the existing abstracts. The International Bureau was asked to study means to complete and improve these inventories.

25. The International Bureau stated that it would continue its efforts to improve and complete the inventories, but expressed the view that if no IPC symbols could be included in the inventories because such symbols had not been published in the abstract journal, or on the patent document, the inventories would be of far less value to the prospective International Searching Authorities. It was therefore suggested to limit the coverage of the said inventories to those references for which also reliable IPC symbols could be allotted, for example, from 1970 onwards.

26. The Interim Committee noted the proposals of Derwent as contained in document PCT/TCO/VII/12 and asked the International Bureau to investigate among prospective International Searching Authorities and other members of the Interim Committee how many would be interested in Derwent's offer of a numerically arranged file of English language abstracts of patent documents of Japan and the Soviet Union on A6 sheets or on 16mm microfilm reels.

English language abstracts of current patent documents published by Japan and the Soviet Union

27. The Interim Committee noted that for Soviet Union patent documents the only available service giving complete coverage was offered by Derwent, that it had been established that these abstracts were generally available, that all the prospective International Searching Authorities were subscribing to this service and that, consequently, there seemed to be no major problem for searching the patent documents currently being published by the Soviet Union and including them in the search files. The Delegation of Sweden asked in this respect that it be investigated whether the Derwent publication "Soviet Inventions Illustrated" could not also be published using one side of each page only.

28. With respect to English language abstracts of Japanese patent documents, the Interim Committee noted that at least four services, none of them giving a complete coverage, were available. These are: "Patents Abstracts of Japan," published by the Japanese Patent Office, "Japanese Patents Gazette," and "Japanese Patents Report" published by Derwent and "Chemical Abstracts." The International Bureau was invited to investigate this matter further and, more particularly, study the extent to which the four services overlap and/or complement each other. The Delegation of Austria suggested in this respect that the Permanent Committee for Patent Information should be asked to deal with this question and report to the PCT Committee for Technical Cooperation in due course.

29. The Representative of INPADOC stated that his Organization was at present studying and negotiating the possibilities of receiving English language abstracts of Japanese and Soviet Union patent documents in machine-readable form if available directly from the respective Patent Offices.

Proposals of INSPEC concerning the PAL System

30. Discussions were based on document PCT/TCO/VII/10.

31. The Representative of INSPEC stated that his Organization had started its Patent Associated Literature (PAL) Service on March 1, 1974, and that the Service had been continued in various forms for more than three years. He emphasized that the PAL Service had been conceived and based upon the principle of a centralized processing of non-patent literature with the aim of saving effort and expenditure in individual Patent Offices by freeing examining staff from the need to carry out this work. However, it had become clear that a number of Patent Offices had encountered insurmountable resistance to this idea of centralized processing and had found it necessary to allow their examining staff to continue to review and process the non-patent literature themselves. Following this, the number of subscriptions to the PAL Service had diminished in such a way that INSPEC could no longer offer the PAL Service without considerable losses and had decided to

discontinue the PAL System in April 1977. The Representative of INSPEC added that none of the subscription cancellations had invoked technical deficiencies in the Service.

32. The Representative of INSPEC then briefly introduced the new proposals under PAL System Mark II. It was emphasized that the PAL System Mark II had been designed as a current awareness service which was expected to be of interest to Patent Offices and also to industry and commerce. The PAL System Mark II therefore consisted of an abstract journal covering patent associated literature items in the physics and electrical fields and a magnetic tape service covering the same items. The specifications of the two services are given below:

(a) Abstract Journal

- (i) Content: main entries and cross references; each main entry will have a consecutive number within a given year;
- (ii) Coverage: IPC Sections G and H;
- (iii) Bibliography: title, author, corporate author, English abstract, US Classification symbols, IPC symbols, plus title, issue, language and pagination of the source document;
- (iv) Indexes: by author's name  
by IPC Classification symbol  
by US Classification symbol
- (v) Price: 400 US dollars per year, or 500 US dollars if annual cumulative indexes are produced.

(b) Magnetic Tape

- (i) Content: same as for Abstract Journal;
- (ii) Coverage: same as for Abstract Journal;
- (iii) Bibliography: same as for Abstract Journal plus thesaurus-controlled and free-language subject indexing terms;
- (iv) Price: 4,000 US dollars per year.

33. In reply to a question of the Chairman, the Representative of INSPEC said that, provided sufficient interest was shown in the Service, the PAL System Mark II could be started in the first quarter of 1978. He emphasized that INSPEC would like to have an expression of interest of the Interim Committee members before the end of November 1977.

34. The International Bureau stated that it would circulate the INSPEC proposals, as contained in document PCT/TCO/VII/10, to all Interim Committee members, requesting at the same time a statement with respect to their interest in the Service. The result of this inquiry would be communicated to INSPEC as soon as available.

35. The Delegation of the Soviet Union said that, as in the past, it was interested in a non-patent literature information service on magnetic tape as proposed by INSPEC, that it would communicate its decision on this question as soon as possible, and that it would also consider the other services offered by INSPEC.

