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GUIDELINES FOR INTERNATIONAL SEARCH TO BE CARRIED OUT
UNDER THE PATENT COOPERATION TREATY (PCT)

Revised Version

prepared by the International Bureau

Background to the present document

1. The PCT Interim Committee for Technical Cooperation (hereinafter referred to as "the Interim Committee"), at its sixth session, held in Geneva from November 3 to 8, 1976, established a PCT Working Group on Guidelines for International Search and for International Preliminary Examination (hereinafter referred to as "the PCT Working Group") for the purpose of assisting in the establishment of Guidelines for International Search to be Carried Out under the Patent Cooperation Treaty (PCT) (see the report of that session, document PCT/TCO/VI/16, paragraph 72).
2. At its first session (February 14 to 18, 1977), the PCT Working Group had before it a document dated August 9, 1976, prepared by the International Bureau, bearing the number PCT/TCO/VI/8 and entitled "Guidelines for International Searches to be Carried Out under the Patent Cooperation Treaty (PCT)" (hereinafter referred to as "the draft PCT Guidelines"). This document consisted of an amended version of the EPO Guidelines for Searches prepared in accordance with the proposals of three prospective International Searching Authorities, as well as a comparative analysis of the said proposals. The PCT Working Group also had before it comments from three patent Offices and one intergovernmental organization as contained in document PCT/WG/GSE/I/2, as well as comments from one non-governmental organization as contained in document PCT/TCO/VI/13.
3. The PCT Working Group, at its session referred to above, held a detailed discussion of the subject matter covered in the draft PCT Guidelines and prepared, mainly by amending the draft PCT Guidelines in accordance with the proposals of the members of the PCT Working Group, a revised version of the draft PCT Guidelines to be considered by the Interim Committee. The said revised version of the draft PCT Guidelines is attached hereto.
4. The Interim Committee is invited to consider the revised version of the draft PCT Guidelines as established by the PCT Working Group and to give its advice to the International Bureau so that the Guidelines for International Search to be Carried Out under the Patent Cooperation Treaty (PCT) may be finally established.

[Revised version of the
draft PCT Guidelines follows]

GUIDELINES FOR INTERNATIONAL SEARCH
TO BE CARRIED OUT UNDER THE PATENT COOPERATION TREATY (PCT)

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CHAPTER I

INTRODUCTION

1. These Guidelines were elaborated by the PCT Interim Committee for Technical Cooperation.
2. The Guidelines constitute elaborations and clarifications of the provisions of the Treaty and the Regulations thereunder and their relevant Articles and Rules and Sections of the Administrative Instructions thereunder with respect to international search.
3. In order to ensure uniform practice the International Searching Authorities are expected to adhere to these Guidelines to the extent that they are not amended or revoked by the Committee for Technical Cooperation established under Article 56 of the Treaty. Nevertheless, the application of the Guidelines to, and the interpretation thereof in respect of, individual international applications is the responsibility of the International Searching Authorities and it may be necessary for search examiners to depart from the general instructions given here in exceptional cases.
4. These Guidelines were drafted for, and apply to, international searches and, where appropriate, international-type searches.
5. References to the relevant provisions of the Articles of the Treaty, Rules of the Regulations under the Treaty and Sections of the Administrative Instructions under the Treaty are included in these Guidelines in the appropriate places.

CHAPTER II

GENERAL

1. The procedure through which an international application proceeds from the filing of the application to the granting of a patent (or the refusal thereof) comprises two clearly separated basic stages, i.e., the international search and the substantive examination by an international, regional or national Office.
2. The objective of the international search is to discover the prior art which is relevant for the purpose of determining whether, and if so to what extent, the claimed invention to which the international application relates is or is not new and does or does not involve an inventive step (PCT Article 15(2), Rule 33.1(a)).
3. The international search is essentially a documentary search in a document collection that is systematically arranged (or otherwise systematically accessible) for search purposes according to the subject matter contents of the documents (PCT Rule 36.1(ii)). These are primarily patent documents of various countries, supplemented by a number of articles from periodicals and other non-patent literature.
4. An international search report will be prepared containing the results of the international search, in particular by identifying the documents constituting the relevant prior art (PCT Article 16(1), Rule 43.5).
5. The international search report serves to provide information on the relevant prior art to the applicant, to the public if the international application is published and to the designated Offices and the International Preliminary Examining Authorities (PCT Article 18(2), Article 20(1)(a), Article 21(3)).
6. Since the international search will be carried out and the international search report will be prepared by the International Searching Authorities and the examination will be carried out by the designated Offices or by the International Preliminary Examining Authorities, the separation of the two steps may be geographical as well as procedural.

[CHAPTER II (cont'd.)]

7. In some instances there are no facilities for systematic searching by the designated Offices, other than for conflicting national applications. Some designated Offices may, therefore, be dependent on the work of the International Searching Authorities for their knowledge of the state of the art on which their assessments of the patentability of the claimed invention will be based. The international search must, therefore, be as complete and effective as possible, within the limitations necessarily imposed by economic considerations (see Chapter III, paragraph 2).

8. In order to be able to inform the designated Offices and the International Preliminary Examining Authorities of the documents necessary for them to assess novelty and inventive step, the search examiner must be familiar with the basic requirements of examination, especially with respect to novelty, inventive step and unity of invention. Also to be able to decide when the international search need not be carried out or needs to be restricted, the search examiner must be aware of the subjects which are not required to be searched either because they may be excluded under PCT Rule 39, or because they are generally accepted not to be patentable subjects or susceptible of industrial application. On the other hand, feed-back from designated Offices and International Preliminary Examining Authorities to the International Searching Authorities on the general effectiveness of international search reports for the prosecution of international applications will be necessary to ensure that such searches are well adapted to the needs of examination and such feed-back should be encouraged by the International Searching Authorities.

9. The international search shall be carried out and the international search report prepared by an International Searching Authority. The international search itself will normally be performed by one search examiner. In exceptional cases, where the invention is of a nature requiring searching in widely dispersed specialized fields, an international search report containing the work of two, or possibly three, search examiners may be necessary.

