

# WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

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## INTERNATIONAL PATENT COOPERATION UNION (PCT UNION)

### ASSEMBLY

**Eighteenth Session (11th Extraordinary)  
Geneva, July 8 to 12, 1991**

#### REPORT

*Adopted by the Assembly*

#### INTRODUCTION

1. The Assembly of the International Patent Cooperation Union (PCT Union) (hereinafter referred to as "the Assembly") held its eighteenth session (11<sup>th</sup> extraordinary) in Geneva from July 8 to 12, 1991.
2. The following 25 Contracting States were represented at the session: Australia, Austria, Cameroon, Canada, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Finland, France, Germany, Hungary, Italy, Japan, Mongolia, Netherlands, Norway, Poland, Republic of Korea, Romania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom and United States of America.
3. The following three States, members of the International Union for the Protection of Industrial Property (Paris Union), participated in the session as observers: Bangladesh, Indonesia and Mexico.
4. The European Patent Organisation (EPO), having the status of special observer, was represented.

5. The following six non-governmental organizations were represented by observers: Committee of National Institutes of Patent Agents (CNIPA), European Federation of Agents of Industry in Industrial Property (FEMIP), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI) and Union of Industrial and Employers' Confederations of Europe (UNICE).

6. The list of participants is contained in Annex I to this report.

#### OPENING OF THE SESSION

7. The session was opened by the Director General.

#### ELECTION OF AN ACTING CHAIRMAN

8. In the absence of its Chairman and of the two Vice-Chairmen, the Assembly unanimously elected Mr. Peter Messerli (Switzerland) as Acting Chairman. Mr. Messerli was obliged for unexpected and unavoidable reasons to be absent after the first day of the session. The Assembly therefore elected another Acting Chairman, Mr. Leslie Lewis (United Kingdom).

#### ADOPTION OF THE AGENDA

9. The Assembly adopted, for its session, the agenda contained in Annex II to this report (document PCT/A/XVIII/1 Rev.).

#### AMENDMENTS TO THE REGULATIONS UNDER THE PCT

10. The Assembly considered proposed amendments as appearing in documents PCT/A/XVIII/2 to 8 as well as several proposals presented during the meeting.

11. Following the discussion of the proposals referred to in the previous paragraph, the Assembly unanimously adopted amendments to the Regulations under the PCT as appearing in Annex III to this report.

12. The Assembly decided that the amendments would enter into force on July 1, 1992

13. All amendments to Rules which are not referred to in the subsequent paragraphs of this report were adopted without any discussion or without any request for the inclusion of statements in this report.

14. Rule 3.3(a)(iii)<sup>\*</sup>. In adopting the amendments to this Rule, the Assembly noted that the Delegation of France would have preferred that the words "on the front page of the pamphlet and in the Gazette" be kept in the said Rule.

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\* References in this report to "Articles" are to those of the Patent Cooperation Treaty (PCT) and to "Rules" to those of the Regulations under the PCT ("the Regulations").

15. The Representative of the EPO suggested that the check list under Rule 3.3 allow for the inclusion of an indication that a sequence listing in machine readable form for the purposes of Rule 13<sup>ter</sup> is submitted with the international application.
16. Rules 4.1(b)(iv) and 4.9(a). In adopting the amendments to these Rules, the Assembly noted the view expressed by the Delegation of the Netherlands and the Representative of the EPO that the names of all States designated for a regional patent should be indicated in the request.
17. Rule 4.5(d). In response to a question raised by the Representative of the EPO, the Assembly agreed that this Rule enabled different applicants to be indicated for different States designated for a European patent.
18. Rule 4.9(b) and (c). In response to a question by the Representative of the EPO whether the receiving Office was required to make a declaration under Article 14(3)(b) if designation and confirmation fees were not paid within the time limit under Rule 4.9(b)(ii), the Assembly noted that, because of the wording of the applicant's statement under Rule 4.9(b)(ii), the designation concerned would be withdrawn by the applicant in such a case, rather than be "considered withdrawn" in the terms of Article 14(3)(b), so that no declaration under that Article would be required. Also, the confirmation fee under Rule 15.5 was not a fee prescribed under Article 14(3)(a) and (b) (see Rule 27.1).
19. Rule 4.10(d-bis). The Assembly decided not to adopt Rule 4.10(d-bis), as set out in document PCT/A/XVIII/4, since it could not be fully discussed in the present session of the Assembly due to lack of time, and noted that most delegations preferred to retain the present practice followed under Rule 4.10(d). The International Bureau informed the Assembly that the question of a priority claim based on an earlier application filed on the same day as the international application might be taken up at another time.
20. Rules 4.15, 53.8, 56.1 and 90bis.5. The Assembly noted, in response to a concern expressed by the Representative of the EPO, that the amended Rules simply provided a procedural mechanism for handling international applications in certain cases where an applicant-inventor was unwilling or unavailable to sign the documents referred to, but agreed that the situation in which the applicant was unwilling to sign should not apply to the provisions of Rule 90bis.5. The questions of entitlement to apply for a patent and ownership of the invention would not be affected by these amended Rules and would continue to be matters for national law.
21. Rules 12.1, 20.4 and 26.3ter. In adopting these Rules, the Assembly noted the view of the Delegation of Japan that Article 11(1)(ii) required the whole international application to be in a single prescribed language only, but the Assembly took a different view of the scope of that Article as reflected in Rule 20.4(c). When discussing the amendments, reference was made to the Draft Patent Law Treaty which would allow that any text matter contained in any drawings, if originally furnished in a foreign language, be subsequently furnished in the official language without the filing date being affected.
22. In connection with Rule 26.3<sup>ter</sup>(a), the Assembly noted the view of the Delegation of the Netherlands that the Rule would be inconsistent with Articles 11 and 14, which made no provision for correction of the language used in elements of the international application without changing the international filing date of that application, but the Assembly took the

view that elements other than those referred to in Article 11(1)(iii)(d) and (e) were capable of correction by way of filing a translation into an admitted language.

23. The Assembly agreed that, when filing a translation to effect a correction under Rule 26.3*ter*(a), it was not permitted to change the substance of the international application. If the filing of such a translation were to result in a broadening of the scope of the international application, sanctions under national law would apply.

24. Rule 13. In adopting the amendments to this Rule, the Assembly agreed that the contents of the current Rules 13.2 and 13.3 relating to unity of invention would continue to apply. It decided to delete the current Rules 13.2 and 13.3 from the Regulations and to include their contents, along with similar details relating to unity of invention in "Markush" type claims and in "intermediate and final product" claims as set out in document PCT/CAL/IV/5, in the Administrative Instructions and, with other examples, in the International Search Guidelines and the International Preliminary Examination Guidelines. It was also agreed that the PCT Applicant's Guide should explain the requirement of unity of invention for the users of the PCT.

25. It was agreed by the Assembly that the unity of invention provisions of Rule 13 governed the practice to be followed in processing international applications during both the international phase before the international authorities and the national phase before the designated and elected Offices.

26. Rule 13*ter*. In adopting Rules 13*ter*.1 and 13*ter*.2, the Assembly agreed, with the concurrence of the International Bureau, the International Searching Authorities and the International Preliminary Examining Authorities, that no Administrative Instructions would be promulgated which included a standard for nucleotide and/or amino acid sequence listings in machine readable form without the prior agreement of all International Searching and Preliminary Examining Authorities. Pending the establishment of such a standard in the Administrative Instructions, each International Searching Authority, International Preliminary Examining Authority and designated Office could require sequence listings to be furnished in a machine readable form acceptable to it. The Assembly recommended that a WIPO standard for a machine readable format for sequence listings be developed, and the International Bureau was requested to put the matter to the WIPO Permanent Committee on Industrial Property Information (PCIPI) for development of such a standard as soon as possible.

27. Rule 15.5(b). In adopting Rule 15.5(b), the Assembly agreed that any specification by the applicant for the allocation of moneys under that Rule to certain designations under Rule 4.9(b) could be taken into account only if it had been received by the receiving Office within the time limit under Rule 4.9(b)(ii), and that the Administrative Instructions should make this clear.

28. Rules 15.6 and 57.6. In adopting the amendments to these Rules, the Assembly agreed that refunds of the international fee and the handling fee could also be made by the International Bureau, on a case-by-case basis, where justified in special circumstances, but that no specific enabling provision in the Regulations was needed to this effect. The Delegations of Australia, the Netherlands and the United Kingdom noted that they would have preferred express provisions for refund by the International Bureau to be included in the Regulations.