Guidelines for International Search to be Carried Out under the Patent Cooperation Treaty (PCT)

36. Discussions were based on document PCT/TCO/VII/2.

37. The Delegations of Germany (Federal Republic of) and of the Soviet Union pointed to the need to publish, as soon as possible, these Guidelines, as adopted by the Interim Committee. The Interim Committee agreed that, initially, the International Bureau should publish the said Guidelines in the PCT/INT series of documents.

38. The Interim Committee decided that, since the draft Guidelines contained in document PCT/TCO/VII/2 had been considered fully by the Working Group on Guidelines for International Search and for International Preliminary Examination, it would limit its discussion to matters of substance, on the understanding that any proposals for minor amendments of an editorial nature might be submitted in writing to the International Bureau during the present session of the Interim Committee and could be included, by the International Bureau, in the final published version of the Guidelines. Written proposals for amendments were submitted to the International Bureau by the Delegations of Hungary and the Netherlands as well as by the Representative of UNICE. The amendments to the Guidelines agreed upon by the Interim Committee during its session, and one suggestion discussed but not adopted, are set out below under the relevant headings of the Guidelines, the said heading being shown with broken underlining.

#### CHAPTER III--CHARACTERISTICS OF THE INTERNATIONAL SEARCH

39. Upon a proposal of the Delegation of Norway, the Interim Committee agreed to amend the third sentence of paragraph 3.8 to read as follows:

"Therefore, where the subject matter of the main claim is novel, that of the dependent claims will also be considered novel for the purpose of international search."

40. The Delegation of Hungary suggested that, in order to avoid any confusion between novelty and inventive step in the context of the international search, the following amendments could be made to paragraphs 3.9 and 3.10:

(i) The first sentence of paragraph 3.9 should read:

"However, where the novelty or inventive step of the main claim is questioned, it may be necessary for assessing inventive step--as distinct from novelty--of a dependent claim considered in combination with the main claim, to establish whether the features of the dependent claim as such, are novel by searching one or more additional classification units."

(ii) The last sentence of paragraph 3.10 should read:

"A search in additional classification units either for sub-combinations or for individual elements of the combination should only be performed if this is still necessary for establishing the novelty of the element in order to assess the inventive step--as distinct from novelty--of the combination."

The suggestion was not adopted by the Interim Committee but is reflected in this report at the request of the Delegation of Hungary.

#### CHAPTER IV--SEARCH PROCEDURE AND STRATEGY

41. Upon a proposal of the Delegation of the United States of America, the Interim Committee agreed to amend the last sentence of paragraph 1.4 to read as follows:

"Whenever the search examiner modifies the abstract supplied by the applicant, he shall inform the applicant and invite him to comment within one month (PCT Rule 38.2(a))."

#### CHAPTER V--CLASSIFICATION OF INTERNATIONAL APPLICATIONS

42. Upon a proposal of the Delegation of the United States of America, the Interim Committee agreed to amend paragraph 1.1 to read as follows:

"Classification involves the assigning of one or more classification symbols to a particular international application whereby the technical subject of the invention of that application is identified. Every international application must be classified by the International Searching Authority at least according to the IPC in full (PCT Rule 43.3), and this Chapter deals only with such classification. This involves the assigning of the appropriate IPC symbols identifying the technical subject of the claimed invention (or the subjects of each of the claimed inventions, if there is more than one), such identification being as precise and comprehensive as the classification permits. Also non-obligatory classification symbols may be assigned for any "supplementary" and "complementary" information contained in the document being classified and which it is appropriate so to identify in accordance with the Guide to the IPC. The assigned IPC symbols appear on the published international application."

43. Upon a proposal of the Delegation of the United States of America, the Interim Committee agreed to amend the first sentence of paragraph 2.1 to read as follows:

"The classification of the international application will be determined by the search examiner, who must apply all classification symbols required by the rules of the IPC, in respect of the claimed invention ("Obligatory Classification"), and may also apply all classification symbols in respect of the "supplementary" and "complementary" information ("Non-Obligatory Classification") as defined in the current edition of the Guide to the IPC."

44. Upon a proposal of the Delegation of the United States of America, the Interim Committee agreed to amend the second sentence of paragraph 2.2 to read as follows:

"The classification of the invention itself should be distinguished from any "supplementary" or "complementary" classification. Where it is necessary to assign more than one symbol for the invention itself, that which in the search examiner's opinion most adequately identifies it, or, when this presents difficulties, that which identifies the invention for which most information is given, should be indicated first, e.g., in order to facilitate subsequent allotment of the applications."

#### CHAPTER VI--RELEVANT PRIOR ART

45. The Interim Committee, taking into account the discussion of the analogous provisions of Rule 64.2 and 64.3 by the Working Group on Guidelines for International Search and for International Preliminary Examination at its June 1977 session, decided that paragraphs 3.1, 4.5 and 6.1 should be amended to reflect the fact that Rule 33.1(b) and (c) should be interpreted to apply to a written disclosure made available to the public on, or to an application published on, the international filing date, as well as to a written disclosure made available to the public after, or an application published after, the international filing date. The International Bureau was entrusted with making the necessary modifications.

