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WORKING GROUP ON THE DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS

Second Session
Geneva, July 16 to 19, 2007

REPORT

adopted by the Working Group

INTRODUCTION

1. The Working Group on the Digital Access Service for Priority Documents held its second session in Geneva from July 16 to 19, 2007¹.
2. The following members of the Working Group were represented: (i) the following Member States of the International Union for the Protection of Industrial Property (Paris Union), the Patent Law Treaty (PLT) Assembly and/or the International Patent Cooperation Union (PCT Union): Barbados, Canada, China, Colombia, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Iraq, Israel, Japan, Mexico, Monaco, Norway, Portugal, Republic of Korea, Romania, Russian Federation, Serbia, Spain, Sudan, Sweden, United Kingdom, United States of America; (ii) European Patent Office (EPO).
3. The following international non-governmental organization was represented as an observer: International Association for the Protection of Intellectual Property (AIPPI).

¹ Working documents for the session, and the electronic forum set up to facilitate the work of the Working Group, are accessible on WIPO's website via www.wipo.int/pdocaccess.

4. The following national non-governmental organization was represented as an observer: Intellectual Property Institute of Canada (IPIC).
5. The list of participants is contained in document WIPO/DAS/PD/WG/2/INF/1.

OPENING OF THE SESSION

6. Mr. Francis Gurry, Deputy Director General of WIPO, on behalf of the Director General, opened the session and welcomed the participants.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

7. The Working Group unanimously elected Mr. Peter Back (United Kingdom) as Chair for the session, and Mr. Bogdan Boreschievici (Romania) and Mr. Gennady Negulyaev (Russian Federation) as Vice-Chairs.
8. Mr. Philip Thomas (WIPO) acted as Secretary to the Working Group.

ADOPTION OF THE AGENDA

9. The Working Group adopted the agenda appearing in document WIPO/DAS/PD/WG/2/1.
10. The Working Group agreed that the record of the proceedings of the session would consist of a report in summary form, noting important matters raised in discussions and the conclusions reached.

ESTABLISHMENT OF THE DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS

11. The Secretariat observed that it was important for the Working Group to reach agreement on the system architecture, general principles, framework provisions and organizational structure at the present session so that systems development and consideration of operational matters could begin forthwith, with a view to making a practical implementation of the service available in the first half of 2008.

SYSTEM ARCHITECTURE

12. Discussions were based on document WIPO/DAS/PD/WG/2/2.
13. The Representative of the EPO, speaking also on behalf of the Delegations of Japan and the United States of America, expressed support for the system architecture as proposed in document WIPO/DAS/PD/WG/2/2, noting in particular that it would allow enough flexibility for both Offices of first filing and Offices of second filing to participate. The Representative pointed out some outstanding issues. First, consideration needed to be given by the Consultative Group to be established under the framework provisions (see below) as to how long recognized digital libraries would need to store priority documents, and it would be important for information about that matter to be published by the International Bureau. Second, the possibility of providing for access to translations of priority documents should be addressed at some stage, but priority should be given first to development of systems providing for access to priority documents themselves. Third, a cost estimate for the project

was needed covering both the building and future running of the system. It would be appropriate for the Consultative Group to be kept apprised of this issue.

14. The Secretariat emphasized that it was intended to provide a system which would support all of Routes A to C as set out in Figures 3 to 5 of document WIPO/DAS/PD/WG/2/2 (see Figures 2 to 4 in Annex I of the present document), the choice being left to each depositing Office as to which Route would be used in relation to priority documents entering the system from its digital library. The Secretariat noted that, while it would be necessary to support Route C in order to enable certain Offices to comply with statutory provisions relating to confidentiality of application information, careful development would be needed in order to ensure that it was implemented in a user friendly way.

15. The Delegation of the United States of America stated that its Office would be obliged to implement Route C because of national law requirements as to confidentiality of application data, but that work was in hand to ensure that real time access to the Office's systems would be possible, which would be key to permitting an immediate response when an application first entered the access control system. However, it would not be possible for the Office to guarantee service availability on a 24 hour/7 day basis. The Delegation observed that it would only be necessary to ensure service during normal office hours in order to meet the needs of most applicants. However, the system would also need to cater for those cases where it was not possible to provide an immediate response. The Representative of the EPO indicated that the EPO had not yet decided upon any of the three options available, and would therefore support the retention of Route C.

16. It was agreed that an Office of first filing should have the option of providing a service whereby it would manage the access list on behalf of an applicant in a similar way to that proposed for the International Bureau (see document WIPO/DAS/PD/WG/2/2, paragraph 8, second sentence, reflected in Annex I of the present document, paragraph 4). This would allow use of the service by applicants in regions with poor Internet connectivity without requiring them to write to the International Bureau. This option for Offices should also be reflected in the agreed general principles (see paragraphs 33 to 35, below, and Annex II, paragraph 5).

17. The importance of flexibility and interoperability was emphasized by several delegations and also by the Secretariat. The system should be able to support communication with a wide range of existing Office systems, so far as possible using the systems and protocols currently in use, including Trilateral Document Access Priority Document eXchange (TDA-PDX) (see document WIPO/DAS/PD/WG/1/6, paragraph 16 and Annex) and PCT (Patent Cooperation Treaty) Electronic Document Interchange (PCT-EDI).

18. In relation to a suggestion by one delegation that there ought to be a time limit for applicants to make a priority document accessible via the service, the Secretariat stated that it was intended that an Office of second filing would apply the same time limit for applicants to comply with the requirements of making a document available via the service as that which applied under the applicable law (under which the Office of second filing operates) for furnishing a priority document by conventional means directly to the Office. It was therefore not necessary to provide a specific time limit for requesting a priority document to be included in a digital library for the purposes of the service.

19. It was agreed that the first sentence of paragraph 9 of document WIPO/DAS/PD/WG/2/2 should be read as applying not only at the time of filing a later

application claiming priority but also when an applicant sought to satisfy requirements as to the provision of a priority document at a later time, that is, after the filing of the application claiming priority (see paragraph 5 in Annex I of the present document).