29. Rule 16.2. In adopting the amendment to this Rule, the Assembly agreed that the receiving Office would be entitled to apply the Rule by first inviting the applicant to make a

request for a refund and then refunding the fee only after receipt of such a request from the applicant.

30. Rule 16bis.2. In adopting the amendment to this Rule, the Assembly agreed that, if separate invitations were made under both paragraphs (a) and (b) of Rule 16bis.1 (for example, where the international application was filed early in the priority year or without claiming priority), a late payment fee could be payable twice.

31. Rule 27.1. The Assembly noted the view of the Delegation of Japan that the late payment fee under Rule 16bis.1(a) and (b) should not fall under the “fees prescribed under Article 3(4)(iv)” as provided in Rule 27.1(a).

32. Rules 32bis and 90bis.3. In adopting Rule 90bis.3 and agreeing to the deletion of Rule 32bis, the Assembly noted the view expressed by the Delegations of France, Italy, Japan and the United Kingdom that withdrawal of a priority claim should not be permitted after international publication.

33. Rule 36. A proposal to amend Rule 36 was submitted by Sweden and the EPO in document PCT/A/XVIII/8 along with the proposal of the International Bureau on that Rule in document PCT/A/XVIII/2. The International Bureau withdrew its proposal in favor of the proposal by Sweden and the EPO which was adopted in a modified form to include documentation not only on paper but also in microform or on electronic media, such as, for example, CD-ROM, optical disks, magneto-optic disks, magnetic tapes and magnetic disks.

34. Rule 42. The Assembly agreed not to amend Rule 42. However, the Assembly recognized that there may be special circumstances, such as where time is needed to resolve matters arising under Rule 13ter (nucleotide and/or amino acid sequence listings) or Rule 40 (lack of unity of invention), in which it may not be possible to establish the international search report within the time limit under Rule 42. In such a case, the international search report must be established as soon as possible after the expiration of that time limit. The report should be established prior to international publication.

35. Several delegations would have preferred to include appropriate provisions in Rule 42.

36. The Delegation of Sweden and the Representative of the EPO pointed out that, in some cases, the International Searching Authority would not be able to establish the international search report prior to international publication, for example, where the applicant paid the search fee under Rule 16bis delaying significantly the start of the international search. In such circumstances, the time limit under Rule 42 could well expire after the technical preparations for international publication had been completed.

37. Rule 43.8. In response to a question raised by the Delegation of Japan as to the difference in meaning between “an authorized officer” in present Rule 43.8 and “the officer ... responsible” in that Rule as amended, the Assembly agreed that “the officer ... responsible” meant the person who actually performed the search work and prepared the search report.

38. Rule 43.9. The Representative of the EPO proposed that the Administrative Instructions should include provision for an indication in the international search report that a sequence listing has been furnished under Rule 13ter.1(a).

39. Rules 47.1(a-bis) and 47.4. The International Bureau indicated, in response to a question raised by the Delegation of the United Kingdom during the discussion of Rule 47.4,

that any early communication to a designated Office under Article 20, resulting from a request under Article 23(2), would include the notice of designation under Rule 47.1(a-bis).

40. Rule 49.5(c-bis). In adopting the amendment to Rule 49.5(c-bis), the Assembly noted the view, expressed by the Delegations of Japan and the Netherlands, that Rule 49.5(c-bis), in governing the procedure for the provision of translations to designated Offices under Article 22, dealt with matters which should be left to national law.

41. The Assembly agreed that Rule 49.5(c-bis), in permitting the designated Office to “consider the international application withdrawn,” was referring only to the loss of effect of the international application in the designated State referred to in Article 24.

42. Rule 49.5(h). In adopting the amendment to Rule 49.5(h), the Assembly noted the view expressed by the Delegation of Japan that the procedure for the provision of translations of abstracts and of indications under Rule 13bis.4 to designated Offices should be left to national law. The Delegation of the Netherlands expressed a similar view but only as regards the translation of the abstract.

43. The Assembly also noted the view of the Representative of the EPO that some sanction for non-compliance should be included in Rule 49.5(h), but the Assembly decided that it was preferable to leave the sanction to national law.

44. Rule 53.9. The Representative of the EPO expressed the view that amendments under Article 19 could be disregarded for the purposes of the international preliminary examination without the need to consider them as reversed by an amendment under Article 34; that amendments under Article 34 merely served the purposes of the procedure for international preliminary examination; and that amendments under Article 34 thus did not affect the scope of the applicant’s rights under the national law applicable in elected States. However, in adopting Rule 53.9, the Assembly took the view that the making of amendments under Articles 19 and 34 resulted in the amendment of the international application itself; that amendments under Article 19 made prior to the filing of the demand continued to be applicable in the international preliminary examination procedure unless superseded, or considered as reversed, by amendments under Article 34; and that what constituted the international application for the purposes of the national phase before the elected Offices was, unless further amended under Article 41, the application as amended by any amendments annexed to the international preliminary examination report (see Rule 76.5(iv)).

45. In response to a question from the Delegation of the Netherlands, the International Bureau explained that each designated or elected Office was entitled to require a translation of both the international application as filed and the international application as amended. In view of this entitlement, a designated or elected Office would have the right to require less than both translations; for example, it could require a translation only of the international application as filed.

46. The Assembly agreed that amendments under Article 34 were made for the purposes of the international preliminary examination in the sense that they did not affect the international application for the purposes of designated Offices which were not elected, and that amendments under Article 19 which were subsequently superseded, or considered as reversed, by amendments under Article 34 continued to be applicable for the purposes of designated Offices not elected.

47. As regards the concept that amendments under Article 19 were considered as reversed by an amendment under Article 34 (see Rule 53.9(a)(ii)), the Assembly agreed that what was meant was that the claims were thereby amended under Article 34 so as to revert to the claims as originally filed, with effect from the time when the demand was filed.

48. Rules 54.2 and 54.3. In adopting the amendments to Rule 54.2 and the deletion of Rule 54.3, the Assembly agreed that Rule 54.2 as adopted would not permit a sole applicant who was not a national or resident of a Contracting State bound by Chapter II to file a demand.

49. The Assembly also noted the views of the Delegations of Japan and the Netherlands that an applicant who was not a national or resident of a Contracting State bound by Chapter II should not be entitled to make an election as the sole applicant for an elected State, even if the demand had been filed by two or more applicants of whom at least one was entitled to file the demand under Rule 54.2. The Assembly agreed that the deletion of Rule 54.3 was consistent with amendments adopted to Rule 18 whereby two or more applicants could jointly file an international application and decide upon the distribution among them of the designations, provided that at least one of them was a national or resident of a Contracting State, with no restriction that there be such an applicant for each designated State. The Assembly agreed that the adopted minimum requirements for filing a demand were consistent with Article 31.

50. Rule 56.1. In adopting the amendments to this Rule, the Assembly noted the concerns of the Delegations of Japan and the Netherlands as to the qualifications needed to file a later election, similar to those outlined above in relation to Rules 54.2 and 54.3. However, the Assembly decided that the provisions for filing a later election should place any applicant making a later election in no worse a position than he would have been if he had been indicated in the demand and had made the election in that demand.

51. Rule 56.1(f). In response to a question from the Delegation of the United States of America as to why the last sentence of this Rule contained the expression “considered to have been submitted to the International Bureau” rather than an expression such as “considered to have been received by the International Bureau”, the International Bureau drew attention to Article 31(6)(b) in which the expression “shall be submitted to the International Bureau” is used relative to later elections.

52. Rule 60.1(g). The Delegation of the United States of America indicated that the invitation procedure provided for in the Rule would unduly delay the start of the international preliminary examination. The Assembly noted that any delay resulting from that invitation procedure would be caused by the applicant and could not be attributed to the International Preliminary Examining Authority.

53. Rule 61.3. In adopting the amendment to this Rule, the Assembly agreed that the Administrative Instructions should include appropriate provisions for notifying the applicant promptly when a demand was filed after the expiration of the time limit under Article 39(1)(a).

54. Rule 61.4. In response to a concern expressed by the Delegation of Japan, the Assembly agreed that the requirement of confidentiality imposed by Article 38 in relation to the file of the international preliminary examination did not extend to the mere fact that a demand had been made or that certain States had been elected. This view was consistent with the provisions of Article 31(7) which, in requiring that each elected Office be notified of its

election, did not impose an obligation on that Office to keep the fact of its election confidential.

55. Rule 62.1. In adopting Rule 62.1, the Assembly agreed that the Administrative Instructions should include appropriate provisions for the International Preliminary Examining Authority to be informed if no amendments under Article 19 had been made by the time when the copy of the demand was received by the International Bureau.