#### CHAPTER IX--INTERNATIONAL SEARCH DOCUMENTATION

46. Upon a proposal of the Delegation of the Netherlands, the Interim Committee agreed that in paragraph 4.2 the references to documents PCT/TCO/IV/18, paragraph 28(i), and PCT/TCO/VI/16, paragraph 81, should be deleted.

#### CHAPTER X--INTERNATIONAL SEARCH REPORT

47. Upon a proposal of the Delegation of the Netherlands, the Interim Committee agreed to delete from paragraph 6.2(a) the words "the total number of separate inventions is to be indicated;"

#### Steps in the procedure before the International Searching Authority

48. This item of the agenda was dealt with in a joint session of both Interim Committees. Discussions were based on document PCT/AAQ/VIII/14-PCT/TCO/VII/5.

49. In a general discussion, it was agreed that the document under consideration, the usefulness of which for the work of the International Searching Authorities was fully recognized, did not require publication in the series of PCT/INT documents. It should, however, in its final form be placed at the disposal of prospective International Searching Authorities in order to facilitate their preparation for their future tasks. Since several Delegations expressed the desire to have an opportunity for the submission of observations in writing after this session, it was agreed that observations concerning the document could be submitted to the International Bureau until January 1, 1978. Thereafter the International Bureau would prepare a final version of the document and would distribute the document to the prospective International Searching Authorities.

50. The Representative of the IIB stated that the sequence of procedural steps followed in the document under consideration did not always correspond with the practice of prospective International Searching Authorities. Since the practice of the said Authorities might differ in this respect, it should be understood that the prospective International Searching Authorities were not bound by the sequence of procedural steps as reflected in the said document.

#### INFORMATION CONCERNING REQUEST FROM CUBA

51. The International Bureau informed the Interim Committee that Cuba, as a member of the Interim Committee, had expressed its interest in receiving a set of the sorted collections of patent documents as offered by Australia, Austria and Canada under PCT Rule 34(1)(c)(vi) and that the respective patent offices would receive, within a short period, an official request to this effect. The Interim Committee noted the statement made by the International Bureau.

52. The Delegation of Austria stated that the Austrian Patent Office would be glad to supply to Cuba a set of sorted patent documents of Austria.

#### INTERNATIONAL PRELIMINARY EXAMINATION

##### Guidelines for International Preliminary Examination to be Carried Out under the Patent Cooperation Treaty (PCT)

53. Discussions were based on documents PCT/TCO/VII/6 and 8.

54. In introducing the documents, the International Bureau referred to the consideration of a draft of the Guidelines by the Working Group on Guidelines for International Search and for International Preliminary Examination at its June 1977 session. In accordance with a further procedure agreed upon by the Working Group, the International Bureau had sent to the members of the Working Group, for their final comments, the report of the Working Group's said session and the text of the draft PCT Guidelines revised on the basis of that report. The Working Group had noted that such comments would be largely on matters of detail and the Interim Committee could make a final decision for the adoption of the Guidelines at its October 1977 session.

55. Five members of the Working Group submitted comments in accordance with the procedure agreed upon by the Working Group. The said comments were set out in Annexes A to E of document PCT/TCO/VII/8. These Annexes are referred to in paragraphs 57 to 105 below, without reference to the document number.

56. The Interim Committee adopted the Guidelines contained in document PCT/TCO/VII/6 subject to certain amendments thereof on the basis of the said comments and upon proposals made during its discussion. The said amendments are set out below under the headings of the relevant Chapters of the Guidelines, the said headings being indicated by broken underlining. Certain other matters arising from the discussion of the Guidelines have also been reflected. The Interim Committee agreed that the Guidelines should be published by the International Bureau in the same manner as the Guidelines for International Search to be Carried Out under the Patent Cooperation Treaty (PCT) (see paragraph 37 of this report).

##### Amendment of the Guidelines

##### CHAPTER I--INTRODUCTION

57. The Interim Committee agreed to amend paragraphs 1.3 and 1.4 in accordance with the comments set forth in Annex E.

58. Upon a proposal of the Delegations of the Netherlands and the United Kingdom, the Interim Committee agreed to amend paragraph 1.5 to read as follows:

"The main legal effects of using Phase II are (i) the processing of the international application before the national Offices is delayed--that is, it cannot start, except upon the request of the applicant--at least until the expiration of the 25th month after the priority date when, normally, the international preliminary examination report has become available (PCT Article 40(1)), and (ii) as already indicated, the applicant is not required to furnish a translation of the international application to an elected Office, nor to pay the national fee, before the expiration of the 25th month after the priority date (PCT Article 39(1)). These legal effects are subject to the election being effected within the time limit indicated in Chapter I, paragraph 1.4."