20. In relation to very large applications (for example, those including large sequence listings or computer programs), consideration would need to be given as to whether to impose a strict upper limit on file size or to offer transfer on physical media, such as DVDs, in some cases, at least as an interim measure. By way of example, the TDA systems currently permitted file transfers of up to 50MB, but work was underway to increase this limit. The matter would be an appropriate one for consideration by the Consultative Group.

21. One delegation suggested that consultations would be required on many of the technical considerations set out in paragraph 16 of document WIPO/DAS/PD/WG/2/2. The Secretariat stated that many of the issues concerned were ones which would be best dealt with at a bilateral level between the International Bureau and individual depositing or accessing Offices, in order to ensure that the new system would be able to connect properly with their particular systems. Certain of the other issues were of a more general nature and would require consultation with the Consultative Group, which could in any event always request information and give recommendations on matters affecting Offices using the system. However, micro-management of aspects of system development which did not affect the operation of systems of depositing and accessing Offices needed to be avoided, since this would slow development down greatly.

22. Certain specific suggestions by delegations as to technical matters needing to be addressed were noted by the Secretariat for further consideration as the systems were developed.

23. The Working Group recommended the use of a system architecture for implementation of the digital access service for priority documents based on a managed access list system, as summarized in Annex I.

24. The Working Group agreed that the means for addressing technical considerations such as those set out in paragraph 16 of document WIPO/DAS/PD/WG/2/2 should be determined by the International Bureau in the process of developing the new system, consulting the Consultative Group as appropriate on matters of more general importance.

25. The Working Group agreed that the question of how to deal with corrections of priority documents under the new system, as raised in paragraph 17 of document WIPO/DAS/PD/WG/2/2, should be left for consideration by the Consultative Group.

26. The Working Group recommended that initial development work should focus on the use of TDA and PCT communication services as described in paragraph 18 of document WIPO/DAS/PD/WG/2/2.

27. The Secretariat provided an estimate of the costs of implementing and running the digital access service in accordance with the system architecture which was recommended by the Working Group. The cost of initial setup would be small, because the hardware infrastructure necessary for the likely initial level of usage was already in place for PCT purposes and much of the software required for document scanning and communication was already either in use (for PCT-EDI and PCT-COR) or under development (for a TDA bridge

and developments of PatentScope) for PCT purposes. The estimated software development costs for systems specific to the digital access service amounted to 185,000 Swiss francs in addition to certain software development and maintenance activities that would be absorbed by the internal teams responsible for the PCT software mentioned above. Operation of the service once established was expected to require a single administrative member of staff. When the service is sufficiently mature, additional specific hardware would be required to ensure a reliable service at a high volume of use, at an estimated cost of 180,000 Swiss francs and an additional one or two administrative staff members to assist in operation of the system.

28. The Secretariat stated that these costs and administrative roles would be accommodated within the existing budget and staffing levels, the latter being possible by further efficiencies expected to be achieved through deployment of further improvements to IT systems within the PCT over the relevant period.

29. The Delegation of Japan expressed its appreciation for providing the estimate by the Secretariat, stating that transparency and accountability in governance of the Organization was important both for Member States and for users of the patent system.

30. Several delegations noted that there would also be costs involved for depositing and accessing Offices in developing and administering the systems involved.

ORGANIZATIONAL STRUCTURE AND FRAMEWORK PROVISIONS

31. Discussions were based on document WIPO/DAS/PD/WG/2/3.

32. The Secretariat noted that the digital access service would exist in parallel with other systems for accessing priority documents and that Offices of second filing should have the flexibility to retrieve priority documents from whichever source was appropriate.

General Principles

33. Discussions were based on the text of the agreed principles as set out in Annex II of document WIPO/DAS/PD/WG/2/3, which included certain suggested changes to the principles as agreed by the Working Group at its first session.

34. The Working Group agreed that a further change be made to the principles as mentioned in paragraph 16, above.

35. The Working Group recommended the general principles for implementation of the digital access service for priority documents as set out in Annex II.

Framework Provisions and Explanatory Notes

36. Discussions were based on the draft framework provisions and explanatory notes set out in Annex III of document WIPO/DAS/PD/WG/2/3.

37. Informal breakout sessions, in which all delegations were invited to participate, were held with the aim of considering some of the technical and drafting issues involved in the framework provisions and the explanatory notes. As a result of that work, a number of changes were agreed by the Working Group and incorporated in the text that was approved.

38. The Working Group recommended that the International Bureau establish framework provisions as set out in Annex III, together with the explanatory notes supplementing those provisions, subject to possible further drafting changes, including those mentioned in paragraph 43, below, to be made by the Secretariat after consultation with participants in the Working Group via the priority documents electronic forum.
39. Certain comments and clarifications, particularly concerning matters that required further consideration and possible drafting changes, are noted in the following paragraphs.
40. It was agreed that the framework provisions did not affect the basic rights and obligations, or give rise to any new obligations, under the Paris Convention or the PLT (see paragraphs 4 and 9 of the framework provisions and explanatory notes 5 and 8).
41. In connection with paragraph 7 of the framework provisions, the Delegations of China and the Republic of Korea indicated that their Offices currently operated digital libraries which were in use for exchanging priority documents and expressed the desire that their digital libraries be designated as participating from the outset. It was also noted that the Korean Intellectual Property Office would soon be implementing the TDA protocol. The Secretariat confirmed that electronic priority document exchanges were currently made between the International Bureau and those Offices in the context of the PCT, and consequently it foresaw no difficulty in establishing the necessary connections for the purposes of the digital access service. Those digital libraries were accordingly included among those which would be designated at the outset under paragraph 7(i) of the framework provisions (see explanatory note 7).
42. Three delegations indicated that paragraphs 12 and 13 of the framework provisions as originally set out in document WIPO/DAS/PD/WG/2/3 would be incompatible or inconsistent with their national laws, noting also that in some cases the procedures followed were in some ways more advantageous to applicants than under those paragraphs. While agreeing that the applicant should be offered suitable protection against a failure of the service following the taking of proper and timely steps to make a priority document available to an Office of second filing via the service, the Working Group agreed that it would be acceptable for an Office to notify the applicant of the need to furnish or make available a priority document prior to the final date by which the priority document was required. The applicant should then have to comply within a time limit (being not less than two months from the date of the notification). The redrafted text of those paragraphs appearing as paragraphs 14 and 15 in Annex III attempted to take those concerns into account.
43. It was agreed that delegations should have the opportunity to consider further whether the text of the corresponding paragraphs in Annex III (paragraphs 14 and 15) met the desired objective and to make any comments or proposals for redrafting via the priority documents electronic forum. In particular, the Delegations of Japan and the United States indicated that they would check whether the text would be consistent with their national laws. The Delegation of Japan stated that, if the text were found to be inconsistent, it would seek the inclusion of a transitional reservation provision designed to enable the necessary changes to be made under its national law in order to be able to implement the provisions. It was agreed that such a provision should be included if further consideration showed it to be necessary, the text to be settled in consultation with delegations via the priority documents electronic forum. The Delegation of Sweden also stated that the paragraphs would be incompatible with the present provisions of its national law.