CHAPTER III

CHARACTERISTICS OF THE INTERNATIONAL SEARCH

1. The objective of the international search

1.1 As stated in Chapter II, paragraph 2, the objective of the international search is to discover relevant prior art for the purpose of assessing novelty and inventive step. Decisions on novelty and inventive step are the province of the designated Offices. However, these issues must be borne in mind by the search examiner in order to enable an effective international search to be carried out.

1.2 Occasionally the search examiner must also bear in mind matters of substantive examination other than novelty or inventive step, in order to be able to proceed with the international search or to decide to restrict the search. Examples are to be found in Chapter VII: Unity of Invention and Chapter VIII: Exclusions from the International Search.

2. Scope of the international search

2.1 The international search is essentially a thorough, high quality, all-embracing search. Nevertheless, it must be realized that, even though completeness should be the ultimate goal of the international search, this goal may not be necessarily obtained because of such factors as the inevitable imperfections of any classification system and its implementation, and may not be economically justified if the cost is to be kept within reasonable bounds. The search examiner should therefore organize his search effort and utilize his search time in such a manner as to reduce to a minimum the possibility of failing to discover existing highly relevant prior art, such as complete anticipations for any claims. For less relevant prior art, which often exists with a fair amount of redundancy amongst the documents in the search collection, a lower retrieval ratio can be accepted (see also Chapter III, paragraph 2.6).

[CHAPTER III (cont'd.)]

2.2 The International Searching Authority carrying out the international search shall endeavor to discover as much of the relevant prior art as its facilities permit and shall, in any case, consult the documentation specified in the PCT Regulations (PCT Article 15(4)).

2.3 This implies first of all that the International Searching Authority in searching an international application will, in principle, consult all documents in the relevant classification units of the search files, irrespective of their language or age, or of the type of document. Nevertheless the search examiner should for reasons of economy exercise his judgment, based on his knowledge of the technology in question and of the documentation involved, to omit sections in which the likelihood of finding any documents relevant to the international search is negligible, for example documents falling within a period preceding the time when the area of technology in question began to develop. Similarly he need only consult one member of a patent family unless he has good reason to suppose that, in a particular case, there are relevant substantial differences in the content of different members of the same family.

2.4 The international search shall be carried out on the basis of the search files which may contain material pertinent to the claimed invention (PCT Rule 33.2(a)). It should first cover all directly relevant technical fields, and may then have to be extended to analogous fields (PCT Rule 32.2(b)), but the need for this must be judged by the search examiner in each individual case, taking into account the outcome of the search in the initial fields.

2.5 The question of which arts are, in any given case, to be regarded as analogous shall be considered in the light of what appears to be the necessary function or use of the claimed invention and not only the specific functions expressly indicated in the international application (PCT Rule 33.2(c)).

2.6 The decision to extend the international search to fields not mentioned in the international application must be left to the judgment of the search examiner, who should not put himself in the place of the inventor and try to imagine all the kinds of applications of the claimed invention. The over-riding principle in determining the extension of the search in analogous fields should be whether it is possible that a reasonable objection that there is lack of inventive step could be established on the basis of what is likely to be found by the search in these fields.

3. Orientation and subject of the international search

3.1 The international search should be directed to the invention defined by the claims, as interpreted with due regard to the description and drawings (if any) and with particular emphasis on the inventive concept towards which the claims are directed (PCT Article 15(3), Rule 33.3(a)).

3.2 Consequently, the international search should, on the one hand, not be restricted to the literal wording of the claims but, on the other hand, should not be broadened to include everything that might be derived by a person skilled in the art from a consideration of the description and drawings.

3.3 As a consequence, the international search should usually embrace also subject matter that is generally recognized as equivalent to that which is specified in the claims. This applies to the claimed subject matter as a whole, and also to its individual features even though, in its specifics, the invention as described in the international application is different (PCT Rule 33.2(d)). For example, if the claim specifies a cable clamp having a certain construction, the search should embrace pipe and similar clamps likely to have the specified construction. Likewise, if the claim is directed to an article consisting of several parts which are defined by their function and/or structure, and the claim stipulates that certain parts are welded together, the search should also embrace equivalent methods of connecting such as glueing or riveting, unless it is clear that welding possesses particular advantages required for the invention.

3.4 Since the applicant may not amend the claims before receiving the international search report, except to correct formal matters which are contrary to the PCT and are called to the applicant's attention by the receiving Office, the international search will be directed to the claims as originally filed.

[CHAPTER III (cont'd.)]

3.5 Claims that are deemed to be drawn to inventions for which no fees have been paid must be excluded from the international search (see PCT Article 17(3)(a) and Chapter VII).

3.6 In principle, and in so far as possible and reasonable, the international search should cover the entire subject matter to which the claims are directed or to which they might reasonably be expected to be directed after they have been amended (PCT Rule 33.3(b)). For example, where an international application relating to an electric circuit contains one or more claims only directed to the function and manner of operation, and the description and drawings include an example with a detailed non-trivial transistor circuit, the search must necessarily include this circuit. Nevertheless, reasons of economy may make certain restrictions of the international search necessary, for example, when there is a broad claim and many examples and it is not possible to foresee which will be the subject of amended claims.

3.7 No special search effort need be made for searching unduly wide or speculative claims, beyond the extent to which they are supported by the description. For example, if, in an international application relating to and describing in detail an automatic telephone exchange, the claims are directed to an automatic communication switching center, the international search should not be extended to automatic telegraph exchanges, data switching centers, etc., merely because of the broad wording of the claim, except if it is probable that such an extended search could produce a document on the basis of which a reasonable objection as regards lack of novelty or inventive step could be established. Likewise, if a claim is directed to a process for manufacturing an "impedance element" but the description and drawings relate only to the manufacture of a resistor element, and give no indication as to how other types of impedance elements could be manufactured by the process of the claimed invention, extension of the search to embrace, say, manufacture of capacitors, would not normally be justified.