59. The Interim Committee agreed to amend paragraphs 1.6 and 4.3 in accordance with the comments set forth in Annex A.

CHAPTER II--CONTENT OF THE INTERNATIONAL APPLICATION (OTHER THAN THE CLAIMS)

60. The Interim Committee agreed to amend paragraph 2.2, the title of Section 3 and paragraph 3.2 in accordance with the comments set forth in Annex E.

61. The Interim Committee agreed to amend paragraph 4.6 in accordance with the comments set forth in Annex D.

62. The Interim Committee agreed to amend paragraph 4.11 in accordance with the comments set forth in Annex B.

63. The Interim Committee agreed to amend paragraph 4.13 in accordance with the comments set forth in Annex E.

64. Upon a proposal of the Delegation of the United States of America, the Interim Committee agreed to amend the fifth sentence of paragraph 4.15 to read as follows:

"Other physical values (i.e., other than those having units directly available from length, mass, time and temperature) must be expressed in the units recognized in the international practice; e.g., for electric units the MKSA (Meter, Kilogram, Second, Ampere) or SI (Système International) systems should be used."

65. Upon a proposal of the Delegation of the United States of America, the Interim Committee agreed to amend paragraph 4.17 to read as follows:

"References to previously (i.e., before the international filing date) published material including patent applications and specifications of granted patents, text books and periodicals are allowable and often desirable (see Chapter II, paragraph 4.4 above) to explain the background art. A reference to an unpublished, previously filed application (i.e., not published before the international filing date) describing background art should not be regarded as being part of the disclosure, unless the application referred to is made available to the public on or before the publication date of the international application. The reference to such an application describing background art made available to the public on or before the publication date of the international application may be replaced by the actual text referred to and may be taken into account by the examiner. Similarly, references to text books and periodicals are allowable under the same conditions if it can be proved that the content thereof was fixed prior to the international filing date. In the case of any document made available to the public later than the publication date of the international application or not to be published at all (e.g., an application withdrawn before publication), the examiner should not take into account the reference to that document for the purposes of international preliminary examination. It should be noted, however, that this practice relates only to the international phase and does not preclude any decision applying relevant national law as far as it relates to the contents of the disclosure of the international application as filed."

66. The Interim Committee agreed to amend paragraph 5.1 in accordance with the comments set forth in Annex A.

67. The Interim Committee agreed to amend paragraphs 6.1 and 6.4 in accordance with the identical comments set forth in Annexes D and E.

CHAPTER III--THE CLAIMS

68. The Interim Committee agreed to amend paragraph 3.2 in accordance with the identical comments set forth in Annexes A and B.

69. Upon a proposal of the Delegation of Sweden, the Interim Committee agreed to delete from paragraph 3.3 the example relating to distinct medical uses of a known substance.

70. The Interim Committee agreed to amend paragraphs 4.1 and 5.1 in accordance with the comments set forth in Annex E.
71. The Interim Committee agreed to amend paragraph 6.5 in accordance with the identical comments set forth in Annexes A, C and E.
72. The Interim Committee agreed to amend paragraph 7.6 in accordance with the comments set forth in Annex E.

CHAPTER IV--REQUIREMENTS FOR INTERNATIONAL PRELIMINARY EXAMINATION

73. Upon a proposal of the Delegation of the Netherlands, the Interim Committee agreed to replace the word "could" with the word "should" in the last sentence of paragraph 2.2.

74. The Interim Committee agreed to amend paragraph 2.4(d) in accordance with the identical comments set forth in Annexes D and E.

75. The Interim Committee agreed to amend paragraph 2.4(f) in accordance with the comments set forth in Annex E.

76. The Interim Committee agreed to amend paragraph 2.6 in accordance with the comments set forth in Annex D.

77. Upon a proposal of the United States of America, the Interim Committee agreed to amend paragraph 5.2 to read as follows:

"A written disclosure, i.e., a document, should be regarded as made available to the public if, at the relevant date (as to "relevant date," see Chapter IV, paragraph 5.4), it was possible for members of the public to gain knowledge of the content of the document and there was no bar of confidentiality restricting the use or dissemination of such knowledge. As a general rule, no non-patent document will be cited in the international search report if the date of publication or public availability of the document concerned is clearly later than the filing date of the international application. However, patent documents published on or after the filing date of the searched application will be cited in the search report if the filing or priority date of such published application is earlier than the filing date of the searched application. Such published patent documents, although cited in the search report, are not considered as prior art for the purposes of Article 33(2) and (3), but are mentioned in the preliminary examination report. The international search report may have cited a document where there is difficulty in establishing whether the date of publication or public availability of the document is or is not later than the filing date of the international application. The International Searching Authority will have tried to remove any doubt that may exist. Additional documents providing evidence in the case of doubt may have been cited. Any indication in a document of the date of its publication should be accepted as correct by the examiner unless proof to the contrary has been offered, e.g., by the International Searching Authority, showing earlier publication, or by the applicant, showing later publication. Also, if there is any ambiguity as to the precise date of publication of a document, the International Searching Authority may have established a publication date, e.g., the date of receipt in a library to which the public have access. If the applicant presents sound reasons for doubting that the document forms part of the prior art in relation to his international application and any further investigation does not produce evidence sufficient to remove that doubt, the examiner should not pursue the matter further."