56. Rules 66.1(d) and 66.4bis. The Assembly agreed that the effect of these Rules was that any amendments which were received by the International Preliminary Examining Authority before it had begun to draw up a written opinion or the international preliminary examination report would always be taken into account for the purposes of that opinion or report. The Assembly also agreed that the International Preliminary Examination Guidelines should include guidance for the International Preliminary Examining Authorities as to circumstances in which amendments were permitted not to be taken into account.

57. In adopting Rule 66.4bis, the Assembly noted the view of the Delegation of Japan that such a provision should not be included in the Regulations since the Treaty required all amendments under Article 19 to be taken into account for the purposes of the international preliminary examination, without any exception, and that the international preliminary examination should not start until amendments under Article 19 had been received or until the time limit for making amendments under Article 19 had expired.

58. Rule 66.1(e). In adopting Rule 66.1(e), the Assembly agreed that the International Preliminary Examination Guidelines should clarify that, where a claim had been only partly searched by the International Searching Authority, that claim should be subjected to international preliminary examination to the extent possible.

59. Rule 76.5(iv). In adopting this Rule, the Assembly noted the view of the Delegations of Japan, the Netherlands and the United States of America that the question of provision of translations for the purposes of Article 39(1) should be a matter for national law.

60. The Assembly noted that Rule 76.5(iv) related only to the requiring of translations for the purposes of entry into the national phase under Article 39(1). The Assembly agreed, noting the provisions of Article 29, that the Rule did not preclude national law from requiring, for the purposes of provisional protection, a translation of amendments made under Article 19 even where the amendments were not annexed to the international preliminary examination report.

61. Rule 82.1(d) and (e). The Delegation of Spain, noting that these provisions were contrary to the Spanish legislation, considered them to be contrary to Article 48 and expressed the view that they should not be included in the Regulations. This view was shared by the Delegations of Japan and the United States of America. However, the Assembly took the view that the word "mail" in Article 48 was not limited to the service of postal authorities.

62. Rule 90. In adopting Rule 90, the Assembly noted a suggestion by the Delegation of Germany, which was supported by the Representative of AIPPI, to add to Rule 90.2(b) a provision pursuant to which the first named agent would be considered as the common agent of all the applicants in all cases where only some, but not all, applicants have appointed an agent, instead of considering the first named applicant as common representative also in such cases.

63. Rule 90bis.6. In response to a request by the Representative of the EPO, the International Bureau stated that it would take appropriate measures to assess any possible abuse resulting from withdrawal of demands prior to the establishment of the international preliminary examination report but after entry into the national phase. The Delegation of the United States of America and the Representative of the EPO expressed concerns relative to Rule 90bis.6 but welcomed the statement by the International Bureau.
64. Rule 91.1. The United Kingdom proposed an amendment to Rule 91.1(b) in document PCT/A/XVIII/6 Rev. which was considered with the proposed amendment to Rule 91 in document PCT/A/XVIII/2. Both of these proposed amendments were very much welcomed by all representatives of the non-governmental organizations and met with favor from several delegations, because they would make the PCT safer for applicants. Other delegations expressed great hesitation about adopting such amendments, in particular, because they would allow introduction into the international application of information not contained therein at the time of filing. In view of such hesitations, the proposed amendments were not adopted.
65. Rule 92.4. In adopting the amendment to this Rule, the Assembly noted that the Rule as amended would enable a national Office or intergovernmental organization, if it wished, to require the furnishing of the originals of signed documents. This could be done by way of a general requirement under Rule 92.4(d) (e.g., by providing that the original of any filed document signed by the applicant was required to be furnished) or by taking action, in specific cases, under Rule 92.4(f).
66. The Assembly unanimously adopted this report on July 12, 1991

[Annex I follows]

ANNEXE I/ANNEX I

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS MEMBRES/MEMBER STATES

(dans l'ordre alphabétique français des noms des États)  
(in the French alphabetical order of the names of the States)

ALLEMAGNE/GERMANY

Frank Peter GOEBEL, Director, Legal Division, German Patent Office, Munich

AUSTRALIE/AUSTRALIA

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AUTRICHE/AUSTRIA

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CAMEROUN/CAMEROON

Gaspard TOWO-ATANGANA, Consul général, Genève

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DANEMARK/DENMARK

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ESPAGNE/SPAIN

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Giovanni de SANCTIS, Examineur, Office central des brevets, Ministère de l'industrie, du commerce et de l'artisanat, Rome

JAPON/JAPAN

Kunishige SATO, Director of PCT Affairs Office, Japanese Patent Office, Tokyo

Tetsuo SHIBA, Deputy Director of the Patent Examination Standard Office, Japanese Patent Office, Tokyo

Shigeo TAKAKURA, First Secretary, Permanent Mission, Geneva

MONGOLIE/MONGOLIA

Gonchiguin GONGOR, Premier secrétaire, Mission permanente, Genève

NORVÈGE/NORWAY

Ingolf LILLEVIK, Head of Division, Patent Department, Norwegian Patent Office, Oslo

PAYS-BAS/NETHERLANDS

Siep de VRIES, Member of the Patents Council, Netherlands Patent Office, Rijswijk

POLOGNE/POLAND

Bogdan ROKICKI, Directeur, Département des demandes, Office des brevets de la République de Pologne, Varsovie

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

Joon Kyu KIM, Attaché (Intellectual Property), Permanent Mission, Geneva

RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/DEMOCRATIC PEOPLE'S  
REPUBLIC OF KOREA

Chang Rim PAK, Counsellor, Permanent Mission, Geneva

ROUMANIE/ROMANIA

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SUEDE/SWEDEN

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Marie ERIKSSON (Miss), Head of Division, Royal Patent and Registration Office, Stockholm

SUISSE/SWITZERLAND

Peter MESSERLI, Chef du service juridique I, Office fédéral de la propriété intellectuelle, Berne

Karl GRUNIG, Chef de la section administrative des brevets, Office fédéral de la propriété intellectuelle, Berne

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Michal GUTTMANN, Vice-President, Federal Office for Inventions, Prague

Marta HOSKOVA (Mrs.), Head of Department, Federal Office for Inventions, Prague

UNION SOVIÉTIQUE/SOVIET UNION

Alexander Vladimirovich SENCHIKHIN, Head, Department of International Patent Cooperation, All-Union Scientific Research Institute of State Patent Examination (VNIIGPE), USSR Patent Office, Moscow

II. ÉTATS OBSERVATEURS/OBSERVER STATES

BANGLADESH

Mohammed Ishaq TALUKDAR, Minister (Economic Affairs), Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Etti HUSIN (Miss), Third Secretary, Permanent Mission, Geneva

MEXIQUE/MEXICO

Ismael NAVEJA, Deuxième secrétaire, Mission permanente, Genève

III. ORGANISATION INTERGOUVERNEMENTALE/  
INTERGOVERNMENTAL ORGANIZATION

ORGANISATION EUROPÉENNE DES BREVETS/EUROPEAN PATENT  
ORGANISATION

Larissa GRUSZOW (Mme), Administrateur principal, Affaires juridiques internationales,  
Office européen des brevets, Munich

Brigitte GUNZEL (Mme), Juriste, Direction "Droit des brevets", Office européen des brevets,  
Munich

Jacques VAN AUBEL, Chef de Groupe, Section de dépôt, Office européen des brevets,  
Rijswijk

Bertil HJELM, Examineur, Direction générale 2, Office européen des brevets, Munich

Erich WAECKERLIN, Directeur, Direction générale 2, Office européen des brevets, Munich

IV. ORGANISATIONS NON GOUVERNEMENTALES/  
NON-GOVERNMENTAL ORGANIZATIONS

Association internationale pour la protection de la propriété industrielle (AIPPI)/International  
Association for the Protection of Industrial Property (AIPPI): Heinz BARDEHLE (Chairman  
of PCT Committee; Patent Attorney, Munich); Michael N. MELLER (Patent Attorney, New  
York)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC):  
John H. KRAUS (Representative to the United Nations and other International Organizations  
at Geneva)

Comité des instituts nationaux d'agents de brevets (CNIPA /Committee of National Institutes  
of Patent Agents (CNIPA): Eugen POPP (Patent Attorney, Munich)

Fédération européenne des mandataires de l'industrie en propriété industrielle  
(FEMAPI)/European Federation of Agents of Industry in Industrial Property (FEMAPI):  
Reinhard KOCKLAUNER (Patentassessor, Hofheim)