44. The Secretariat pointed out that paragraphs 12 to 15 of the framework provisions formed, in effect, a single package, and that any transitional provision or exceptions in respect of these provisions would introduce confusion and a possible trap for applicants, since there would be a risk of applicants losing rights as a result of a failure in the service rather, despite their having correctly performed all the necessary tasks in good time and without any knowledge that there was a problem until it was too late for the problem to be resolved.

45. The Representative of the EPO stated that it was its understanding that paragraph 14 of the framework provisions did not prevent an Office from giving the opportunity to comply subject to the payment of a fee.

46. In response to a query from a delegation, the Secretariat confirmed that the list of the ways in which a priority document could become publicly available under the service, as set out in paragraph 17 of the framework provisions, was exhaustive. Priority documents might also become publicly available in other ways, but to ensure appropriate confidentiality, the restrictions on access to documents *via the service* should only be lifted if authorized in one of the ways mentioned in paragraph 17. It was observed that, in the case of publication by an Office of second filing, the relevant Office would need to be an “authorized accessing Office” as defined in paragraph 14, and that the applicable law would be the law under which that Office operated. The Secretariat confirmed that Offices would not be under any obligation to notify the International Bureau that documents had been published.

47. In relation to paragraph 18(iv) of the framework provisions, one delegation emphasized that it would be necessary for the International Bureau’s publication of information to clearly distinguish between notifications and information from Offices under paragraph 8 and paragraph 10 of the framework provisions, respectively, in order to avoid confusion for applicants.

48. In relation to paragraph 22 of the framework provisions, the Working Group noted that the requirements of translations would be sufficiently different from those of priority documents, and the framework provisions therefore could not apply to translations *mutatis mutandis* when the service was developed to take account of them. The Consultative Group would need to consider the necessary operating procedures and, if appropriate, recommend modifications of the framework provisions for consideration by the Working Group under paragraph 24 of the framework provisions.

49. In relation to paragraph 23 of the framework provisions, one delegation observed that the long term availability of priority documents from digital libraries would be a significant issue for Offices which intended to download documents only when specifically required, potentially long after a patent had been granted, but the delegation felt that this might not be so important during the initial development of the service while documents continued to be downloaded systematically as part of the pre-grant procedure.

50. One delegation observed that the definition of “patent application” in paragraph 25(viii) of the framework provisions did not cover all kinds of protection for an invention which might conceivably form the basis of a right of priority under different patent laws. One delegation noted, in particular, that it would be useful for the system to be applicable to utility models. The Working Group felt that the definition covered the large majority of applications which would be relevant at least for the time being as the service was developed, but noted that the definition could be reviewed at a later stage when the system was up and running.

51. It was agreed that the explanatory notes, which were approved by the Working Group together with the framework provisions, may be modified by the International Bureau after consultation, on changes of substance, with the Consultative Group (see explanatory note 1).

52. The Chair informed the Working Group of a letter that he had received from the Delegation of Colombia, which was unable to be present in the session at the time. The Chair noted that most of the matters raised in the letter had been raised in the Working Group's discussions, and that certain others should be addressed in the ongoing work of the Secretariat, to which the Chair passed the letter.

FUTURE WORK

53. The Secretariat reminded delegations of the need to conclude the outstanding issues in the framework provisions via the electronic forum (see paragraphs 42 to 44, above). When agreement had been reached in that way, the framework provisions would be established and there would be no pending matters still requiring consideration by the Working Group. The Working Group would, however, be reconvened, or its members consulted, in the event that changes were required to the framework provisions in the future.

54. The Secretariat noted that, on establishment of the framework provisions, the Consultative Group would come into force and would commence work on operational procedures and technical requirements. The Consultative Group would normally operate through correspondence and by use of an electronic forum. Participation by interested Patent Offices and, as observers, interested organizations was encouraged.

55. The Secretariat noted that it would, as required by the Assemblies, be submitting a report to the Assemblies, for consideration during their 43rd series of meetings in September-October 2007, on the results of the Working Group's work and on progress towards implementation of the service.

56. The Working Group unanimously adopted this report on July 19, 2007.

[Annexes follow]

ANNEX I

SYSTEM ARCHITECTURE FOR THE DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS

