

# WIPO



PCT/WG/2/13

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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

INTERNATIONAL PATENT COOPERATION UNION  
(PCT UNION)

PATENT COOPERATION TREATY (PCT)  
WORKING GROUP

Second Session  
Geneva, May 4 to 8, 2009

SUMMARY BY THE CHAIR

Agenda item 1: Opening of the session

1. Mr. Francis Gurry, Director General of WIPO, opened the session and welcomed the participants. Mr. Claus Matthes (WIPO) acted as Secretary to the Working Group.

Agenda item 2: Election of a Chair and two Vice-Chairs

2. The Working Group unanimously elected Mr. Alan Troicuk (Canada) as Chair for the session, and Mr. Yin Xintian (People's Republic of China) and Mr. Gennady Negulyaev (Russian Federation) as Vice-Chairs.

Agenda item 3: Adoption of the agenda

3. The Working Group adopted as its agenda the draft contained in document PCT/WG/2/1 Rev. 2.

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Agenda items 4(a) to (d):

The Future of the PCT;

Proposals to Enhance Quality and Efficiency of the PCT Route;

Three Track PCT System; and

Comprehensive Proposal for PCT Reform

4. Discussions were based on documents PCT/WG/2/3, 8, 11 and 12.

5. The Meeting agreed that the relevant PCT bodies should continue their work to improve the PCT. The Meeting agreed that the PCT system can and should function more effectively, within the existing legal framework of the Treaty provisions,

- to deliver results which meet the needs of applicants, Offices and third parties in all Contracting States;
- without limiting the freedom of Contracting States to prescribe, interpret and apply substantive conditions of patentability and without seeking substantive patent law harmonization or harmonization of national search and examination procedures.

6. The Meeting agreed that the relevant PCT bodies should discuss ways in which the objective set out in paragraph 5, above, could be achieved,

- taking an incremental approach;
- in a member-driven process, involving broad-based consultations with all stakeholder groups, including regional information workshops;
- taking into account the recommendations contained in the WIPO Development Agenda;
- taking into consideration the topics addressed in the draft roadmap proposed by the International Bureau in document PCT/WG/2/3, subject to the discussions set out in the Working Group's report, taking note of certain concerns expressed by Contracting States, and taking note of any other topics which Contracting States may wish to address in order to achieve the objective set out in paragraph 5.

7. The Meeting agreed that the work set out in paragraph 6, above, should be informed by an in-depth study factoring in, but not limited to, the following elements:

- outlining the background of the need to improve the functioning of the PCT system;
- identifying the existing problems and challenges facing the PCT system;
- analyzing the causes underlying the problems;
- identifying possible options to address the problems;
- evaluating the impact of the proposed options;

- defining and clarifying concepts, such as ‘duplication of work’, ‘unnecessary actions’ etc.

The Meeting recommended that this study be prepared and submitted to the Working Group at least two months before the next Working Group meeting.

8. The Meeting agreed on the importance of fee reductions and capacity building measures, including in patent drafting and filing, and agreed that the relevant PCT bodies should prepare proposals, including fee reductions and capacity building measures, to increase access to the PCT for independent inventors and/or natural persons, small and medium sized enterprises and universities and research institutions, in particular from developing and least developed countries.

9. The Meeting recommended that technical assistance be enhanced for national and regional Offices of developing and least developed countries in order that they may benefit fully from the PCT system, and the Meeting agreed on the importance of facilitating participation by representatives of Offices of developing and least developed countries in the meetings of the PCT Working Group.

Agenda item 4(e): Enhancing the Value of International Search and Preliminary Examination Under the PCT: Making International Preliminary Examination More Useful

10. Discussions were based on document PCT/WG/2/6.

11. Many of the issues had, at a general level, been considered in the context of the section “Making International Examination More Complete, Relevant and Useful” in paragraphs 4 and 5 of Annex I to document PCT/WG/2/3 and delegations did not wish to comment in further detail at this stage.