Fédération internationale des conseils en propriété industrielle (FICPI)/International  
Federation of Industrial Property Attorneys (FICPI): Knud RAFFNSØE (President of Study  
and Works Commission; Patent Agent, Copenhagen)

Union des confédérations de l'industrie et des employeurs d'Europe (UNICE)/Union of  
Industrial and Employers' Confederations of Europe (UNICE): Reinhard KOCKLAUNER  
(Patentassessor, Hofheim)

## V. BUREAU/OFFICERS

Président par interim/Acting Chairman: – le premier jour de la session/  
on the first day of the session  
Peter MESSERLI (Suisse/Switzerland)  
– les autres jours de la session/  
on the other days of the session  
Leslie LEWIS (Royaume-Uni/United Kingdom)

Secrétaire/Secretary: Busso BARTELS (OMPI/WIPO)

## VI. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Arpad BOGSCH, Directeur général/Director General

François CURCHOD, Directeur du Cabinet du Directeur général/Director of the Office of the  
Director General

Division de l'administration du PCT/PCT Administration Division: Daniel BOUCHEZ  
(Directeur/Director); Teruhisa SHIMOMICHI

Division juridique du PCT/PCT Legal Division: Busso BARTELS (Directeur/Director);  
Louis O. MAASSEL; Vitaly TROUSSOV; Philip THOMAS; Isabelle BOUTILLON (Mlle)

[L'annexe II suit/Annex II follows]

ANNEX II

**AGENDA**  
*adopted by the Assembly*

1. Opening of the session by the Director General
2. Election of an Acting Chairman
3. Adoption of the agenda (this document)
4. Amendment of the Regulations under the PCT (documents PCT/A/XVIII/2 to 8)
5. Adoption of the report of the session
6. Closing of the session by the Acting Chairman

[Annex III follows]

ANNEX III

TEXT OF THE ADOPTED AMENDMENTS

Regulations under the Patent Cooperation Treaty

PART A

Introductory Rules

**Rule 1**  
**Abbreviated Expressions**

[No change]

**Rule 2**  
**Interpretation of Certain Words**

2.1 [Amendment to the French text only]

2.2 “Agent”

Whenever the word “agent” is used, it shall be construed as meaning an agent appointed under Rule 90.1, unless the contrary clearly follows from the wording or the nature of the provision, or the context in which the word is used.\*

2. 2bis “Common Representative”

Whenever the expression “common representative” is used, it shall be construed as meaning an applicant appointed as, or considered to be, the common representative under Rule 90.2.

2.3 [No change]

PART B

Rules Concerning Chapter I of the Treaty

**Rule 3**  
**The Request (Form)**

3.1 Form of Request\*\*

The request shall be made on a printed form or be presented as a computer print-out.

3.2 [No change]

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\* The amendment consists in deleting, at the end of the sentence, the words “, also the common representative referred to in Rule 4.8”.

\*\* The title has been amended to read “Form of Request” instead of “Printed Form”.

### 3.3 Check List

(a) The request shall contain a list indicating:

(i) [No change]

(ii) [No change]

(iii) the number of that figure of the drawings which the applicant suggests should accompany the abstract when the abstract is published;\* in exceptional cases, the applicant may suggest more than one figure.

(b) The list shall be completed by the applicant, failing which the receiving Office shall\*\* make the necessary indications, except that the number referred to in paragraph (a)(iii) shall not be indicated by the receiving Office.

### 3.4 Particulars

Subject to Rule 3.3, particulars of the printed request form and of a request presented as a computer print-out shall be prescribed by the Administrative Instructions.

## **Rule 4** **The Request (Contents)**

### 4.1 Mandatory and Optional Contents: Signature

(a) [No change]

(b) The request shall, where applicable, contain:

(i) [No change]

(ii) [Amendment to the French text only]

(iii) [No change]

(iv) an indication that the applicant wishes to obtain a regional patent,\*\*

(v) [No change]

(c) [No change]

(d) [No change]

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\* The amendment consists in deleting, after the word “published”, the words “on the front page of the pamphlet and in the Gazette”.

\*\* The amendment consists in deleting, after the word “shall”, the words “fill it in and”.

\*\*\* The amendment consists in deleting, after the word “patent”, the words “and the names of the designated States for which he wishes to obtain such a patent”.

4.2 [No change]

4.3 [No change]

#### 4.4 Names and Addresses

(a) [No change]

(b) [No change]

(c) Addresses shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address and, in any case, shall consist of all the relevant administrative units up to, and including, the house number, if any. Where the national law of the designated State does not require the indication of the house number, failure to indicate such number shall have no effect in that State. In order to allow rapid communication with the applicant, it is recommended to indicate any<sup>\*</sup> teleprinter address, telephone and facsimile machine numbers, or corresponding data for other like means of communication, of the applicant or, where applicable, the agent or the common representative.

(d) [No change]

#### 4.5 The Applicant

(a) [No change]

(b) [No change]

(c) [No change]

(d) The request may, for different designated States, indicate different applicants. In such a case, the request shall indicate the applicant or applicants for each designated State or group of designated States.

4.6 [No change]

4.7 [No change]

#### 4.8 Common Representative<sup>\*\*</sup>

If a common representative is designated, the request shall so indicate.

#### 4.9 Designation of States

(a) Contracting States shall be designated in the request:

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\* The amendment consists in deleting, after the words "indicate any", the words "telegraphic and".

\*\* The title has been amended to read "Common Representative" instead of "Representation of Several Applicants Not Having a Common Agent".

(i) in the case of designations for the purpose of obtaining national patents, by an indication of each State concerned;

(ii) in the case of designations for the purpose of obtaining a regional patent, by an indication that a regional patent is desired either for all Contracting States which are party to the regional patent treaty concerned or only for such Contracting States as are specified.

(b) The request may contain an indication that all designations which would be permitted under the Treaty, other than those made under paragraph (a), are also made, provided that:

(i) at least one Contracting State is designated under paragraph (a), and

(ii) the request also contains a statement that any designation made under this paragraph is subject to confirmation as provided in paragraph (c) and that any designation which is not so confirmed before the expiration of 15 months from the priority date is to be regarded as withdrawn by the applicant at the expiration of that time limit.

(c) The confirmation of any designation made under paragraph (b) shall be effected by

(i) filing with the receiving Office a written notice containing an indication as referred to in paragraph (a)(i) or (ii), and

(ii) paying to the receiving Office the designation fee and the confirmation fee referred to in Rule 15.5

within the time limit under paragraph (b)(ii)

#### 4.10 Priority Claim

(a) [No change]

(b) If the request does not indicate both

(i) when the earlier application is not a regional or an international application, the country in which such earlier application<sup>+</sup> was filed; when the earlier application is a regional or an international application, at least one country for which such earlier application<sup>+</sup> was filed, and<sup>+</sup>

(ii) the date on which the earlier application was filed,

the priority claim shall, for the purposes of the procedure under the Treaty, be considered not to have been made. However, where, resulting from an obvious error, the indication of the said country or the said date is missing or is erroneous, the receiving Office may, at the request of the applicant, make the necessary correction. The error shall be considered as an obvious error whenever the correction is obvious from a comparison with the earlier application. Where the error consists of the omission of the indication of the said date, the correction can only be made before the transmittal of the record copy to the International

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<sup>+</sup> Amendment to the English text only.

Bureau. In the case of any other error relating to the indication of the said date or in the case of any error relating to the indication of the said country, the correction can only be made before the expiration of the time limit under Rule 17.1(a) computed on the basis of the correct priority date.

(c) [No change]

(d) [No change]

(e) [No change]

4.11 [Amendment to the French text only]

4.12 [No change]

4.13 [Amendment to the French text only]

4.14 [Amendment to the French text only]

4.15 Signature

(a) Subject to paragraph (b), the request shall be signed by the applicant or, if there is more than one applicant, by all of them.

(b) Where two or more applicants file an international application which designates a State whose national law requires that national applications be filed by the inventor and where an applicant for that designated State who is an inventor refused to sign the request or could not be found or reached after diligent effort, the request need not be signed by that applicant if it is signed by at least one applicant and a statement is furnished explaining, to the satisfaction of the receiving Office, the lack of the signature concerned.