3.8 The international search carried out in the classification units of the search files to be consulted for the main claim(s) must include all dependent claims. Dependent claims should be interpreted as being restricted by all features of the claim(s) from which they depend. Therefore, where the subject matter of the main claim is novel, that of the dependent claims will also be novel. When the novelty and inventive step of the main claim are apparent as a result of the international search, there is no need to make a further search in respect of the subject matter of the dependent claims as such. For example, in an international application relating to cathode ray oscilloscope tubes, in which the main claim is directed to specific means along the edge of the front of the tube for illuminating the screen, and a dependent claim adds a specific connection between the front and the main part of the tube, the search examiner should, in the search files he consults for searching the illumination means, also search for the connecting means whether in combination with the illumination means or not. When, after this search, the novelty and inventive step of the illuminating means are apparent, the search examiner should not extend his search for the connecting means to further search files specifically provided for these connections.

3.9 However, where the novelty or inventive step of the main claim is questioned, it may be necessary for assessing inventive step of a dependent claim to establish whether the features of the dependent claim as such are novel by searching one or more additional classification units. No such special search should be made for features that are trivial or generally known in the art. When the dependent claim adds a further feature (rather than providing more detail of an element figuring already in the main claim), the dependent claim in effect constitutes a combination claim and should be dealt with accordingly (see Chapter III, paragraph 3.10).

3.10 For claims characterized by a combination of elements (e.g., A, B and C) the international search should be directed towards the combination; however, when searching classification units for this purpose, sub-combinations, including the elements individually (e.g., AB, AC, BC and also A, B and C separately) should be searched in those units at the same time. 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 of the combination.

[CHAPTER III (cont'd.)]

3.11 When the international application contains claims of different categories, all these must be included in the international search, and even when the international application contains only claims of one category, it may be desirable to include other categories in the search. For example, generally, except when the international application contains indications to the contrary, one may assume that in a claim directed to a chemical process, the starting products form part of the state of the art and need not be searched; the intermediate products will only be searched when they form the subject of one or more claims; but the final products will always have to be searched, except when they are evidently known.

3.12 The search examiner should, in general, exclude from his international search subjects for which no searches are to be carried out or no meaningful search can be made; this may result, for example, from the fact that certain subjects are excluded from the search under PCT Rule 39, or that the international application is obscure (see Chapter VIII).

3.13 When the claims of the international application do not relate to one invention only, nor to a group of inventions so linked as to form a single general inventive concept, and the required additional fees have not been paid within the prescribed time limit, the international search will normally be restricted to the invention, or so linked group of inventions, first mentioned in the claims (see Chapter VII). If the additional fees have been timely paid, all inventions covered thereby must also be searched.

3.14 In certain circumstances it may be desirable to extend the subject matter of the international search to include the "technological background" of the claimed invention (see Chapter IV, paragraph 2.4). This would include:

- the preamble to the first claim, i.e., the part preceding the expression "characterized by";
- the state of the prior art which is deemed to be known in the introduction of the description of the international application but not identified by specific citations;
- the general technological background of the invention (often called "general state of the art").

4. Types of searches

4.1 International searches. The task of the International Searching Authority is primarily to carry out international searches and to draw up international search reports on international applications.

4.2 International-type searches. Under the PCT, an International Searching Authority may be entrusted with carrying out "international-type searches" for national applications. These searches are by definition similar to international searches, and the same considerations will apply (PCT Article 15(5)).

CHAPTER IV

SEARCH PROCEDURE AND STRATEGY

1. Procedure prior to searching

1.1 When taking up an international application to be searched, the search examiner should first consider the application in order to determine the subject of the claimed invention taking account of the guidance given in Chapter III, paragraphs 3.1 to 3.3. For this purpose he should make a critical analysis of the claims in the light of the description and drawings. Although he need not study all details of the description and drawings, he should consider these sufficiently to identify the problem underlying the invention, the insight leading to its solution, the totality of the means essential to the solution as particularly reflected in the technical features thereof found in the claims, and the results and effects obtained.

[CHAPTER IV (cont'd)]

1.2 If the search examiner notices any formal shortcomings which have been overlooked by the receiving Office, the International Searching Authority should call them to the attention of the receiving Office, which will take appropriate action. Similarly, if the International Searching Authority notes matter contrary to public order ("ordre public") or morality or disparaging statements which ought to be omitted from the international application as published, it should suggest to the applicant that he voluntarily correct his international application and should notify the receiving Office and the International Bureau accordingly (PCT Rule 9.2).

1.3 Documents cited in the international application under consideration should be examined if they are cited as the starting point of the invention, or as showing the state of the art, or as alternative solutions to the problem concerned, or when they are necessary for a correct understanding of the application; however, when such citations clearly relate only to details not directly relevant to the claimed invention, they may be disregarded. If the international application cites a document that is not published or otherwise not accessible to the International Searching Authority and the document appears essential to a correct understanding of the invention to the extent that a meaningful international search would not be possible without knowledge of the content of that document, the International Searching Authority may postpone the search and request the applicant to provide first a copy of the document, if possible to do so within the time limits for the preparation of the international search report under the PCT. If no copy of the document is received, the International Searching Authority shall first attempt to carry out the international search and then, if necessary, indicate that no meaningful search could be carried out in total (PCT Article 17(2)(a)(ii) or that the search needed to be restricted (PCT Article 17(2)(b)).

1.4 The search examiner should then consider the abstract (together with the title of the invention and the figure of the drawings to be published with the abstract) in relation to the requirements of the Regulations under the Treaty (see Chapter XI). Since the abstract should relate to the international application as filed, the search examiner should consider it and determine its definite content before carrying out the international search, in order to avoid being inadvertently influenced by the results of the search. However, if there are initial obscurities, which are cleared away in the course of the search, he may have to return to the abstract after the search is completed. Under certain circumstances (see Chapter XI), the search examiner will himself have to establish the abstract and/or title, and/or select the figure to accompany the abstract for publication purposes. Whenever the search examiner establishes or modifies the abstract, he shall inform the applicant and invite him to comment within one month (PCT Rule 38.2(a)).

1.5 The search examiner, after having considered the abstract, if any, will then classify the international application according to at least the International Patent Classification (IPC) (see Chapter V).

1.6 If publication of the international application is due before international search, the search examiner will have to establish the classification of the application much earlier than he carries out the search (see Chapter V, paragraph 2); he will then at the same time briefly examine the abstract (together with the title and selected figure) for the purpose of publication. This examination of the abstract will not go beyond ensuring that it relates to the application concerned and that no conflict exists with the title of the invention or with the classification of the application. If at that time no abstract, title or figure selection has been provided by the applicant, the search examiner will have to do so.