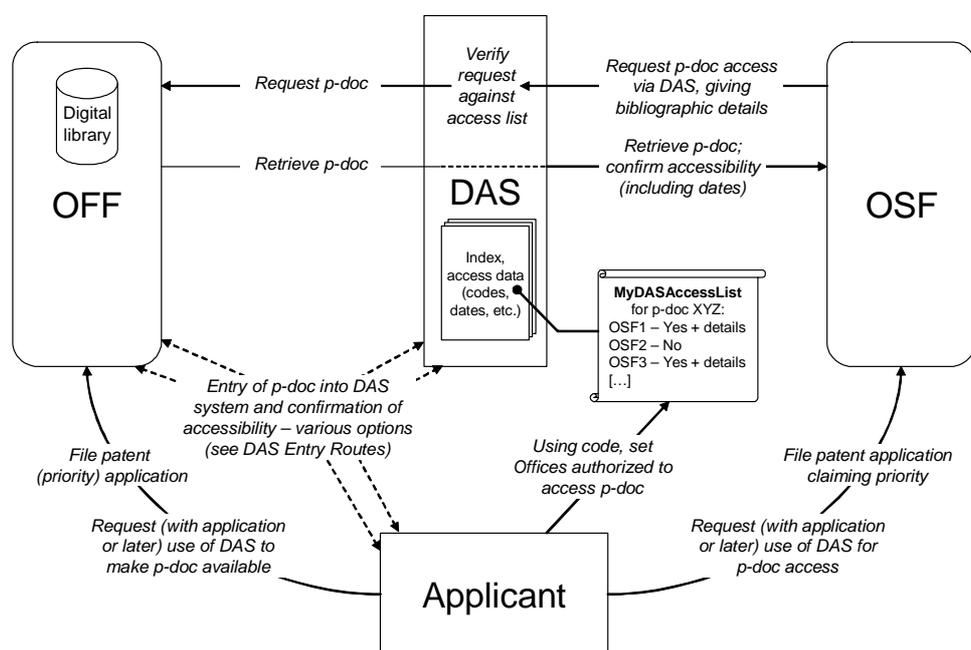
1. The system architecture should follow the network model shown in the conceptual diagram in the general principles (see Annex II), offering a gateway to a variety of Offices' digital libraries, some of which might also be accessible to some Offices by means other than the digital access service (DAS). It should permit certified copies of priority documents to be provided to DAS by the Office of first filing (OFF), directly by applicants, or by other Offices participating in DAS. It should offer a flexible combination of packaging channels and document formats, as indicated in paragraph 3 of the general principles.

2. The access control system is set out below. The system is set out in terms of actions before an OFF, but in fact it would work in the same way where the relevant digital library is maintained by any Office which holds a certified copy of the priority document (for example, as an OSF), supplied by an agent or applicant for which the Office has a name and address and is therefore able to send the access control code to a person who is known to have the right to make use of the document.

3. Document access control should be by a "managed access list" as described below and illustrated in Figure 1. In this system, on requesting that an application that may later form the basis for a priority claim be made available through DAS, the applicant is allotted an access control code specific to the application. The system should support several different routes for entry of priority documents into the DAS system, allowing for different legal constraints and user requirements, as detailed below in paragraphs 8 and 9 and Figures 2 to 4. The system should allow applicants to modify the access control code and the access control list using DAS at any time, provide a means for applicants to authorize the disclosure of sufficient information to DAS (as would be needed in the case of certain Offices such as the United States Patent and Trademark Office), and provide to the OSF information on the dates that a priority document became available to DAS, and when the applicant authorized access to that OSF.

Figure 1

DAS Access Control: Applicant manages access lists



4. Using the application number and the allotted code, the applicant can control which OSFs are permitted access to the application as a priority document by means of adjusting the settings in an access control list held in DAS by the International Bureau. This would normally be done directly by the applicant using a web interface, but for applicants with no Internet access, the International Bureau, or an Office of first filing which offers such a service, would set the details on request by post including the required information.

5. When the later application claiming priority is made (or at a later time when an applicant seeks to satisfy the priority document requirements after filing), the applicant would only need to state to a participating OSF that the priority document should be retrieved from DAS. The OSF would not require any information beyond the standard bibliographic details currently provided when making a priority claim in order to access the priority document, provided that access by that OSF had been authorized on the access control list within DAS for that priority document.

6. It should be noted that the step of authorizing access will be an essential one. Unless the applicant has set the authorization or the system recognizes that the document has already been published, the OSF will not be able to access the priority document through the system and rights might potentially be lost.

7. Possible future developments might include an “account” system, where an applicant who files many applications will be able to set a “default” access list, but this would not be part of the system to begin with in order to minimize costs and the time needed to deploy a basic working system.

Entry of priority documents into the DAS system; Allocation or confirmation of access control codes

8. The system will need to work with digital libraries held by Offices which act under different legal constraints in relation to the confidentiality of applications and applicant details. It seems to be necessary to deal with three possible routes, illustrated in Figures 2, 3 and 4, below:

(a) Route A: The OFF holding the digital library is able to send to DAS both a reference to the priority document and some applicant contact information (either physical mailing address or e-mail address);

(b) Route B: The OFF is able to send to DAS a reference to the priority document, but no further details until the applicant approaches the DAS directly with an access control code which has been assigned; or

(c) Route C: The OFF is not able to send any information at all to DAS until the applicant gives DAS an access control code recognized by the OFF. Under this option, a confirmation of availability can only be provided to the applicant by DAS once availability has been confirmed with the OFF, implying delays in such feedback if DAS and the OFF in question do not have a dedicated real-time mechanism in place to support the confirmation.

9. The flows of data required are shown in Figures 2 to 4. In each case, the applicant will have an access control code sent (or confirmed, if one has already been specified by the applicant) either by the OFF or by DAS. Using Route A, DAS will be able to confirm to the applicant that the system has correctly recognized the priority document. Using Routes B and C, the confirmation may only be possible at a later time than under Route A, namely, when the applicant first submits the code to DAS to manage the access list since prior to that time, the system may have no record of the application, or else insufficient information to activate the access control code within DAS.

Security of delivery

10. The security of the system also requires that the identity of Offices offering digital libraries or attempting to access a priority document be confirmed. However, this does not require special consideration because, whereas the identity of a person claiming to be an applicant is difficult to verify, the Offices involved are a limited group with which the International Bureau already has trusted communication channels. Each of the systems which are proposed to be used for communications already includes a means for establishing a secure channel between the International Bureau and a point which can be identified as a particular Office.