4.16 [No change]

4.17 [Amendment to the French text only]

## **Rule 5 The Description**

5.1 Manner of the Description

(a) The description shall first state the title of the invention as appearing in the request and shall:

(i) [No change]

(ii) [Amendment to the French text only]

(iii) [No change]

(iv) [No change]

(v) [No change]

(vi) [No change]

(b) [No change]

(c) [No change]

## 5.2 Nucleotide and/or Amino Acid Sequence Disclosure

Where the international application contains disclosure of a nucleotide and/or amino acid sequence, the description shall contain a listing of the sequence complying with the standard prescribed by the Administrative Instructions.

### **Rule 6 The Claims**

6.1 [No change]

6.2 [No change]

6.3 [No change]

6.4 Dependent Claims

(a) [Amendment to the French text only]

(b) [No change]

(c) [No change]

6.5 [No change]

### **Rule 7 The Drawings**

[No change]

### **Rule 8 The Abstract**

[No change]

### **Rule 9 Expressions, Etc., Not to Be Used**

[No change]

## **Rule 10 Terminology and Signs**

[No change]

## **Rule 11 Physical Requirements of the International Application**

11.1 [No change]

11.2 [No change]

11.3 [No change]

11.4 [No change]

11.5 [No change]

11.6 Margins

(a) The minimum margins of the sheets containing<sup>\*</sup> the description, the claims, and the abstract, shall be as follows:

- top: 2 cm
- left side: 2.5 cm
- right side: 2 cm
- bottom: 2 cm

(b) [No change]

(c) [No change]

(d) [No change]

(e) Subject to paragraph (f) and to Rule 11.8(b), the margins of the international application, when submitted, must be completely blank.

(f) The top margin may contain in the left-hand corner an indication of the applicant's file reference, provided that the reference appears within 1.5 cm from the top of the sheet. The number of characters in the applicant's file reference shall not exceed the maximum fixed by the Administrative Instructions.

11.7 Numbering of Sheets

(a) [No change]

(b) The numbers shall be centered at the top or bottom of the sheet,<sup>\*\*</sup> but shall not be placed in the margin.

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\* The amendment consists in deleting, after the word "containing", the words "the request,".

\*\* The amendment consists in deleting, after the word "sheet", the words "in the middle,".

11.8 Numbering of Lines

- (a) [No change]
- (b) The numbers should appear in the right half of the left margin.

11.9 [No change]

11.10 Drawings, Formulae, and Tables, in Text Matter

- (a) [No change]
- (b) [No change]
- (c) [No change]
- (d) [Amendment to the French text only]

11.11 [No change]

11.12 [No change]

11.13 [No change]

11.14 [No change]

**Rule 12**  
**Language of the International Application**

12.1 Admitted Languages

- (a) [No change]
- (b) Notwithstanding paragraph (a), the request, any text matter of the drawings, and the abstract need not be in the same language as other elements of the international application, provided that:
  - (i) the request is in a language admitted under paragraph (a) or in the language in which the international application is to be published;
  - (ii) the text matter of the drawings is in the language in which the international application is to be published;
  - (iii) the abstract is in the language in which the international application is to be published.
- (c) [No change]
- (d) [No change]

12.2 [No change]

### **Rule 13** **Unity of Invention**

13.1 [No change]

#### **13.2 Circumstances in Which the Requirement of Unity of Invention Is to Be Considered Fulfilled\***

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

#### **13.3 Determination of Unity of Invention Not Affected by Manner of Claiming\*\***

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

13.4 [No change]

13.5 [No change]

### **Rule 13bis** **Microbiological Inventions**

[No change]

### **Rule 13ter** **Nucleotide and/or Amino Acid Sequence Listings**

#### **13ter.1 Sequence Listing for International Authorities**

(a) If the International Searching Authority finds that a nucleotide and/or amino acid sequence listing does not comply with the standard prescribed in the Administrative Instructions under Rule 5.2, and/or is not in a machine readable form provided for in those Instructions, it may invite the applicant, within a time limit fixed in the invitation, as the case may be:

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\* The title has been amended to read “Circumstances in Which the Requirement of Unity of Invention Is to be Considered Fulfilled” instead of “Claims of Different Categories”.

\*\* The title has been amended to read “Determination of Unity of Invention Not Affected by Manner of Claiming” instead of “Claims of One and the Same Category”.

(i) to furnish to it a listing of the sequence complying with the prescribed standard, and/or

(ii) to furnish to it a listing of the sequence in a machine readable form provided for in the Administrative Instructions or, if that Authority is prepared to transcribe the sequence listing into such a form, to pay for the cost of such transcription.

(b) any sequence listing furnished under paragraph (a) shall be accompanied by a statement to the effect that the listing does not include matter which goes beyond the disclosure in the international application as filed.

(c) If the applicant does not comply with the invitation within the time limit fixed in the invitation, the International Searching Authority shall not be required to search the international application to the extent that such non-compliance has the result that a meaningful search cannot be carried out.

(d) If the International Searching Authority chooses, under paragraph (a)(ii), to transcribe the sequence listing into a machine readable form, it shall send a copy of such transcription in machine readable form to the applicant.

(e) The International Searching Authority shall, upon request, make available to the International Preliminary Examining Authority a copy of any sequence listing furnished to it, or as transcribed by it, under paragraph (a).

(f) A sequence listing furnished to the International Searching Authority, or as transcribed by it, under paragraph (a) shall not form part of the international application.

#### 13ter.2 Sequence Listing for Designated Office

(a) Once the processing of the international application has started before a designated Office, that Office may require the applicant to furnish to it a copy of any sequence listing furnished to the International Searching Authority, or as transcribed by that Authority, under Rule 13ter.1(a).

(b) If a designated Office finds that a nucleotide and/or amino acid sequence listing does not comply with the standard prescribed in the Administrative Instructions under Rule 5.2, and/or is not in a machine readable form provided for in those Instructions, and/or no listing of the sequence was furnished to the International Searching Authority, or transcribed by that Authority, under Rule 13ter.1(a), that Office may require the applicant:

(i) to furnish to it a listing of the sequence complying with the prescribed standard, and/or

(ii) to furnish to it a listing of the sequence in a machine readable form provided for in the Administrative Instructions or, if that Office is prepared to transcribe the sequence listing into such a form, to pay for the cost of such transcription.

### **Rule 14 The Transmittal Fee**

[No change]

## **Rule 15**

### **The International Fee**

#### 15.1 Basic Fee and Designation Fee

Each international application shall be subject to the payment of a fee for the benefit of the International Bureau (“international fee”) to be collected by the receiving Office and consisting of,

(i) a “basic fee,” and

(ii) as many “designation fees” as there are national patents and regional patents sought under Rule 4.9(a) by the applicant in the international application, except that, where Article 44 applies in respect of a designation, only one designation fee shall be due for that designation.

15.2 [No change]

15.3 [No change]

#### 15.4 Time of Payment

(a) [No change]

(b) [No change]

(c) [No change]

(d) [Deleted]

#### 15.5 Fees under Rule 4.9(c)

(a) Notwithstanding Rule 15.4(b), the confirmation under Rule 4.9(c) of any designations made under Rule 4.9(b) shall be subject to the payment to the receiving Office of as many designation fees (for the benefit of the International Bureau) as there are national patents and regional patents sought by the applicant by virtue of the confirmation, together with a confirmation fee (for the benefit of the receiving Office), as set out in the Schedule of Fees.

(b) Where moneys paid by the applicant within the time limit under Rule 4.9(b)(ii) are not sufficient to cover the fees due under paragraph (a), the receiving Office shall allocate any moneys paid as specified by the applicant or, in the absence of such specification, as prescribed by the Administrative Instructions.

#### 15.6 Refund

The receiving Office shall refund the international fee to the applicant:

(i) if the determination under Article 11(1) is negative, or

(ii) if, before the transmittal of the record copy to the International Bureau, the international application is withdrawn or considered withdrawn.

**Rule 16**  
**The Search Fee**

16.1 [No change]

16.2 Refund

The receiving Office shall refund the search fee to the applicant:

- (i) if the determination under Article 11(1) is negative, or
- (ii) if, before the transmittal of the search copy to the International Searching Authority, the international application is withdrawn or considered withdrawn.

16.3 [No change]

**Rule 16bis**  
**Extension of Time Limits for Payment of Fees\***

16bis.1 Invitation by the Receiving Office\*\*

(a) Where, by the time they are due under Rule 14.1(b), Rule 15.4(a) and Rule 16.1(f), the receiving Office finds that in respect of an international application no fees were paid to it by the applicant, or that the amount paid to it by the applicant is less than what is necessary to cover the transmittal fee, the basic fee and the search fee, the receiving Office shall invite the applicant to pay to it the amount required to cover those fees, together with, where applicable, the late payment fee under Rule 16bis.2, within one month from the date of the invitation.