2. Search strategy

2.1 Having determined the subject of the invention, as outline in Chapter IV, paragraph 1.1, it may be desirable for the search examiner to prepare first a written search statement, defining the subject of his search as precisely as possible. In many instances one or more of the claims may themselves serve this purpose, but they may have to be generalized in order to cover all aspects and embodiments of the invention. At this time, the considerations relating to the exclusion from international search (see Chapter VIII) and to lack of unity of invention (see Chapter VII, paragraph 1) should be borne in mind. The search

[CHAPTER IV (cont'd.)]

examiner may also have to restrict the subject of the international search because of obscurities (see Chapter VIII, paragraph 2); but he should not do this if it can be avoided and he should subsequently adjust his search if such obscurities are cleared away during the search. Any restrictions of the international search on these grounds should be indicated in the international search report. If no search is made, a declaration should be issued under Article 17(2)(a) of the PCT.

2.2 Next, the search examiner should select the units of the classification and/or other sections of the documentation (for example, mechanized search systems or abstracting journals) to be consulted for the international search, both in all directly relevant fields and in analogous fields. In searches made by using the IPC, the selection of classification units in related fields should be limited to:

(i) higher subdivisions allowing searching by abstraction (generalization) in as much as this is justified from a technical viewpoint, and

(ii) parallel subdivisions, bearing in mind the fact that the fields in question will become increasingly unrelated.

2.3 Often various search strategies are possible, and the search examiner should exercise his judgment based on his experience and knowledge of the search files, to select the search strategy most appropriate to the case in hand, and establish the order in which various classification units are to be consulted accordingly. He should give precedence to the units in which the probability of finding relevant documents is highest. Usually the main technical field of the international application will be given precedence, starting with the classification units most relevant to the specific example(s) of the claimed invention.

2.4 The search examiner should then carry out the international search, directing his attention primarily to novelty, but also at the same time paying attention to any prior art likely to have a bearing on inventive step. He should also note any documents that may be of importance for other reasons, such as documents putting doubt upon the validity of any priority claimed, contributing to a better or more correct understanding of the claimed invention, or illustrating the technological background; but he should not spend time in searching for these documents, nor in the consideration of such matters unless there is a special reason for doing so in a particular case.

2.5 The search examiner should concentrate his search efforts on the classification units in which the probability of finding highly relevant documents is greatest. He should always take account of the search results already obtained in considering whether to extend the search to other areas.

2.6 The search examiner should continuously evaluate the results of his search, and if necessary reformulate the subjects of the international search accordingly. The selection of the classification units to be searched or the order of searching them may also require alteration during the search as a consequence of intermediate results obtained. The search examiner should also use his judgment, taking into account results obtained, in deciding at any time during or after the systematic search, whether he should approach the search documentation in some different manner, e.g., by consulting documents cited in the description of documents produced by the search or in a list of references of such documents, or whether he should turn to documentation outside that which is available in the search files.

2.7 If no documents of a more relevant nature for assessing novelty and inventive step are available, the search examiner should consider citing any documents relevant to the "technological background" of the invention (see Chapter III, paragraph 3.14), which he may have noted during the international search. Generally speaking no special search effort will be undertaken for this purpose; however, the search examiner may exercise his discretion here in special cases. In exceptional cases an international search may be completed without any relevant document having been found.

2.8 Reasons of economy dictate that the search examiner uses his judgment to end his search when the probability of discovering further relevant prior art becomes very low in relation to the effort needed. The international search may also be stopped when documents have been found clearly demonstrating lack of novelty in

[CHAPTER IV (cont'd.)]

the entire subject matter of the claimed invention and its elaborations in the description, apart from features which are trivial or common general knowledge in the field under consideration, application of which features would not involve inventive step.

3. Procedure after searching

3.1 After completion of the international search, the search examiner should select from the documents retrieved, the ones to be cited in the international search report. These should always include the most relevant documents (which will be specially characterized in the report, PCT Rule 43.5(c)). Less relevant documents should only be cited when they concern aspects or details of the claimed invention not found in the documents already selected for citation. In cases of doubt or borderline cases in relation to novelty or inventive step, the search examiner should readily make citations in order to give the designated Offices and International Preliminary Examining Authorities the opportunity to consider the matter more fully.

3.2 To avoid increasing costs unnecessarily, the search examiner should not cite more documents than is necessary, and therefore when there are several documents of equal relevance the international search report should not normally cite more than one of them. When more than one member of the same patent family is present in a search file, the international search need not discover all of them nor need the international search report cite all of them. In selecting from these documents for citation, the search examiner should pay regard to language convenience, and preferably cite (or at least note) documents in the language of the international application.

3.3 Finally the search examiner should prepare the international search report (see Chapter X).

3.4 It may happen occasionally, that after completion of an international search report, the International Searching Authority discovers further relevant documents (e.g. in a later search for a related application). These should be added to the international search report up to the time that preparations for its publication are completed. Thereafter, if within two years from the priority date of the international application the International Searching Authority should discover any particularly relevant document, it should bring this to the notice of the applicant and of the International Bureau for subsequent communication to the designated Offices and the International Preliminary Examining Authorities and for publication.

CHAPTER V

CLASSIFICATION OF INTERNATIONAL APPLICATIONS

1. Definition

1.1 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 mandatory 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, together with the identification of any "supplementary" and "complementary" information contained in the document being classified 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.

[CHAPTER IV (cont'd.)]

2. Definitive classification of the international application

2.1 The classification of the international application will be determined by the search examiner, who should apply all classification symbols required by the rules of the IPC, not only in respect of the claimed invention ("Obligatory Classification"), but also the "supplementary" and "complementary" information (Non-Obligatory Classification) as defined in the current edition of the Guide to the IPC. Preferably this should be done when he has studied the content of the application in order to carry out the international search. However, if, exceptionally, publication of the application is due before the search, it will be necessary for the search examiner to study the application sufficiently to determine the classification at this earlier stage. The terms "Obligatory Classification" and "Non-Obligatory Classification" are defined in the Recommendation of the Committee of Experts of the IPC Union annexed hereto (Annex A). The search examiner should first of all identify and classify the technical subject or subjects of the invention in accordance with the guidance given under "Obligatory Classification." Further guidance, if required, will be found in Chapter III, paragraphs 3.1 and 3.2.