PCT Rule 33.1  
(c)  
PCT Rule 64.3  
PCT Rule 70.10

78. The Interim Committee agreed to amend paragraphs 5.4 and 6.1 in accordance with the comments set forth in Annex E.

79. Upon a proposal by the Delegations of the United Kingdom and the United States of America, supported by the Representative of CEIF, the Interim Committee agreed to amend paragraph 6.3 to read as follows:

"The PCT does not deal explicitly with the case of copending international applications of the same date. However, it is an accepted principle in most patent granting systems that two patents shall not be granted to the same applicant for one invention. It is permissible to allow an applicant to proceed with two international applications having the same description where the claims are quite distinct in scope and directed to different subject matter. However, in the rare case in which there are two or more international applications from the same applicant designating the same State or States and the claims of those applications have the same priority date and relate to the same invention (even though they may not necessarily claim that invention in identical terms), the applicant should be notified that he may be required in the national phase to choose which one of those applications he wishes to proceed to grant. A similar notification, to the applicant alone, should be given in the case where his international application designates a State in which he proceeds with a national application having the same priority date and relating to the same invention as the said international application, if the examiner is aware of this situation. However, no such notification should be given where two international applications of the same priority date and relating to the same invention are received from two different applicants."

80. Upon a proposal of the Delegation of the Soviet Union, the Interim Committee agreed to include in paragraph 7.3 a cross reference to Chapter IV, paragraph 8.3.
81. Upon a proposal of the Delegation of the Soviet Union, the Interim Committee agreed to include in paragraph 7.6 a cross reference to examples AI(iii) and A2(ii) of Chapter IV, paragraph 8.8.
82. The Interim Committee agreed to amend paragraphs 8.1 and 8.3 in accordance with the comments set forth in Annex E.
83. Upon a proposal of the Delegation of the Soviet Union, the Interim Committee agreed to include in paragraph 8.5 a cross reference to Chapter IV, paragraph 8.10.
84. The Interim Committee agreed to amend paragraph 8.8 in accordance with the comments set forth in Annex E.

#### CHAPTER V--PRIORITY

85. The Interim Committee agreed to amend paragraph 1.1 in accordance with the comments set forth in Annex B.
86. The Interim Committee agreed to amend paragraph 2.1 in accordance with the comments set forth in Annex E.

#### CHAPTER VI--PROCEDURE BEFORE THE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

87. The Interim Committee agreed to amend paragraph 1.2 in accordance with the comments set forth in Annex E.
88. Following observations by the Delegation of the Netherlands and the Representative of CEIF and on the request of the Interim Advisory Committee for Administrative Questions (see document PCT/AAQ/VIII/21, paragraph 14), the Interim Committee agreed to amend paragraph 2.2 to read as follows:

Section 407  
Administrative  
Instructions  
PCT Art. 31(7)  
PCT Rule 61.2  
PCT Art. 38  
PCT Art. 36(3)  
(a)  
PCT Art. 37(3)  
(b)

"The fact that international preliminary examination has been demanded is not confidential. The International Bureau publishes the list of elected States and notifies each elected Office of its election. Conversely, the international preliminary examination report is not published and is confidential; however, the International Bureau communicates that report together with a translation, if necessary, to each elected Office. Possible withdrawal of the demand or of any or all elections are also confidential; however, the International Bureau notifies each elected Office concerned of the withdrawal of its election as well as the International Preliminary Examining Authority concerned."