Figure 2

DAS Entry – Route A: OFF releases p-doc reference and applicant details to DAS

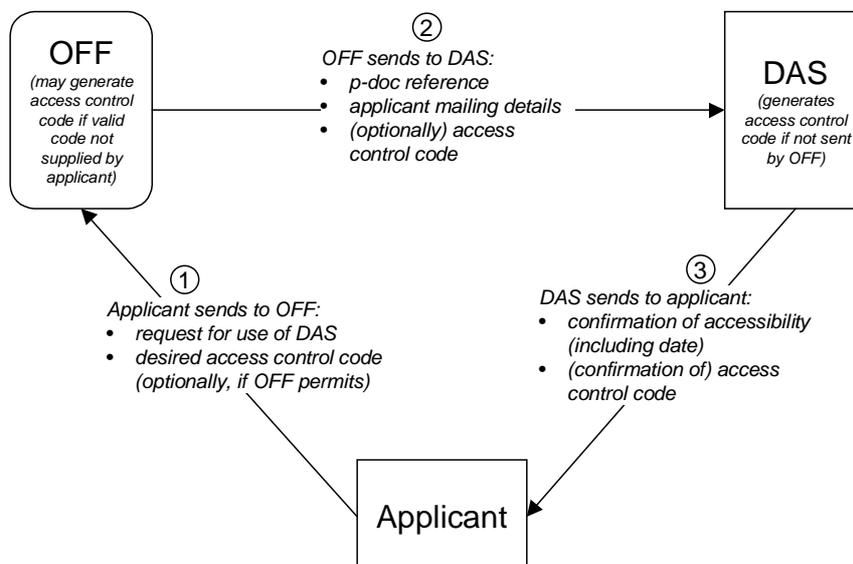


Figure 3

**DAS Entry – Route B:
OFF releases p-doc reference to DAS, but not applicant details**

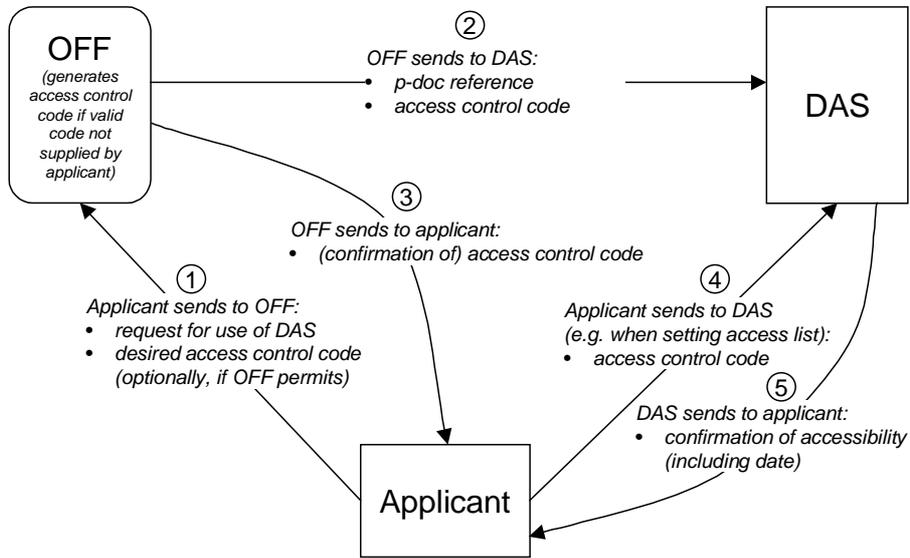
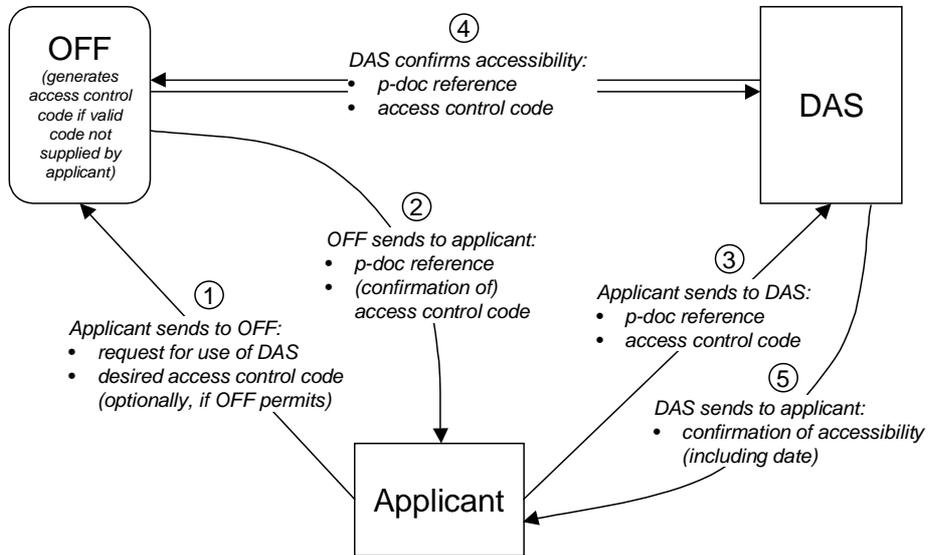


Figure 4

**DAS Entry – Route C:
OFF releases no details directly to DAS**



[Annex II follows]

ANNEX II

**GENERAL PRINCIPLES
FOR THE IMPLEMENTATION OF THE
DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS**

1. *Business need*

(a) The fundamental requirement is to allow applicants to meet priority document requirements of Offices of second filing without having to physically obtain and submit certified copies with each of them.

(b) The system will enable voluntary participation by Offices of or acting for any Paris Union Member State, regardless of membership of other Treaties, taking into account the different capacities of Offices.

(c) Offices will be able to choose to obtain priority documents under an arrangement with the International Bureau as an alternative to multiple bilateral arrangements.

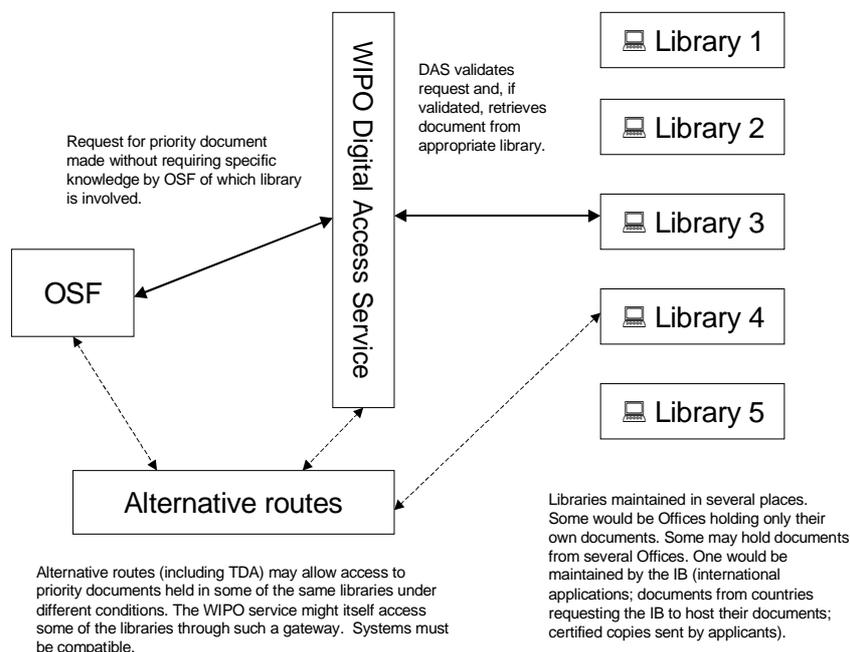
(d) The system must provide performance improvements and efficiencies for applicants, Offices and the International Bureau over traditional Paris Convention and paper-based arrangements.