2.2 If the international application requires classification in more than one sub-class, or more than one main ("OO") group within a sub-class, then all such classifications should be assigned. It is particularly important that the classification of the invention itself should be distinguished from any "supplementary" or "complementary" classification and that, 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.

2.3 The classification should be determined without taking into consideration the probable content of the international application after any amendment, since this classification should relate to the disclosure in the international application as filed. If, however, the search examiner's understanding of the invention, or of the content of the application as filed, alters significantly as a result of the search (e.g., as a result of prior art found, or because of the clarification of apparent obscurities), he should amend the classification accordingly unless it is too late for publication.

3. Amended classification in the case of later published international search report

3.1 In the case where the international search report is not available in time for publication with the international application and is therefore published separately, and the search examiner finds it necessary to amend the original classification for the reasons given in paragraph 2.3 above, he should include the amended classification in the international search report, indicating that it replaces that published on the international application. Such amendment of the classification should not be made unless the search examiner is quite certain that it is necessary.

4. Classification when scope is obscure

4.1 When the scope of the invention is not clear, the classification will have to be based on what appears to be the invention in so far as this can be understood. It may then be necessary to amend it if obscurities are removed by the search, as discussed in paragraph 2.3 above.

5. Lack of unity of invention

5.1 All claimed inventions must be fully classified, whether or not there is lack of unity of invention, since all will be disclosed in the published international application. Each invention claimed is to be classified as set out in paragraphs 2.1 to 4.1 above.

CHAPTER VI
RELEVANT PRIOR ART

1. Prior art generally

1.1 PCT Article 15(2) states that the objective of the international search is to discover relevant prior art, which by the terms of PCT Rule 33.1(a) shall consist of everything which has been made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) and which is capable of being of assistance in determining that the claimed invention is or is not new and that it does or does not involve an inventive step (i.e., that it is or is not obvious), provided that the making available to the public occurred prior to the international filing date.

1.2 It follows that oral disclosure, use, exhibition or other means of disclosure is not relevant prior art for the purposes of the international search unless it is substantiated by a written disclosure. The date on which the written disclosure was made available to the public may have been after the filing date of the international application under consideration (PCT Rule 33.1(b)).

1.3 It is to be noted that there is no restriction whatever with respect to the geographical place where, or the language or manner in which, the relevant information was made available to the public; also no age limit is stipulated with respect to documents containing this information.

2. Novelty

2.1 In considering novelty, the documents of the relevant prior art should be considered separately; consequently it is not permissible to combine or mosaic separate documents together.

2.2 A document takes away the novelty of any subject matter explicitly contained in the document.

2.3 A prior document should be construed only in the light of knowledge available at the time the document was published, and excluding any knowledge subsequently discovered.

2.4 In considering novelty it should be borne in mind that a generic disclosure does not usually take away the novelty of any specific example falling within the terms of that disclosure, but that a specific disclosure does take away the novelty of any generic claim embracing that disclosure, e.g., a disclosure of copper takes away the novelty of metal, and one of rivets takes away the novelty of fastening means.

3. Documents to be cited according to PCT Rule 33.1(c)

3.1 Where the search examiner finds in the search files any published application or any patent whose publication date is later but whose filing date, or, where applicable, claimed priority date, is earlier than the international filing date of the international application searched, and which would constitute relevant prior art for the purposes of PCT Article 15(2) had it been published prior to the international filing date, the application or patent shall be specially mentioned in the international search report (PCT Rule 33.1(c)).

4. Date of reference; filing and priority date

4.1 Since the International Searching Authority is not responsible for the verification of any claimed priority date (which in the examination stage takes the place of the filing date for assessing relevant prior art and determining precedence) the basic reference date for the international search must be taken as the international filing date of the international application as accorded by the receiving Office (PCT Rule 33.1(a)).

[CHAPTER VI (cont'd.)]

4.2 The International Searching Authority will therefore take into account documents published between the priority date or dates and the filing date of the international application under consideration, and these must be identified as such in the international search report. For identifying these documents when an international application has more than one priority date, the oldest date is to be applied for this purpose. When deciding which documents to select for citing in the international search report, the search examiner will have to refer to these dates and should preferably choose any published before the date of priority. Thus, for example, where there are two equally relevant documents, one published before the date of priority and the other after that date but before the international filing date, he should choose the former (see Chapter IV, paragraph 3.2).

4.3 It is the responsibility of the designated Office to check whether and to what extent the priority claim is justified; therefore, the International Searching Authority will not check whether the contents of the international application correspond to those of the priority application(s). Nevertheless, documents showing that a priority claim might not be justified (e.g., an earlier application or patent resulting therefrom, by the same applicant, indicating that the application from which priority is claimed may not be the first application for the invention concerned) should be mentioned in the international search report. No special search should normally be made for this purpose except when there is a special reason to do so, e.g., when the priority application is a "continuation in part" of an earlier application from which no priority is claimed; also sometimes the fact that the country of residence of the applicant is different from the country of the priority application may be an indication of possible lack of first filing, justifying a certain extension of the international search.

4.4 The international search will mainly take into consideration documents published before the international filing date of the international application. However, some extension may be necessary for specific purposes, as is apparent from Chapter VI, paragraphs 1.2 and 4.1.

4.5 Certain other situations may occur in which a document published after the international filing date is relevant; examples are a later document containing the principle or theory underlying the invention, which may be useful for a better understanding of the invention, or a later document showing that the reasoning or the facts underlying the invention are incorrect. The international search should not be extended for this purpose, but documents of this nature known to the search examiner could be selected for citation in the international search report.

5. Contents of prior art disclosure

5.1 As a general rule the search examiner will select for citation only documents which are present in the search files of the International Searching Authority or to which he has access in some other manner; in that way no doubt will exist about the contents of the documents cited, since the search examiner will generally have physically inspected each document cited.