Agenda item 4(f): Form of Amendments

12. Discussions were based on document PCT/WG/2/9, containing proposals by the European Patent Office.

13. The Working Group approved the proposed amendments of the Regulations set out in the Annex to document PCT/WG/2/9 with a view to their submission to the PCT Assembly for consideration at its next session, in September-October 2009, subject to the need to add a provision along the lines of Rule 70.2(c), but as a “may” rather than a “shall” provision, and to possible further drafting changes to be made by the Secretariat.

14. One delegation had to reserve its position pending completion of assessment of the proposals.

Agenda item 4(g): Eligibility Criteria for Reductions in Certain Fees

15. Discussions were based on document PCT/WG/2/4.

16. The Working Group agreed to request the Secretariat to carry out studies requested by the delegations of Barbados and Singapore, and to present those studies to the next session of the Working Group.

Agenda item 4(h): Establishment of Equivalent Amounts of Certain Fees

17. Discussions were based on document PCT/WG/2/2.

18. The Working Group approved the proposed amendments of the Regulations set out in Annex I to document PCT/WG/2/2, the proposed amendments to the Directives of the Assembly set out in Annex II to document PCT/WG/2/2 and the proposed amendments to Article 11 of the Agreements between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities as set out in Annex III to document PCT/WG/2/2, with a view to their submission to the Assembly for consideration at its next session, in September-October 2009, subject to certain agreed drafting changes and to possible further drafting changes to be made by the Secretariat, including to clarify the application of the Directives to the supplementary search fee.

19. One delegation had to reserve its position pending completion of assessment of the proposals.

Agenda item 4(i): International Form for National Phase Entry

20. Discussions were based on document PCT/WG/2/5.

21. There was no consensus for further work on this proposal at this time.

Agenda item 4(j): Presentation of Revisions to International Applications

22. Discussions were based on document PCT/WG/2/7.

23. The Working Group recognized the importance of developing effective systems to handle and publish international applications in electronic format and noted that it was important to be able to distinguish clearly between original and subsequently provided parts of the international application. It was noted that further consultations would be made by circulars.

Agenda item 4(k): Supplementary International Search

24. Discussions were based on document PCT/WG/2/10.

25. The Working Group approved the proposed amendments of the Regulations set out in the Annex to document PCT/WG/2/10 with a view to their submission to the Assembly for consideration at its next session, in September-October 2009, subject certain comments and clarifications and to possible further drafting changes to be made by the Secretariat, including the need to clarify that refunds under Rule 45*bis*.5(g) do not apply to the case of non-establishment of the supplementary international search because of subject matter in accordance with Article 17(2) and Rule 39, as they apply under Rule 45*bis*.5(c).

26. One delegation had to reserve its position pending completion of assessment of the proposals.

Agenda item 5: Other matters

27. The Working Group agreed that proposals concerning entry into force and transitional arrangements in respect of those amendments of the Regulations, of the Directives and of Article 11 of the Agreements between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities which had been approved by the Working Group with a view to their submission to the Assembly for consideration at its next session, in September-October 2009, should be posted by the Secretariat on the Working Group's electronic forum on WIPO's website for comments and suggestions by delegations and representatives, with a view to submitting detailed proposals to the Assembly.

Agenda item 6: Further work

28. The Working Group agreed that the present summary by the Chair should be submitted, together with the draft report of the present session, to the Assembly for consideration at its next session, in September-October 2009, to inform the Assembly of the discussions and decisions that had been made at the present session.

29. The Working Group agreed to recommend to the Assembly that, subject to the availability of sufficient funds:

(i) one session of the Working Group should be convened between the September 2009 and September 2010 sessions of the Assembly; and

(ii) the same financial assistance that had been made available to enable attendance of certain delegations at this session of the Working Group should be made available to enable attendance of certain delegations at that next session.

Agenda item 7: Adoption of the report of the session

30. It was agreed that a draft report of the present session would be circulated for comments and adoption by correspondence subsequent to the meeting.

*31. The Working Group noted the contents of this summary by the Chair.*

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