2. *Network model*

(a) *Non-duplication of systems:* The system will make use of digital libraries in which Offices hold priority documents. The International Bureau's digital library will hold priority documents from Offices which do not maintain their own.

(b) *Interoperability:* Common protocols and meta-information will be used to ensure that priority documents can be accessed in the same manner irrespective of the digital library in which they are held, be it the International Bureau's, under TDA, or another.

*Conceptual Diagram of Networked System
(Access by Office of Second Filing)*



3. *Flexibility:* The system will allow a wide range of combinations of packaging channels (including paper, physical media (CD-R and DVD), SFTP and TDA) and document format (including paper, ST.36, PCT minimal specification (based on PDF and TIFF) and SDIF) in order to ensure that all existing systems for exchanging priority documents are accommodated. The system will permit the transformation of format in order to facilitate interoperability.

4. *Secure data transmissions:* The security of data transmissions will be at least equivalent to the levels that apply in the systems operating in the context of the PCT for the exchange of sensitive data.

5. *Confidentiality:* There must be an appropriate mechanism, in relation to priority documents that are not publicly available, for ensuring that access is given to Offices of second filing only where authorized by the applicant. This will be implemented by an access control list managed by the applicant, normally through the service's website, but alternatively by sending the required details to the International Bureau or the Office of first filing if the applicant does not have access to the Internet.

6. *Translations and other documents:* The system will enable applicants to deposit certified translations of priority documents in a digital library for making them accessible to Offices of second filing under generally similar arrangements to those for priority documents. Further work is needed to address the implications of different Offices' certification requirements for translations, the possibility of obtaining translations from other sources, and the possible use of the system for other associated documents, for example, documents confirming the right of priority, in particular where the right is transferred to other persons.

7. *Efficiency*

(a) *Avoid duplication:* Duplication of work, data holdings and information between the International Bureau and Offices will be avoided. This applies in particular to existing digital libraries such as under TDA arrangements.

(b) *Improve technical capacity:* The system will be geared to handle large volumes of data and data transmissions, with appropriate speed of uploading and downloading, with built-in flexibility to cater to potentially increased needs in the future.

(c) *Transparency:* WIPO's website will provide up-to date details about the system, including the conceptual framework, the nature and scope of participation by Offices in the system, the location of priority document holdings, Office requirements and operational details, including changes in those things.

8. *Developing countries:* The International Bureau will provide technical assistance and adequate capacity building to developing countries, in particular least developed countries, based on discussion of their individual needs, to facilitate their participation in the system.

9. *Charges:* The International Bureau will not charge a fee for use of the service.

[Annex III follows]

ANNEX III

FRAMEWORK PROVISIONS FOR THE
DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS^{1*}

established on [date]

Digital Access Service

1. These provisions are established by the International Bureau in accordance with a decision of the Paris Union Assembly, the PLT Assembly and the PCT Union Assembly and the recommendations of the Working Group on the Digital Access Service for Priority Documents (“the Working Group”)².
2. The digital access service for priority documents (“the service”) operates in accordance with these provisions and having regard to the general principles and system architecture recommended by the Working Group³.
3. The aim of the service is to provide applicants and Patent Offices with a simple and secure option whereby priority documents may be furnished for the purposes of the applicable law, having regard to relevant international agreements and understandings⁴.
4. The implementation of these provisions by Patent Offices is a matter for the applicable law⁵.
5. These provisions come into effect from the date on which they are established, except that the service commences practical operations in terms of deposit of and access to priority documents from a date to be fixed by the International Bureau after consultation with the Consultative Group⁶.
6. Words and expressions used in these provisions are to be understood with reference to paragraph 26.

Participating Digital Libraries

7. A digital library participates for the purposes of these provisions (“participating digital library”):
 - (i) if it is so designated by the International Bureau when these provisions come into effect⁷;
 - (ii) if, upon request by a Patent Office, it is so designated by the International Bureau at a later time after consultation with the Consultative Group.
8. The criteria referred to in paragraph 23 apply to all participating digital libraries.

* See document WIPO/DAS/PD/WG/2/4, paragraphs 38 and 42 to 44, as to possible further drafting changes to the framework provisions.

9. The giving by a Patent Office of a notification under paragraph 12 does not give rise to any obligation on the part of that Office to accept a participating digital library for the purposes of Rule 4(3) of the Regulations under the PLT⁸.

Depositing Offices and Availability of Priority Documents Via the Service

10. A Patent Office (“depositing Office”) may notify the International Bureau that copies of patent applications deposited by it in a participating digital library⁹ are to be made available via the service as priority documents in accordance with these provisions. The notification also informs the International Bureau of relevant operating procedures and technical requirements referred to in paragraph 23, including any specification of options from among those available.

11. The applicant may submit a priority document to the International Bureau, or to a Patent Office that is prepared to receive priority documents for the purpose, together with a request that it be deposited in a participating digital library and made available via the service.

Accessing Offices

12. A Patent Office (“accessing Office”) may notify the International Bureau that, for the purposes of the applicable law¹⁰ and subject to paragraphs 13 to 15, the Office treats a priority document that is available to it via the service as though it had been furnished to it by the applicant. The notification also informs the International Bureau of relevant operating procedures and technical requirements referred to in paragraph 23, including any specification of options from among those available.