5.2 However, under certain circumstances a document whose contents have not been verified may be cited, provided there is justification for the assumption that there is identity of contents with another document which the search examiner has inspected and cited. Both documents should then be mentioned in the international search report. For example, instead of the document published before the international filing date in an inconvenient language and selected for citation, the search examiner may have inspected a corresponding document (e.g., another member of the same patent family, or a translation of an article) in a more convenient language and possibly published after the international filing date; also the search examiner may assume that, in the absence of explicit indications to the contrary, the contents of an abstract are contained in the original document. Also the search examiner should assume that the contents of a report of an oral disclosure are in agreement with that disclosure.

5.3 Before citing documents in a language with which he is not familiar, the search examiner should satisfy himself that the document is relevant (e.g., through translation by a colleague, through a corresponding document or abstract in a familiar language, through a drawing, or chemical formula in the document).

[CHAPTER VI (cont'd.)]

6. Matters of doubt regarding relevant prior art

6.1 Since decisions with respect to novelty are not the responsibility of the International Searching Authority but of the designated Offices, the International Searching Authorities should not discard documents because of doubt as regards, for example, the exact date of publication or public availability, or the exact contents of an oral disclosure, exhibition etc., to which such documents may refer. The International Searching Authority should try to remove any doubt that may exist and should cite the documents concerned in the international search report unless the date of publication or of public availability of the document concerned is clearly later than the filing date of the international application. Additional documents providing evidence in the matters of doubt may be cited.

6.2 Any indication in a document of the date of its publication should be accepted by the International Searching Authority as correct unless proof to the contrary is offered, e.g., by the International Searching Authority, showing earlier publication, or by the applicant, showing later publication. If the indicated date of publication is insufficiently precise (e.g., because a year or year and month only are given) to establish whether publication was before the filing date of the international application, the International Searching Authority should endeavor to establish the exact date with sufficient precision for that purpose. A date of receipt stamped on the document, or a reference in another document, which must then be cited, may be of assistance in this respect.

7. Evaluating the inventive step

7.1 The inventive step will have to be evaluated in relation to all aspects of the claimed invention, such as the underlying problem (whether explicitly stated in the international application or implied), the insight upon which the solution relies, the means constituting the solution, and the effect or results obtained. Therefore, the international search will take all these aspects into consideration.

CHAPTER VII

UNITY OF INVENTION

1. The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (PCT Rule 13.1). If the International Searching Authority considers that the international application does not comply with the requirement of unity of invention, it must search, and draw up the international search report for, those parts of the international application which relate to the invention (or group of inventions forming unity) first mentioned in the claims and those parts of the international application which relate to inventions for which additional fees have been paid (PCT Article 17(3)(a)).

2. The International Searching Authority will inform the applicant of the lack of unity of invention by a communication, preceding the issue of the international search report, which will contain an invitation to pay additional fees. This invitation must specify the reasons for which the international application is not considered as complying with the requirement of unity of invention, identify the separate inventions and indicate the amount to be paid (PCT Rule 40.1). The invention(s) or group(s) of inventions, other than the one first mentioned in the claims, will be searched only if the applicant pays the additional fees. Since these payments must take place within a period to be set by the International Searching Authority (PCT Article 17(3)(a), Rule 40.3) and within the time limit for the international search report set by PCT Rule 42, the International Searching Authority should endeavor to ensure that international searches be made as early as possible.

3. The applicant may protest the allegation of lack of unity of invention or that the amount of the additional fee is excessive and request a refund of the additional fee(s) paid. If the International Searching Authority finds the protest justified, the fee(s) will be refunded (PCT Rule 40.2(c)).

[CHAPTER VII (cont'd)]

4. From the preceding paragraph it is clear that the decision with respect to unity of invention rests with the International Searching Authority. In particular, the International Searching Authority should not raise objection of lack of unity of invention merely because the inventions claimed are classified in separate classification units or merely for the purpose of restricting the international search to certain classification units.
5. As indicated in Chapter VII, paragraph 1, the basic criterion for unity of invention is the presence of a single general inventive concept. Consequently, the mere fact that an international application contains several independent claims of the same category or claims of different categories related under PCT Rules 13.2 and 13.3 is in itself no reason for objection on the grounds of lack of unity of invention.
6. PCT Rule 13.2 particularly specifies certain combinations of different categories of claims that should not be objected to on the grounds of lack of unity of invention.
7. Lack of unity of invention may also exist within a single claim. Where the claim contains distinct features which are not linked by a single general inventive concept, the objection as to lack of unity of invention should be raised.
8. Objection of lack of unity of invention does not normally arise because a claim contains a number of individual elements in combination even if these are unrelated (see Chapter III, paragraph 3.10).
9. Lack of unity of invention may be directly evident "a priori," i.e., before considering the claims in relation to any prior art, or may only become apparent "a posteriori," i.e., after taking the prior art into consideration, e.g., a document discovered in the international search shows that there is lack of novelty in a main claim, leaving two or more dependent claims without a single general inventive concept.
10. Whether the lack of unity of invention may be directly evident "a priori" or becomes apparent "a posteriori," the search examiner, when he finds that a situation of lack of unity of invention exists, shall (except in the situation referred to in paragraph 12) immediately inform the applicant of his finding and invite the applicant to pay additional search fees. The search examiner shall then search or continue to search the invention first mentioned in the claims ("main invention"). The international search for additional inventions will then have to be completed only if and when the additional fees are paid.
11. Reasons of economy may make it advisable for the search examiner, while making the search for the main invention, to search at the same time, despite the non-payment of additional fees, the additional inventions in the classification units consulted for the main invention if this takes little or no additional search effort. The international search for such additional inventions will then have to be completed in any further classification units which may be relevant, when the additional search fees have been paid. This situation may occur when the lack of unity of invention is found either "a priori" or "a posteriori."
12. Occasionally in cases of lack of unity of invention, especially in an "a posteriori" situation, the search examiner will be able to make a complete international search for both or all inventions with negligible additional work, in particular, when the inventions are conceptually very close and none of them requires search in separate classification units. In those cases, the search examiner may decide to complete the international search for the additional invention(s) together with that for the invention first mentioned. All results should then be included in the international search report and no objection of lack of unity of invention should be raised.