(b) Where, by the time they are due under Rule 15.4(b), the receiving Office finds that in respect of an international application the payment made by the applicant is insufficient to cover the designation fees necessary to cover all the designations under Rule 4.9(a), the receiving Office shall invite the applicant to pay to it the amount required to cover those fees, together with, where applicable, the late payment fee under Rule 16bis.2, within one month from the date of the invitation.

(c) Where the receiving Office has sent to the applicant an invitation under paragraph (a) or (b) and the applicant has not, within one month from the date of the invitation, paid in full the amount due, including, where applicable, the late payment fee under Rule 16bis.2, the receiving Office shall:

(i) allocate any moneys paid as specified by the applicant or, in the absence of such specification, as prescribed by the Administrative Instructions,

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\* The title has been amended to read “Extension of Time Limits for Payment of Fees” instead of “Advancing Fees by the International Bureau”.

\*\* The title has been amended to read “Invitation by the Receiving Office” instead of “Guarantee by the International Bureau”.

- (ii) make the applicable declaration under Article 14(3), and
- (iii) proceed as provided in Rule 29.

16bis.2 Late Payment Fee\*\*\*

(a) The payment of fees in response to an invitation under Rule 16bis.1(a) or (b) may be subjected by the receiving Office to the payment to it of a late payment fee. The amount of that fee shall be:

(i) 50% of the amount of unpaid fees which is specified in the invitation,  
or,

(ii) if the amount calculated under item (i) is less than the transmittal fee, an amount equal to the transmittal fee.

(b) The amount of the late payment fee shall not, however, exceed the amount of the basic fee.

(c) [Deleted]

**Rule 17**  
**The Priority Document**

17.1 [No change]

17.2 Availability of Copies

(a) [No change]

(b) [No change]

(c) Where the international application has been published under Article 21, the International Bureau shall furnish a copy of the priority document to any person upon request and subject to reimbursement of the cost unless, prior to that publication:

(i) the international application was withdrawn,

(ii) the relevant priority claim was withdrawn or was considered, under Rule 4.10(b), not to have been made, or

(iii) the relevant declaration under Article 8(1) was cancelled under Rule 4.10(d).

(d) Paragraphs (a) to (c) shall apply also to any earlier international application whose priority is claimed in the subsequent international application.

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\*\*\* The title has been amended to read “Late Payment Fee” instead of “Obligations of the Applicant, Etc.”.

## **Rule 18**

### **The Applicant**

18.1 [No change]

18.2 [No change]

18.3 Two or More Applicants<sup>\*</sup>

If there are two or more applicants, the right to file an international application shall exist if at least one of them is entitled to file an international application according to Article 9.

18.4 Information on Requirements Under National Law as to Applicants<sup>\*\*</sup>

(a) [Deleted]

(b) [Deleted]

(c) [No change]

## **Rule 19**

### **The Competent Receiving Office**

19.1 Where to File

(a) [No change]

(b) [Amendment to the French text only]

(c) [No change]

19.2 Two or More Applicants<sup>+</sup>

If there are two or more applicants<sup>++</sup>, the requirements of Rule 19.1 shall be considered to be met if the national Office with which the international application is filed is the national Office of or acting for a Contracting State of which at least one of the applicants is a resident or national.

19.3 [No change]

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\* The title has been amended to read “Two or More Applicants” instead of “Several Applicants: Same for All Designated States”.

\*\* The title has been amended to read “Information on Requirements Under National Law as to Applicants” instead of “Several Applicants: Different for Different Designated States” .

+ The title has been amended, in English only, to read “Two or More Applicants” instead of “Several Applicants”.

++ Amendment to the English text only. Another amendment is made to the French text only; see the French version of this document.

**Rule 20**  
**Receipt of the International Application**

20.1 Date and Number

(a) Upon receipt of papers purporting to be an international application, the receiving Office shall indelibly mark the date of actual receipt on the request\* of each copy received and the international application number on each sheet of each copy received.

(b) [No change]

20.2 Receipt on Different Days

(a) [Amendment to the French text only]

(b) [No change]

20.3 [No change]

20.3*bis* [Deleted]

20.4 Determination under Article 11(1)

(a) [Amendment to the French text only]

(b) [No change]

(c) For the purposes of Article 11(1)(ii), it shall be sufficient that the elements referred to in Article 11(1)(iii)(d) and (e) be in a language admitted under Rule 12.1(a) or (c).

(d) If, on July 12, 1991, paragraph (c) is not compatible with the national law applied by the receiving Office, paragraph (c) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1991. The information received shall be promptly published by the International Bureau in the Gazette.

20.5 Positive Determination

(a) If the determination under Article 11(1) is positive, the receiving Office shall stamp on the request the name of the receiving Office and the words “PCT International Application,” or “Demande internationale PCT.” If the official language of the receiving Office is neither English nor French, the words “International Application” or “Demande internationale” may be accompanied by a translation of these words in the official language of the receiving Office.

(b) The copy whose request<sup>+</sup> has been so stamped shall be the record copy of the international application.<sup>+</sup>

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\* The amendment consists in deleting after the word “request” the word “form”.

(c) [No change]

20.6 [No change]

20.7 [No change]

20.8 [No change]

20.9 [No change]

**Rule 21**  
**Preparation of Copies**

[No change]

**Rule 22**  
**Transmittal of the Record Copy**

[No change]

**Rule 23**  
**Transmittal of the Search Copy**

23.1 Procedure

(a) The search copy shall be transmitted by the receiving Office to the International Searching Authority at the latest on the same day as the record copy is transmitted to the International Bureau unless no search fee has been paid. In the latter case, it shall be transmitted promptly after payment of the search fee.

(b) [Deleted]

**Rule 24**  
**Receipt of the Record Copy by the International Bureau**

24.1 [Remains deleted]

24.2 Notification of Receipt of the Record Copy

(a) The International Bureau shall promptly notify:

(i) the applicant,

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[Footnote continued from previous page]

<sup>+</sup> Amendment to the English text only

(ii) the receiving Office, and

(iii) the International Searching Authority (unless it has informed the International Bureau that it wishes not to be so notified),

of the fact and the date of receipt of the record copy. The notification shall identify the international application by its number, the international filing date and the name of the applicant\*, and shall indicate the filing date of any earlier application whose priority is claimed. The notification sent to the applicant shall also contain a list of the States designated under Rule 4.9(a) and, where applicable, of those States whose designations have been confirmed under Rule 4.9(c).

(b) Each designated Office which has informed the International Bureau that it wishes to receive the notification under paragraph (a) prior to the communication under Rule 47.1 shall be so notified by the International Bureau:

(i) if the designation concerned was made under Rule 4.9(a), promptly after the receipt of the record copy;

(ii) if the designation concerned was made under Rule 4.9(b), promptly after the International Bureau has been informed by the receiving Office of the confirmation of that designation.

(c) If the record copy is received after the expiration of the time limit fixed in Rule 22.3, the International Bureau shall promptly notify the applicant, the receiving Office, and the International Searching Authority, accordingly.

## **Rule 25**

### **Receipt of the Search Copy by the International Searching Authority**

[No change]

## **Rule 26**

### **Checking by, and Correcting before, the Receiving Office of Certain Elements of the International Application**

26.1 [No change]

26.2 [No change]

26.3 [No change]

26.3*bis* [No change]

26.3*ter* Invitation to Correct Defects under Article 3(4)(i)

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\* The amendment consists in deleting, after the word “applicant”, the words “, and the name of the receiving Office”.

(a) Where any element of the international application, other than those referred to in Article 11(1)(iii)(d) and (e), does not comply with Rule 12.1, the receiving Office shall invite the applicant to file the required correction. Rules 26.1 a, 26.2, 26.5 and 29.1 shall apply *mutatis mutandis*.

(b) If, on July 12, 1991, paragraph (a) is not compatible with the national law applied by the receiving Office, paragraph (a) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1991. The information received shall be promptly published by the International Bureau in the Gazette.

26.4 [No change]

26.5 [No change]

26.6 [No change]

### **Rule 27** **Lack of Payment of Fees**

#### 27.1 Fees

(a) For the purposes of Article 14(3)(a), “fees prescribed under Article 3(4)(iv)” means: the transmittal fee (Rule 14), the basic fee part of the international fee (Rule 15.1(i)),\* the search fee (Rule 16), and, where required, the late payment fee (Rule 16bis.2).

(b) For the purposes of Article 14(3)(a) and (b), “the fee prescribed under Article 4(2)” means the designation fee part of the international fee (Rule 15.1(ii)) and, where required, the late payment fee (Rule 16bis.2).