39. Following an observation by the Representative of the IIB and in the light of its discussion of item (4) in document PCT/TCO/VII/9 (see paragraph 114 of this report), the Interim Committee agreed that the International Bureau should add a sentence to paragraph 3.1 indicating that the demand must be checked by the International Preliminary Examining Authority to determine whether it conforms with Rules 53, 54 and 55.
90. The Interim Committee agreed to amend paragraph 4.1 in accordance with the comments set forth in Annex E.
91. The Interim Committee agreed to amend paragraph 4.2 in accordance with the comments set forth in Annex E.
92. The Interim Committee further agreed that the seventh item of paragraph 4.2 should be deleted unless the International Bureau should decide, after further study, that it would be useful for the International Preliminary Examining Authority to receive the correspondence covering formalities.
93. The Interim Committee agreed to amend paragraph 4.4 in accordance with the comments set forth in Annex E.
94. The Interim Committee agreed to amend paragraphs 4.5 and 4.6 in accordance with the identical comments set forth in Annexes C and D.
95. The Interim Committee agreed, in the light of its discussion of item (1) in document PCT/TCO/VII/9 (see paragraph 111 of this report), to entrust to the International Bureau the amendment of paragraph 4.9 so as to indicate that, when the examiner needs a copy of the application the priority of which is claimed, the examiner should request the applicant to furnish to the International Preliminary Examining Authority a copy of the certified copy which he must furnish to the International Bureau (PCT Rule 17.1(a)).
96. The Interim Committee agreed to amend paragraph 4.12 in accordance with the identical comments set forth in Annexes A and E.
97. Upon a proposal of the Delegation of the United Kingdom, supported by the Delegation of the United States of America, the Interim Committee agreed that the reference appearing in the parenthesis at the end of paragraph 5.4 should read as follows:  
"(See, however, Chapter III, paragraph 7.10)."
98. Upon a proposal of the Representative of FEMIP, the Interim Committee agreed that the first sentence of paragraph 5.8 should be amended to indicate that, when the applicant has timely paid the additional fees, even under protest, the examiner will carry out international preliminary examination on those claimed inventions for which additional fees have been paid or to which the claims have been restricted.
99. The Interim Committee agreed to amend paragraphs 5.13 and 5.14 in accordance with the comments set forth in Annex E.
100. The Interim Committee agreed to amend paragraph 5.18 in accordance with the comments set forth in Annex A.
101. The Interim Committee agreed to amend paragraph 6.1 and the title of Section 7 in accordance with the comments set forth in Annex E.
102. The Interim Committee decided to entrust to the International Bureau the amendment of paragraph 7.1 to reflect its conclusion that the PCT was to be interpreted as requiring that amendments to the international application must be submitted in the language in which the application was filed and, where translation of the international application is required under PCT Rule 55.2, in the language of that translation.
103. The Interim Committee agreed to amend paragraphs 7.5, 7.7, 7.20, 7.24 and 8.1 in accordance with the comments set forth in Annex E. The Interim Committee noted that the amendment of paragraph 7.24 would facilitate negotiations between the International Preliminary Examining Authorities and the International Bureau for the provision of copies of additional documents mentioned in written opinions issuing from such Authorities, this matter having already been raised in the session of the Interim Advisory Committee for Administrative Questions (see paragraph 141 of the report of the session of the said Interim Committee, document PCT/AAQ/VIII/21).

104. The Interim Committee agreed to amend paragraph 8.2 in accordance with the comments set forth in Annex A.

105. The Interim Committee agreed to amend paragraphs 8.3, 8.8, 8.15 and 8.16 in accordance with the comments set forth in Annex E.

#### Other matters

106. In the course of the discussion of paragraphs 4.4 and 4.8 of Chapter II, the Delegation of Hungary, referring to PCT Article 33(1) which specifies that the objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step and to be industrially applicable, expressed doubts with respect to the rights attributed to and the role played by the examiner and the International Preliminary Examining Authority in the draft Guidelines under consideration in particular in paragraphs 4.4 and 4.8 of Chapter II and paragraphs 2.2, 2.4, 4.2, 4.3, 4.5, 6.3 and 7.2 of Chapter III. This Delegation expressed the opinion that the rights and actions of the examiners referred to in the said paragraphs may be exercised by an examiner of a national or regional patent Office but not by an examiner of an International Preliminary Examining Authority under the PCT.

107. In the discussion of paragraph 2.4(b) of Chapter IV, the Delegation of Hungary questioned whether only the expression "inanimate products", which expression seemed to lack definition, should be between parenthesis, since the present text seemed to imply that microorganisms themselves might be produced by processes other than a micro-biological process. The retention of the present text could not be justified only for reasons for its identity with the corresponding text of the European Guidelines for Substantive Examination.

108. The said opinions expressed by the Delegation of Hungary were not shared by the Interim Committee but are reflected in this report at the request of the Delegation.

109. In a discussion of paragraph 3.2, of Chapter V, the International Bureau, in response to a question from the Delegation of Sweden, said that, in its opinion, the expression "regional patent" as defined in Article 2(iv), would cover all patents granted under the European Patent Convention and also so-called Community patents. The said opinion was noted by the Interim Committee.

#### Questions relating to international preliminary examination

110. Discussions were based on document PCT/TCO/VII/9 which contained a study prepared by the International Bureau, at the request of the Working Group on Guidelines for International Search and for International Preliminary Examination at its June 1977 session, on the five items appearing below.

(1) The furnishing of a certified copy of the priority application to the International Preliminary Examining Authority under the procedure provided by PCT Rule 66.7(a)

111. The Interim Committee agreed to accept the proposal of the International Bureau as set forth in paragraphs 4 and 5 of the document under consideration upon the understanding that the situation in which the International Preliminary Examining Authority finds it necessary to inspect the certified copy itself would be exceptional but that the question might be considered again after experience is gained in the operation of Chapter II of the Treaty.

(2) Provision to the International Preliminary Examining Authority of copies of documents cited in international search reports

112. The Interim Committee agreed to the conclusions of the International Bureau as set out in paragraph 10 of the document under consideration, and asked the International Bureau to carry out the survey mentioned in that paragraph.