CHAPTER VIII

EXCLUSIONS FROM THE INTERNATIONAL SEARCH

1. Subjects

1.1 PCT Rule 39 specifies certain subjects which an International Searching Authority is not required to search. The subjects which a particular International Searching Authority will not search under PCT Rule 39 will be set forth in the agreement between that International Searching Authority and the International Bureau. Therefore, the subjects excluded from the international search under PCT Rule 39 may vary between the various International Searching Authorities. Furthermore, the International Searching Authorities are not required to search subjects that are generally accepted not to be patentable subjects or susceptible of industrial application.

1.2 Where the subject matter of only some of the claims is a subject excluded from the search (see paragraph 1.1), this will be indicated in the international search report. Search should of course be made in respect of the other claims.

1.3 In cases of doubt as to whether subject matter covered by a claim constitutes a subject excluded from international search, the International Searching Authority should carry out the search to the extent that this is possible in the available documentation.

2. Obscurities, inconsistencies or contradictions

2.1 A situation where a meaningful international search is not possible for all or part of the claimed subject matter, and where a declaration to this effect may take the place of the international search report or be an observation therein, may result from the fact that the international application contains obscurities, inconsistencies or contradictions to the extent that it is impossible to arrive at a reasonable conclusion as to the scope of the claimed invention (PCT Article 17(2)(a)(ii) and (b)). The International Searching Authority in these cases should make a meaningful search to the extent that this is possible and should not ask for clarification.

CHAPTER IX

INTERNATIONAL SEARCH DOCUMENTATION

1. General

1.1 In Article 15(4), the PCT requires the International Searching Authority to endeavor to discover as much of the relevant prior art as its facilities permit and, in any case, consult the minimum documentation specified in PCT Rule 34. The International Searching Authority must have in its possession at least this minimum documentation properly arranged for search purposes (PCT Rule 36.1(ii)).

2. Definition of international search documentation

2.1 The international search documentation is a document collection that is systematically arranged (or otherwise systematically accessible) for search purposes according to the subject matter content of the documents, which are primarily patent documents supplemented by a number of articles from periodicals and other items of non-patent literature.

3. PCT minimum documentation

3.1 The minimum documentation is the document collection arranged for systematic access which consists of :

- (i) national patent documents specified in PCT Rule 34.1 (c);

[CHAPTER IX (cont'd.)]

(ii) published international (PCT) applications, published regional patents and inventors' certificates and published applications therefor (PCT Rule 34.1 (b) (ii));

(iii) such other published items of non-patent literature as are agreed upon by the International Searching Authorities (PCT Rule 34.1(b) (iii)).

3.2 Further detailed information as to the contents of the minimum documentation is set forth in Annex B of this document.

4. Search file contents

4.1 In order to reduce the bulk of the systematically accessible search documentation and the amount of classification work, whenever an application is republished as such or as a granted patent, normally only one of these documents need be included in the search files (PCT Rule 34.1(d)).

4.2 Not all members of a patent family need to be physically present in the systematically arranged search files (see document PCT/TCO/IV/18, paragraph 28 (i)). The question which member or members of a patent family should be included in the search files is left to the discretion of each International Searching Authority so long as access to other members of the family is provided (see document PCT/TCO/VI/16, paragraph 81).

CHAPTER X

INTERNATIONAL SEARCH REPORT

1. General

1.1 The results of the international search will be recorded in the international search report, which is transmitted to the applicant and to the International Bureau and serves as a basis for publication and for examination of the international application by the designated Offices and the International Preliminary Examining Authority.

1.2 The search examiner is responsible for seeing that the international search report is drawn up in handwriting or by typing on a preprinted form for subsequent retyping in final form.

1.3 This Chapter contains information which is necessary to enable the search examiner to complete the form correctly. Further information is contained in the following Sections of the Administrative Instructions:

- for the indication of dates: Section 110
- for the classification of the international applications: Section 504
- for the identification of the cited documents: Section 503
- for the indication of special categories of documents: Sections 505 and 507
- for the indication of the claims to which cited documents are relevant: Section 508.

[CHAPTER X (cont'd.)]

1.4 The international search report must contain no matter, in particular, no expressions of opinion, reasoning, arguments or explanations, other than as required by the form (PCT Rule 43.9).

2. Different types of international search reports

2.1 The International Searching Authority shall draw up the following types of search reports:

- (a) International search report (see Chapter III, paragraph 4.1);
- (b) International-type search report (see Chapter III, paragraph 4.2).

3. Form and language of the international search report

3.1 The preprinted search report form for use by the search examiner contains two main pages to be used for all searches for recording the important features of the search such as the fields searched, and for citing documents revealed by the search, and two optional supplemental sheets (see Form PCT/ISA/210 and 201 annexed to the Administrative Instructions). One of these supplemental sheets is to be used only when modifications in the title or abstract to be published are desired (see Chapter X, paragraph 5). The other supplemental sheet is to be used only when restrictions have been applied as to the subject of the search (see Chapter X, paragraph 6).

3.2 The international search report shall be drawn up in the language in which the international application to which it relates is published (PCT Rule 43.4).

4. Areas of technology searched

4.1 The international search report shall list the classification identification of the fields searched. If the IPC is not used for this purpose, the classification used has to be published (PCT Rule 43.6(a)).

4.2 Where the international search report is entirely or partly based on a previous search made for an application relating to a cognate subject, the search files consulted for this previous search must also be identified in the report as having been consulted for the international application in question.

5. Abstract and title

5.1 In the international search report, the search examiner must indicate approval or amendment of the text of the abstract, the title of the invention, and the selection of the figure which is to accompany the abstract (PCT Rules 8, 44.2) (see Chapter XI). If amendment is desired, the details thereof should be indicated.

6. Restriction of the subject of the international search

6.1 The report must indicate whether the search was restricted or not for any of the reasons indicated in paragraph 6.2.

6.2 If any such restrictions were applied, the claims in respect of which a search has not been carried out must be identified and the reasons for this should be indicated.

The three categories where such restrictions may arise are:

- (a) lack of unity of invention (see Chapter VII); the total number of separate inventions is to be indicated;
- (b) claims drawn to subject matter excluded from the search (see Chapter VIII);
- (c) claims in respect of which a meaningful search cannot be carried out (see Chapter VIII).

[CHAPTER X (cont'd.)]