13. A certificate by the International Bureau that a priority document is available via the service to a particular accessing Office, including bibliographic details¹¹ and the date on which the priority document became available, is made available via the service to the applicant and the Office¹². The certificate is, subject to paragraphs 14 and 15, accepted by the Office for the purposes of the applicable law as proof of the matters it contains.

Opportunity to Comply

14. Where a certificate referred to in paragraph 13 states that a priority document became available via the service to an accessing Office on a date which is on or before the date (“the relevant date”) by which the priority document is required to be furnished under the applicable law, but the Office finds, whether before, on or after the relevant date, that the priority document is in fact not available to it, the Office so notifies the applicant, giving the opportunity to furnish the priority document to it, or to ensure that the priority document is made available to it via the service, within a time limit of not less than two months from the date of the notification¹³.*

* See document WIPO/DAS/PD/WG/2/4, paragraphs 38 and 42 to 44, as to possible further changes relating to this paragraph, in particular, of the framework provisions.

15. Where the priority document is furnished or becomes available to the Office within that time limit, it is treated as though it had been available on the date stated in the certificate. Where the priority document is not furnished or does not become available to the Office within that time limit, the consequences provided by the applicable law apply.

Priority Documents That Are Not Publicly Available

16. A priority document that is not publicly available under paragraph 17 is available via the service only to Offices (“authorized accessing Offices”) by which access is authorized by the applicant in accordance with the operating procedures and technical requirements referred to in paragraph 23.

Priority Documents Becoming Publicly Available

17. A priority document becomes publicly available via the service¹⁴:

(i) upon a request to that effect received by the International Bureau from the applicant;

(ii) upon a notification received by, or on the basis of information obtained by, the International Bureau from the depositing Office or an authorized accessing Office that the document is publicly available under the applicable law¹⁵;

(iii) if it becomes publicly available as a priority document held by the International Bureau in connection with an international application under the Patent Cooperation Treaty¹⁶.

18. A priority document that is publicly available under paragraph 17 is available to any accessing Office, and may be made available to the general public, without the need for authorization by the applicant.

Translations of Priority Documents

19. The International Bureau may establish procedures, after consultation with the Consultative Group, to enable translations of priority documents to be deposited and made available under the service¹⁷.

Publication of Information

20. The International Bureau publishes on WIPO’s website information relating to the service, including:

- (i) the establishment of these provisions and any subsequent modifications of them;
- (ii) the commencement of practical operations of the service;
- (iii) participating digital libraries¹⁸;
- (iv) notifications and information received from Patent Offices¹⁹ under paragraphs 10 and 12;
- (v) operating procedures and technical requirements referred to in paragraph 23.

Consultative Group

21. The Consultative Group consists of:

(i) Patent Offices from which the International Bureau receives a notification under paragraph 10 or 12;

(ii) any other Patent Offices that notify the International Bureau that they wish to participate in the Group;

(iii) as observers, interested organizations invited to meetings of the Working Group that notify the International Bureau that they wish to participate in the Consultative Group.

22. The proceedings of the Consultative Group take place primarily through correspondence and an electronic forum on WIPO's website.

Operating Procedures and Technical Requirements

23. The International Bureau may, after consultation with the Consultative Group, establish and modify operating procedures and technical requirements useful for the operation of the service, including criteria for the participating digital libraries²⁰ under paragraph 7 and the means by which applicants authorize access²¹ for the purpose of paragraph 16.

Modification

24. These provisions may be modified by the International Bureau in accordance with recommendations of the Working Group or after consultation with all of the members of the Working Group.

Languages

25. These provisions are established in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic.²²

Meanings of Words and Expressions

26. In these provisions:

(i) "applicable law" means the national law or regional legal enactments under which a Patent Office operates;

(ii) "applicant" means a person who appears as applicant in the records of the Patent Office with which a patent application was filed, and includes a representative of the applicant recognized under the applicable law;

(iii) "certified" means certified for the purposes of these provisions and Article 4D(3) of the Paris Convention, whether by the Office with which the patent application concerned was filed or by the International Bureau in connection with access via the service, and having regard to the agreed understanding of the Paris Union Assembly and the PCT Union Assembly concerning certification of priority documents²³;

- (iv) “Consultative Group” means the Consultative Group referred to in paragraph 21;
- (v) “International Bureau” means the International Bureau of WIPO;
- (vi) “Paris Convention” means the Paris Convention for the Protection of Industrial Property;
- (vii) “Paris Union” means the Paris Union for the Protection of Industrial Property;
- (viii) “patent application” means an application of a kind referred to in Article 3 of the PLT²⁴;
- (ix) “Patent Office” means an authority entrusted with the granting of patents or the processing of patent applications by a State that is party to the Paris Convention or is a member of WIPO or by an intergovernmental organization at least one of whose member States is party to the Paris Convention or a member of WIPO²⁵;
- (x) “PCT” means the Patent Cooperation Treaty;
- (xi) “PCT Union” means the International Patent Cooperation Union;
- (xii) “PLT” means the Patent Law Treaty;
- (xiii) “priority document” means a certified copy of a patent application²⁶;
- (xiv) “WIPO” means the World Intellectual Property Organization.

EXPLANATORY NOTES

1. The framework provisions are supplemented by these notes, prepared by the International Bureau for explanatory purposes, which do not form part of the framework provisions themselves but were approved by the Working Group together with the framework provisions (see document WIPO/DAS/PD/WG/2/4, paragraph 38). The explanatory notes may be modified by the International Bureau after consultation, on changes of substance, with the Consultative Group.
2. For the Assemblies’ decision that the service be established according to the recommendations of the Working Group, see their report, adopted on October 3, 2006, document A/42/14, paragraph 220. For the recommendations of the Working Group, see its report, adopted on July 19, 2007, document WIPO/DAS/PD/WG/2/4.
3. See document WIPO/DAS/PD/WG/2/4, paragraphs 23 and 35 and Annexes I and II.