### **Rule 28** **Defects Noted by the International Bureau**

[No change]

### **Rule 29** **International Applications or Designations Considered Withdrawn under Article 14(1), (3) or (4)**

#### 29.1 Finding by Receiving Office

(a) If the receiving Office declares, under Article 14(1)(b) and Rule 26.5 (failure to correct certain defects), or under Article 14(3)(a) (failure to pay the prescribed fees under Rule 27.1(a)), or under Article 14(4) (later finding of non-compliance with the requirements listed in items (i) to (iii) of Article 11(1)), that the international application is considered withdrawn:

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\* The amendment consists in deleting the word “and” after the comma.

(i) [No change]

(ii) the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration, and the International Bureau shall in turn notify each designated Office which has already been notified of its designation;

(iii) [No change]

(iv) [No change]

(b) If the receiving Office declares under Article 14(3)(b) (failure to pay the prescribed designation fee under Rule 27.1(b)) that the designation of any given State is considered withdrawn, the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration. The International Bureau shall in turn notify each designated Office which has already been notified of its designation.

29.2 [Remains deleted]

29.3 [No change]

29.4 [No change]

**Rule 30**  
**Time Limit under Article 14(4)**

[No change]

**Rule 31**  
**Copies Required under Article 13**

[No change]

**Rule 32**  
[Deleted]

**Rule 32bis**  
[Deleted]

**Rule 33**  
**Relevant Prior Art for the International Search**

33.1 Relevant Prior Art for the International Search

(a) [No change]

(b) When any written disclosure refers to an oral disclosure, use, exhibition, or other means whereby the contents of the written disclosure were made available to the public, and such making available to the public occurred on a date prior to the international filing date, the international search report shall separately mention that fact and the date on which it occurred if the making available to the public of the written disclosure occurred on a date which is the same as, or later than, the international filing date.

(c) Any published application or any patent whose publication date is the same as, or later than, 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 Article 15(2) had it been published prior to the international filing date, shall be specially mentioned in the international search report.

33.2 [No change]

33.3 [No change]

#### **Rule 34** **Minimum Documentation**

[No change]

#### **Rule 35** **The Competent International Searching Authority**

[No change]

#### **Rule 36** **Minimum Requirements for International Searching Authorities**

##### **36.1 Definition of Minimum Requirements**

The minimum requirements referred to in Article 16(3)(c) shall be the following:

(i) [No change]

(ii) that Office or organization must have in its possession, or have access to, at least the minimum documentation referred to in Rule 34, properly arranged for search purposes, on paper, in microform or stored on electronic media;

(iii) [No change]

#### **Rule 37** **Missing or Defective Title**

[No change]

**Rule 38**  
**Missing or Defective Abstract<sup>+</sup>**

38.1 [No change]

38.2 Establishment of Abstract

(a) If the international application does not contain an abstract 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 an abstract, or if the said Authority finds that the abstract does not comply with Rule 8, it shall itself establish an abstract (in the language in which the international application is published).\*

(b) The applicant may, within one month from the date of mailing of the international search report, submit comments on the abstract established by the International Searching Authority. Where that Authority amends the abstract established by it, it shall notify the amendment to the International Bureau.

**Rule 39**  
**Subject Matter under Article 17(2)(a)(i)**

[No change]

**Rule 40**  
**Lack of Unity of Invention (International Search)**

40.1 [No change]

40.2 Additional Fees

(a) [No change]

(b) [No change]

(c) [No change]

(d) [No change]

(e) Where the applicant has, under paragraph (c), paid an additional fee under protest, the International Searching Authority may, after a prior review of the justification for the invitation to pay an additional fee, require that the applicant pay a fee for the examination of the protest (“protest fee”). The protest fee shall be paid within one month from the date of the notification to the applicant of the result of the review. If the protest fee is not so paid, the protest shall be considered withdrawn. The protest fee shall be refunded to the applicant where the three-member board, special instance or higher authority referred to in paragraph (c) finds that the protest was entirely justified.

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<sup>+</sup> The title has been amended, in English only, to read “Missing or Defective Abstract” instead of “Missing Abstract”.

<sup>\*</sup> The amendment consists in deleting the second sentence.

40.3 [No change]

**Rule 41**  
**Earlier Search Other Than International Search**

[No change]

**Rule 42**  
**Time Limit for International Search**

[No change]

**Rule 43**  
**The International Search Report**

43.1 Identifications

The international search report shall identify the International Searching Authority which established it by indicating the name of such Authority, and the international application by indicating the international application number, the name of the applicant,<sup>\*</sup> and the international filing date.

43.2 Dates

The international search report shall be dated and shall indicate the date on which the international search was actually completed. It shall also indicate the filing date of any earlier application whose priority is claimed or, if the priority of more than one earlier application is claimed, the filing date of the earliest among them.

43.3 [No change]

43.4 [No change]

43.5 Citations

(a) [No change]

(b) [Amendment to the French text only]

(c) [No change]

(d) [No change]

(e) If only certain passages of the cited document are relevant or particularly relevant, they shall be identified, for example, by indicating the page, the column, or the lines, where

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\* The amendment consists in deleting, after the word “applicant”, the words “the name of the receiving Office,”.

the passage appears. If the entire document is relevant but some passages are of particular relevance, such passages shall be identified unless such identification is not practicable.

#### 43.6 Fields Searched

(a) [Amendment to the French text only]

(b) [Amendment to the French text only]

(c) If the international search was based on, or was extended to, any electronic data base, the international search report may indicate the name of the data base and, where considered useful to others and practicable, the search terms used.

#### 43.7 Remarks Concerning Unity of Invention

If the applicant paid additional fees for the international search, the international search report shall so indicate. Furthermore, where the international search was made on the main invention only or on less than all the inventions (Article 17(3)(a)), the international search report shall indicate what parts of the international application were and what parts were not searched.

#### 43.8 Authorized Officer\*

The international search report shall indicate the name of the officer of the International Searching Authority responsible for that report.

#### 43.9 Additional Matter\*\*

The international search report shall contain no matter other than that specified in Rules 33.1(b) and (c), 43.1 to 43.3, 43.5 to 43.8, and 44.2(a),\*\*\* and the indication referred to in Article 17(2)(b), provided that the Administrative Instructions may permit the inclusion in the international search report of any additional matter specified in the Administrative Instructions. The international search report shall not contain, and the Administrative Instructions shall not permit the inclusion of, any expressions of opinion, reasoning, arguments, or explanations.

43.10 [No change]

### **Rule 44** **Transmittal of the International Search Report, Etc.**

44.1 [No change]

44.2 Title or Abstract

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\* The title has been amended to read “Authorized Officer” instead of “Signature”.

\*\* The title has been amended to read “Additional Matter” instead of “No Other Matter”.

\*\*\* The amendment consists in deleting the words “and (b)” after “44.2(a)”.

(a) The international search report shall either state that the International Searching Authority approves the title and the abstract as submitted by the applicant or be accompanied by the text of the title and/or abstract as established by the International Searching Authority under Rules 37 and 38.

(b) [Deleted]

(c) [Deleted]

#### 44.3 Copies of Cited Documents.

(a) [No change]

(b) [No change]

(c) [Deleted]

(d) Any International Searching Authority may perform the obligations referred to in paragraphs (a) and (b) through another agency responsible to it.

### **Rule 45** **Translation of the International Search Report**

[No change]

### **Rule 46** **Amendment of Claims before the International Bureau**

46.1 [No change]

#### 46.2 Where to File

Amendments made under Article 19 shall be filed directly with the International Bureau.

46.3 [No change]

46.4 [No change]

46.5 [No change]

### **Rule 47** **Communication to Designated Offices**

#### 47.1 Procedure

(a) [No change]

(a-bis) The International Bureau shall notify each designated Office, at the time of the communication provided for in Article 20, of the fact and date of receipt of the record copy and of the fact and date of receipt of any priority document. Such notification shall also be sent to any designated Office which has waived the communication provided for in Article 20, unless such Office has also waived the notification of its designation.

- (b) [No change]
- (c) [Amendment to the French text only]
- (d) [No change]
- (e) [Amendment to the French text only]

47.2 [No change]

47.3 [No change]

47.4 Express Request under Article 23(2)

Where the applicant makes an express request to a designated Office under Article 23(2) before the communication provided for in Article 20 has taken place, the International Bureau shall, upon request of the applicant or the designated Office, promptly effect that communication to that Office.