(3) Consequences of the failure of the applicant to file, within the appropriate time limit, a translation of the international application

113. The Interim Committee agreed to the conclusions of the International Bureau as set out in paragraph 12 of the document under consideration.

(4) Inclusion in the Guidelines for International Preliminary Examination to be Carried Out under the Patent Cooperation Treaty (PCT) of the requirements with respect to the demand

114. The Interim Committee agreed with the view of the International Bureau, expressed in paragraph 13 of the document under discussion, that the requirements with respect to the demand need not be set out in an Annex to the Guidelines; it deemed, however, that a sentence should be added to paragraph 3.1 of Chapter VI of the Guidelines indicating that the demand must be checked by the International Preliminary Examining Authority.

(5) Carrying out of international preliminary examination on claimed inventions for which no international search has been carried out

115. Several Delegations said that an International Preliminary Examining Authority could not be required to carry out international preliminary examination on any part of an international application that had not been searched. This followed from the fact that Chapters I and II were so linked that international preliminary examination had to be carried out on the basis of an international search report.

116. In support of that view, the Delegation of Austria referred to the possibility of the avoidance of fees if there was lack of unity of invention and if international preliminary examination had to be carried out when additional search fees had not been paid.

117. The Delegation of the United Kingdom referred, also, to the different requirements of the PCT in relation to the establishment of the documentation of the International Searching and International Preliminary Examining Authorities.

118. Furthermore, the Delegation of the United States of America referred to the situation where the applicant had changed the orientation of the claims to another portion of the disclosure of his international application so as to require an entirely different search.

119. The Representative of the IIB said that, moreover, if any unsearched part of an international application were subjected to examination, there would be the objectionable result of an unpublished search. Furthermore, in the case where the international application is considered as not complying with the requirement of unity of invention, the applicant knows the risk he is taking if he fails to pay additional fees upon the invitation of the International Searching Authority.

120. The International Bureau said that the provisions of Chapters I and II of the Treaty were not so linked that the International Preliminary Examining Authority could abstain from examination of an application due to what had occurred in the procedure under Chapter I. The criteria according to which the International Searching Authority and the International Preliminary Examining Authority may decide not to search or not to examine, as the case may be, in the international procedure, were specified separately under the Articles of Chapters I and II of the Treaty and in the Regulations relating thereto. Such criteria having been established independently, the one from the other, the International Preliminary Examining Authority having the duty of acting upon a demand filed with it would have to do so only having regard to the criteria relating specifically to the second phase of the Treaty. On a practical level, a simple solution lay in the imposition of fees that would apply in the case where no search had been made. The only case where, if required, further search could not be carried out by the Office acting as International Preliminary Examining Authority would be where that Authority was not an International Searching Authority. In such case, special arrangements could be also contemplated as well as the imposition of appropriate fees.

121. The Delegation of Sweden, noting that under Article 17(3)(b), the designated Office may require the payment of a special fee when an international application is transferred to it, suggested that perhaps the situation was analogous to the transfer of an international application to the International Preliminary Examining Authority.

122. In the context of the comments of the International Bureau and of the Delegation of Sweden that an International Preliminary Examining Authority could impose a fee where no search had been made, the Delegation of the United Kingdom pointed out that, under the Treaty, an International Preliminary Examining Authority could not be obliged to carry out a further search whether for a fee or otherwise.

123. The International Bureau, having indicated that it reserved its position in relation to the questions under discussion in order to raise the matter at a later stage before the Assembly of the PCT, the Interim Committee asked the International Bureau to take into account, also, any necessary amendments to the Regulations so that the matters under discussion were not merely dealt with in Guidelines.

Steps in the procedure before the International Preliminary Examining Authority

124. This item of the agenda was dealt with in a joint session of both Interim Committees. Discussions were based on document PCT/AAQ/VIII/13-PCT/TCO/VII/4.

125. In a general discussion, the two Interim Committees reached the same understanding as with respect to the document concerning steps in the procedure before the International Searching Authority, this, however, with the proviso that the distribution of the final version of the document under consideration should be limited to the prospective International Preliminary Examining Authorities.

126. The Representative of CEIF stated, in relation to Step IPEA/2.2 in Part B of the Annex to the document, that such step should include the case where the International Preliminary Examining Authority finds that, in the case of different applicants for different elected States, none of the applicants indicated for the purposes of a given elected State is entitled under Rule 54.3 to make a demand. In such case, the election of that State should be considered not to have been made and the International Preliminary Examining Authority should notify, accordingly, both the applicant or applicants so indicated and the International Bureau.

## TIME LIMITS UNDER THE PCT; DISTRIBUTION OF DOCUMENTS

127. This item of the agenda was dealt with in a joint session of both Interim Committees. Discussions were based on document PCT/AAQ/VIII/16-PCT/TCO/VII/11.

128. Several Delegations, in particular those of the United States of America, Austria and Sweden, commended the International Bureau for having submitted a very clear and complete document setting out the time limits under the PCT.