4. The relevant international agreements and understandings include, in particular:

(i) the Agreed Statement by the Diplomatic Conference for the Adoption of the PLT, adopted on June 1, 2000, urging WIPO to expedite the creation of a digital library system for priority documents and noting that such a system would be of benefit to patent owners and others wanting access to priority documents (see Agreed Statement No. 3 appearing in document PT/DC/47 and in WIPO Publication No. 258);

(ii) the provisions of the Paris Convention, the PLT and the PCT concerning declarations of priority and priority documents (see, in particular: Paris Convention, Article 4D; PLT Article 6 and Rule 4; and PCT Article 8 and Rule 17);

(iii) the agreed understanding adopted by the Paris Union Assembly and the PCT Union Assembly on October 5, 2004, concerning the certification of priority documents provided, stored and disseminated in electronic form (see document A/40/7, paragraph 173, referring to document A/40/6, paragraph 9);

(iv) the obligations of Members of the World Trade Organization that are not party to the Paris Convention to recognize priority rights, for which purpose priority documents may also be deposited and accessed via the service.

5. The framework provisions do not create international treaty-style obligations for participating Patent Offices. The provisions are intended to facilitate the furnishing of priority documents for the purposes of the Paris Convention but do not affect the basic rights and obligations established by that Convention or the PLT or give rise to any new obligation under the Paris Convention or the PLT; see, in particular, paragraph 9 of the framework provisions.

6. This will, for example, enable the giving of notifications under paragraphs 10, 12 and 21(ii) and (iii) of the framework provisions before the service commences practical operations, thus enabling the Consultative Group to have an active role in implementation of the service.

7. The International Bureau envisages that the initial designation of participating digital libraries would be of those Patent Offices which are already in practice exchanging priority documents in electronic form, namely, the State Intellectual Property Office of the People's Republic of China, the Japan Patent Office, the Korean Intellectual Property Office, the United States Patent Office and the European Patent Office, as well as of the International Bureau itself.

8. While a participating Patent Office would not be obliged to accept a participating digital library for the purposes of PLT Rule 4(3), it would of course be free to accept such a digital library for that purpose if it so wished.

9. A Patent Office which is not able, or does not wish, to establish and maintain its own digital library may make arrangements with the International Bureau, or with another Office that is prepared to handle such deposits, to deposit priority documents in the digital library maintained by the International Bureau or that other Office. The International Bureau is prepared for this purpose to receive such documents in electronic form or to scan them if

received in paper form. The arrangements made would need to provide for certain technical matters such as the use of an appropriate data format.

10. See notes 4 and 5, above, as to the way in which the provisions operate in the context of the applicable law and the provisions of the Paris Convention and other international agreements and understandings.

11. Which bibliographic details would be included is a matter to be addressed by the Consultative Group, having regard, for example, to requirements under applicable laws as to maintaining the confidentiality of unpublished applications.

12. Certificates would be available to the applicant and the Office concerned (but not to others) for viewing on-line or by transmission on request.

13. An Office which follows in general the practice of sending such notifications before the relevant date may of course do so whether or not the priority document in question is the subject of a certificate. The time limit of two months is consistent with the time limit prescribed in PLT Rule 6(1).

14. Paragraph 17 of the framework provisions is exhaustive of the ways in which a priority document may become publicly available via the service, but has no operation in relation to ways in which priority documents may become publicly available outside the service. It is envisaged that the operating procedures and technical requirements under paragraph 23 would include provisions designed to cover cases where the application claiming priority is withdrawn at a late stage.

15. While paragraph 17(ii) of the framework provisions *enables* the depositing Office or an authorized accessing Office to notify the International Bureau that the priority document is publicly available under the applicable law (that is, applicable by the Office giving the notification), such an Office is *not obliged* by this provision to give such a notification where the priority document becomes so available. Information as to public availability could also, when authorized by an Office, be obtained by way of data obtained by the International Bureau from the Office.

16. See PCT Rule 17.2(c).

17. Operating procedures and technical requirements providing for the deposit of and access to translations would need to be established under paragraph 23 of the framework provisions before a date could be determined under paragraph 19. The framework provisions do not address or limit the kind of certification, etc., that accessing Offices are entitled to require in the case of translations, and do not assure that a translation submitted under the services would satisfy the needs of any particular accessing Office; those matters would be left to the applicable law in each Office. It is to be hoped, however, that future work might achieve a degree of commonality of approach on the matter, with the result that a single translation might be able to be accepted by a number of accessing Offices.

18. Published details concerning participating digital libraries would include, for example, the date on which a digital library is to commence operations under the service, document format requirements, etc.

19. The publication of up-to-date details of notifications and Office requirements, and changes therein, is of course vital to applicants wishing to rely on the service as a secure means of satisfying requirements for the provision of priority documents. As an example, it will be important to publish details of which possible routes for entry of priority documents into the service (see Annex I of document WIPO/DAS/PD/WG/2/4) are available in a particular Office of first filing.

20. It is envisaged that the criteria for participating digital libraries might include, for example, criteria as to giving access and ensuring confidentiality and a requirement that arrangements be in place for deposited priority documents to be stored for a specified period from the priority date. By way of comparison, it is noted that files relating to international applications under the PCT must be kept by the International Bureau for 30 years from the date of receipt of the record copy; see PCT Rule 93.2(a).

21. As explained in document WIPO/DAS/PD/WG/2/2, the only system presently envisaged for ensuring the applicant's authorization of access is by means of the applicant's control of a list of authorized Offices held by the International Bureau. An access control code will be used to confirm the identity of the applicant when maintaining the list, and the use of secure communication channels between the International Bureau and the accessing Office will assure the identity of the latter.

22. The working languages of the service in its practical operations would be the official working languages of the International Bureau (that is, English and French), with the possibility of extension to other languages when practicable.

23. See note 4(iii), above.

24. PLT Article 3(1) in turn refers to certain provisions of the Paris Convention and the PCT. See also the Explanatory Notes on PLT Article 3. While the definition refers to the PLT, that is purely for the sake of the definition; there is no implication that the Offices concerned must be bound by the provisions of the PLT. As a further point, while the definition covers most kinds of priority document that are likely to be important in practice, future review may be needed to determine whether other kinds of priority document should also be included (for example, priority documents relating to utility models).

25. See also note 4(iv), above.

26. See also the definition of "certified" in paragraph 26(iii) of the framework provisions .

[End of Annex III and of document]