7. Authentication and dates

7.1 The identification of the International Searching Authority which established the international search report and the date on which the report was drawn up should be indicated in the search report. This date should be that of the drafting of the report by the search examiner who carried out the search (PCT Rule 43.1, 43.2).

7.2 The international search report should be signed by an authorized officer of the International Searching Authority (PCT Rule 43.8).

CHAPTER XI

THE ABSTRACT AND THE TITLE OF THE INVENTION

1. The international application must contain an abstract. The purpose of the abstract is to give brief technical information about the disclosure as contained in the description, the claims and any drawings.

2. The search examiner has the task of determining the definitive content of the abstract which is initially supplied by the applicant, and which will subsequently be published with the international application or later (PCT Rule 38.2(b)). In doing this, he should consider the abstract in relation to the application as filed (see Chapter IV, paragraph 1.4). If the international search report is published later than the international application, the abstract published with the application will be as filed, subject to the results of the examination referred to in Chapter IV, paragraph 1.6, and the definitive abstract will be published together with the search report.

3. In determining the definitive content of the abstract the search examiner should take into consideration the fact that the abstract is merely for use as technical information and, in particular, must not be used for the purpose of interpreting the scope of the protection sought. The abstract should be so drafted that it constitutes an efficient instrument for the purpose of assisting the scientist, engineer or researcher in searching in the particular technical field, and should in particular make it possible to assess whether there is need for consulting the international application itself (PCT Rule 8.3).

4. The abstract must meet the requirements of PCT Rule 8. The Guidelines for Preparation of Abstracts (see document PCT/TCO/V/10) are applicable.

5. The search examiner should consider not only the text of the abstract but also the selection of the figures for publication with it. He should alter the text to the extent that this may be necessary in order to meet the requirements set out in PCT Rule 8. He shall select a different figure, or figures, of the drawings if he considers that they better characterize the invention and note it in the international search report (PCT Rule 8.2). In determining the definitive content of the abstract, the search examiner should concentrate on conciseness and clarity, and refrain from introducing alterations merely for the purpose of embellishing the language.

6. The search examiner will be required to approve or establish the title of the invention (PCT Rules 37.2, 44.2(a)). The cases in which he will be required to establish the title will be:

(i) where the international application does not contain the title and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish the title, or

(ii) where the search examiner finds that the title does not comply with the requirements set out in PCT Rule 4.3 (PCT Rule 37.2) (see also Chapter IV, paragraph 1.4).

ANNEX A

RECOMMENDATION
REFERRED TO IN CHAPTER V, PARAGRAPH 2.1

The Committee of Experts recommends, in conformity with Article 5(3)(ii) of the Strasbourg Agreement Concerning the International Patent Classification, that patent documents be classified in accordance with the following rules:

Obligatory Classification (symbols appearing before the double oblique stroke)

According to Article 4, paragraph 3, of the Strasbourg Agreement Concerning the International Patent Classification, in classifying a patent document, the competent authorities of the countries of the Special Union shall indicate the complete symbols of the Classification applied to the invention to which this patent document relates.

For this purpose, it is necessary to identify the technical subject or subjects with which the invention is immediately and essentially concerned or to which it relates.

To establish this, consideration must be given to the invention defined by the claims, with due regard to the description and the drawings (if any) whenever necessary for the interpretation of the claims, in order to identify the technical subject(s) to be classified. The classification symbols allotted should not be restricted to those of the place(s) in the Classification which cover only one aspect of a technical subject identified. Due regard should also be given to further places in the Classification where other aspects of that technical subject may need to be classified.

Non-Obligatory Classification (symbols appearing after the double oblique stroke)

There are often parts of the technical disclosure of a patent document which, although not part of the invention, constitute useful supplementary information to searchers. Since, upon publication of the patent document concerned, such parts of the technical disclosure will be relevant for future applications, it is desirable that such information also be classified. Additionally, it is desirable in certain areas of technology, which are indicated in the Classification, that complementary information, relating to the constituent elements of an invention which has already been classified as such, be classified as well. It is therefore recommended that, in order to improve the benefits to be derived from the Classification, the competent authorities of the countries of the Special Union also indicate the relevant symbols in respect of these two kinds of information.

[Annex B follows]

ANNEX B

CONTENTS OF THE PCT MINIMUM DOCUMENTATION
REFERRED TO IN CHAPTER IX, PARAGRAPH 3.2

A. National patent documents specified in PCT Rule 34.1 (c)

1. The national patent documents specified in PCT Rule 34.1 (c) are the following :

(i) the patents issued in and after 1920 by France, the former Reichspatentamt of Germany, Japan, the Soviet Union, Switzerland (in the French and German languages only), the United Kingdom and the United States of America (PCT Rule 34.1 (c) (i));

(ii) the patents issued by the Federal Republic of Germany (PCT Rule 34.1 (c) (ii));

(iii) the patent applications, if any, published in and after 1920 in the countries referred to in items (i) and (ii) (PCT Rule 34.1 (c) (iii));

(iv) the inventors' certificates issued by the Soviet Union (PCT Rule 34.1 (c) (iv));

(v) the utility certificates issued by, and the published applications for utility certificates of, France (PCT Rule 34.1 (c) (v)).

(vi) the patents and/or published patent applications from other countries since 1920 in the English, French or German language, in which no priority is claimed and which are sorted out and placed at the disposal of the International Searching Authorities by the national Office of the issuing country (PCT Rule 34.1(c) (vi)).

2. An inventory of the national patent documents pertaining to the PCT minimum documentation specified in paragraph 1(i) to (v) above and published in the period from January 1, 1920, to December 31, 1976, is given in document PCT/TCO/... . This inventory indicates the ranges of the publication numbers of the patent documents concerned.

3. In view of the provisions of PCT Rule 34.1(e), document PCT/TCO/... also specifies patent documents of Japan and the Soviet Union for which abstracts in the English language are generally available.

B. Published items of non-patent literature under PCT Rule 34.1(b) (iii)

4. Document PCT/INT/1 specifies the items of non-patent literature under PCT Rule 34.1(b) (iii) agreed upon by the prospective International Searching Authorities and adopted by the PCT Interim Committee for Technical Cooperation.

[End of document]