129. In a general discussion, the Interim Committees recommended to publish the final version of the document under consideration in the series of PCT/INT documents. The final version should be established by the International Bureau after the present session, taking into account the discussions during that session and any written observations submitted thereafter and before November 30, 1977. It was, however, agreed that, if the volume of the written observations would be such that a complete revision of the document would entail a substantial workload which could only be undertaken to the detriment of other priority tasks of the International Bureau during the remaining interim period, the document would be published in the PCT/INT series essentially in its present form whereas an additional document would be prepared containing the observations submitted in writing.

130. With respect to page 20 of the document under consideration, the Delegation of Austria stated that the document included the time limit of 20 months from the priority date for the submission of indications concerning the inventor for purposes of the procedure before designated Offices under Chapter I of the Treaty, whereas the corresponding time limit of 25 months concerning the submission of the said indications for the procedure before elected Offices under Chapter II was missing. It was agreed that the International Bureau would study the question of the relevant time limit under Chapter II and would take the results of its study into account for the revision of the document under consideration.

131. In this context, the two Interim Committees had a general discussion concerning the distribution of documents issuing in the PCT/INT series, during which a general desire for wide dissemination as far as possible free of charge in particular for the competent authorities of, or acting for, the interested States, was expressed.

132. The International Bureau stated that a distinction would be made between those documents which would soon be printed in brochure form and others, the printing of which was not foreseen, and that a special situation existed with respect to the PCT forms. While in general the documents of the PCT/INT series would be largely distributed free of charge, the printed brochures would be distributed against a modest charge but with a fair amount of free copies for the competent authorities of, or acting for, the Contracting States going beyond the obligations of the International Bureau under Rule 87. The fact that a wide dissemination of the documents and brochures on conditions which were not onerous was in the interest of a rapid and smooth implementation of the PCT system would be taken into account. The PCT forms would be distributed to the receiving Offices free of charge.

133. On a question from the Delegation of Hungary, the International Bureau stated that the situation with respect to the copyright of WIPO concerning the said publications under the PCT was as described in document PCT/AAQ/VIII/4, but that those Offices wishing to republish certain of the documents in translation would receive the necessary authorization by the International Bureau.

#### FURTHER PROGRAM FOR THE IMPLEMENTATION OF THE PCT

134. In a joint session of both Interim Committees, the question of the further program for the implementation of the PCT was considered.

135. The Director General informed the Interim Committees that, in view of the expected imminent deposit of the last instrument of ratification required for the entry into force of the Treaty, further sessions of the Interim Committees for the purpose of continuing the preparatory work for the implementation of the PCT were not envisaged and consideration of any further program of the Interim Committees was not necessary. Entry into force of the Treaty was expected for early 1978 and a period of two weeks beginning April 3, 1978, was provisionally set aside during the second week of which the convening of the first session of the Assembly of the PCT Union was envisaged. That session would probably be preceded by a meeting of a Preparatory Committee which would prepare the decisions to be taken by the Assembly. In that Preparatory Committee and in the Assembly, the Contracting States of the PCT and the States contributing to the PCT budget without being Contracting States would have a different status since the latter States could not vote. The Preparatory Committee would deal with all matters whether they were now within the competence of the PCT Interim Advisory Committee for Administrative Questions or the PCT Interim Committee for Technical Cooperation. While the PCT Interim Committee for Technical Cooperation would have one more session in January 1978 which would be held jointly with the first session of the new Permanent Committee for Patent Information, the purpose of that last session was not to deal with PCT interim work, but to have an organizational meeting reviewing the activities of the said Interim Committee with a view to the future planning of work within the Permanent Committee for Patent Information.

136. On a question from the Delegation of Austria, the Director General stated that it was envisaged that the Rules of Procedure of the Assembly of the PCT Union would follow the General Rules of Procedure of WIPO. If certain special rules of procedure were considered necessary in addition, the International Bureau would make proposals which could then be considered in the meetings foreseen for April 1978.

137. The two Interim Committees agreed with the proposals made by the Director General with respect to the further program and time schedule. The Chairman concluded that this was consequently the last session of the PCT Interim Advisory Committee for Administrative Questions and that the next and last session of the PCT Interim Committee for Technical Cooperation, to be held jointly with the Permanent Committee for Patent Information in January 1978, would not deal with substantive matters so that the said Interim Committee would also terminate its work concerning the preparation of the implementation of the PCT at the present session.

#### CLOSING OF THE SESSION

138. In closing the session, the Chairman noted that, although the Interim Committee for Technical Cooperation would have one more session, the present session did in fact bring to an end the preparatory work which had been undertaken in the period following the Washington Diplomatic Conference. The Chairman thanked the Delegations and the observer Organizations for their considerable contribution to the completion of this work through their comments, proposals and suggestions as well as the International Bureau for its role in the preparation of the meetings of the Interim Committee.

139. This report was unanimously adopted by the Interim Committee at its closing meeting on October 17, 1977.

[Annex follows]

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LIST OF PARTICIPANTS

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