## **Rule 48** **International Publication**

48.1 [No change]

48.2 Contents

- (a) The pamphlet shall contain:
  - (i) [No change]
  - (ii) [No change]
  - (iii) [No change]
  - (iv) [No change]
  - (v) [No change]
  - (vi) [No change]
  - (vii) [No change, except the period is replaced by a comma]

(viii) any indications in relation to a deposited microorganism furnished under Rule 13bis separately from the description, together with an indication of the date on which the International Bureau received such indications.

(b) [No change]

(c) [No change]

(d) [No change]

(e) [No change]

(f) [No change]

(g) [No change]

(h) [No change]

(i) [No change]

48.3 [No change]

48.4 [No change]

48.5 [No change]

48.6 Announcing of Certain Facts

(a) [No change]

(b) [Remains deleted]

(c) If the international application, the designation of any designated State or the priority claim is withdrawn under Rule 90bis after the technical preparations for international publication have been completed, notice of the withdrawal shall be published in the Gazette.

### **Rule 49**

#### **Copy, Translation and Fee under Article 22**

49.1 [No change]

49.2 [No change]

49.3 [No change]

49.4 [No change]

49.5 Contents of and Physical Requirements for the Translation

(a) For the purposes of Article 22, the translation of the international application shall contain the description, the claims, any text matter of the drawings and the abstract. If required by the designated Office, the translation shall also, subject to paragraphs (b), (c-bis) and (e),

(i) [No change]

(ii) [No change]

(iii) [No change]

(b) [No change]

(c) [No change]

(c-bis) Where the applicant furnishes, to a designated Office which requires under paragraph (a)(ii) a translation of both the claims as filed and the claims as amended, only one of the required two translations, the designated Office may disregard the claims of which a translation has not been furnished or invite the applicant to furnish the missing translation within a time limit which shall be reasonable under the circumstances and shall be fixed in the invitation. Where the designated Office chooses to invite the applicant to furnish the missing translation and the latter is not furnished within the time limit fixed in the invitation, the designated Office may disregard those claims of which a translation has not been furnished or consider the international application withdrawn.

(d) [No change]

(e) Any designated Office requiring under paragraph (a) the furnishing of a copy of the drawings shall, where the applicant failed to furnish such copy within the time limit applicable under Article 22,<sup>\*</sup> invite the applicant to furnish such copy within a time limit which shall be reasonable under the circumstances and shall be fixed in the invitation.<sup>\*\*</sup>

(f) [No change]

(g) [No change]

(h) Where the applicant did not furnish a translation of the abstract or of any indication furnished under Rule 13*bis*.4, the designated Office shall invite the applicant to furnish such translation, if it deems it to be necessary, within a time limit which shall be reasonable under the circumstances and shall be fixed in the invitation.

(i) [No change]

(j) [No change]

(k) Where a title has been established by the International Searching Authority pursuant to Rule 37.2, the translation shall contain the title as established by that Authority.

(l) If, on July 12, 1991, paragraph (c-bis) or paragraph (k) is not compatible with the national law applied by the designated Office, the paragraph concerned shall not apply to that designated Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1991. The information received shall be promptly published by the International Bureau in the Gazette.

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\* The amendment consists in deleting, after the words "Article 22," "(i)".

\*\* The amendment consists in deleting, after the word "invitation", ",", "or" and the entire item (ii).

**Rule 50**  
**Faculty under Article 22(3)**

[No change]

**Rule 51**  
**Review by Designated Offices**

51.1 Time Limit for Presenting the Request to Send Copies

The time limit referred to in Article 25(1)(c) shall be two months computed from the date of the notification sent to the applicant under Rules 20.7(i), 24.2(c), 29.1(a)(ii), or 29.1(b).

51.2 [No change]

51.3 [No change]

**Rule 51bis**  
**Certain National Requirements Allowed under Article 27(1), (2), (6) and (7)**

51bis.1 Certain National Requirements Allowed

- (a) [No change]
- (b) [Amendment to the French text only]
- (c) [No change]
- (d) [Amendment to the French text only]

51bis.2 Opportunity to Comply with National Requirements

- (a) [No change]
- (b) [No change]
- (c) [Deleted]

**Rule 52**  
**Amendment of the Claims, the Description, and the Drawings, before Designated Offices**

[No change]

**PART C**  
**Rules Concerning Chapter II of the Treaty**

**Rule 53**  
**The Demand**

53.1 Form

(a) The demand shall be made on a printed form or be presented as a computer print-out. The particulars of the printed form and of a demand presented as a computer print-out shall be prescribed by the Administrative Instructions.

(b) Copies of printed demand forms shall be furnished free of charge by the receiving Office or by the International Preliminary Examining Authority.

(c) [Deleted]

53.2 Contents

(a) The demand shall contain:

(i) [No change]

(ii) [No change]

(iii) [No change]

(iv) [No change, except the period is replaced by a comma]

(v) where applicable, a statement concerning amendments.

(b) [No change]

53.3 [No change]

53.4 The Applicant

As to the indications concerning the applicant, Rules 4.4 and 4.16 shall apply, and Rule 4.5 shall apply *mutatis mutandis*. Only applicants for the elected States are required to be indicated in the demand.

53.5 Agent or Common Representative\*

If an agent or common representative is designated, the demand shall so indicate. Rules 4.4\*\* and 4.16 shall apply, and Rule 4.7 shall apply *mutatis mutandis*.

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\* The title has been amended to read “Agent or Common Representative” instead of “The Agent”.

\*\* The amendment consists in deleting “, 4.7,” after “Rules 4.4”.

### 53.6 Identification of the International Application

The international application shall be identified by\* the name and address of the applicant, the title of the invention,\*\* the international filing date (if known to the applicant) and the international application number or, where such number is not known to the applicant, the name of the receiving Office with which the international application was filed.

### 53.7 Election of States

(a) The demand shall indicate at least one Contracting State, from among those States which are designated and are bound by Chapter II of the Treaty (“eligible States”), as an elected State.

(b) Election of Contracting States in the demand shall be made:

(i) by an indication that all eligible States are elected, or,

(ii) in the case of States which have been designated for the purpose of obtaining national patents, by an indication of those eligible States that are elected, and, in the case of States which have been designated for the purpose of obtaining a regional patent, by an indication of the regional patent concerned together with either an indication that all eligible States party to the regional patent treaty concerned are elected or an indication of those among the said States that are elected.

### 53.8 Signature

(a) Subject to paragraph (b), the demand shall be signed by the applicant or, if there is more than one applicant, by all applicants making the demand.

(b) Where two or more applicants file a demand which elects a State whose national law requires that national applications be filed by the inventor and where an applicant for that elected State who is an inventor refused to sign the demand or could not be found or reached after diligent effort, the demand need not be signed by that applicant (“the applicant concerned”) if it is signed by at least one applicant and

(i) a statement is furnished explaining, to the satisfaction of the International Preliminary Examining Authority, the lack of signature of the applicant concerned, or

(ii) the applicant concerned did not sign the request but the requirements of Rule 4.15(b) were complied with.

### 53.9 Statement Concerning Amendments

(a) If amendments under Article 19 have been made, the statement concerning amendments shall indicate whether, for the purposes of the international preliminary examination, the applicant wishes those amendments

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\* The amendment consists in deleting, after the word “by”, the words “the name of the receiving Office with which the international application was filed.”.

\*\* The amendment consists in deleting, after the word “invention”, the words “and, where”.

(i) to be taken into account, in which case a copy of the amendments shall preferably be submitted with the demand, or

(ii) to be considered as reversed by an amendment under Article 34.

(b) If no amendments under Article 19 have been made and the time limit for filing such amendments has not expired, the statement may indicate that the applicant wishes the start of the international preliminary examination to be postponed in accordance with Rule 69.1(d).

(c) If any amendments under Article 34 are submitted with the demand, the statement shall so indicate.

### **Rule 54** **The Applicant Entitled to Make a Demand**

54.1 [No change]

54.2 Two or More Applicants \*

If there are two or more applicants, the right to make a demand under Article 31(2) shall exist if at least one of the applicants making the demand is

(i) a resident or national of a Contracting State bound by Chapter II and the international application has been filed with a receiving Office of or acting for a Contracting State bound by Chapter II, or

(ii) [Amendment to the French text only]

54.3 [Deleted]

54.4 Applicant Not Entitled to Make a Demand \*\*

(a) If the applicant does not have the right to make a demand or, in the case of two or more applicants, if none of them has the right to make a demand under Rule 54.2, the demand shall be considered not to have been submitted.

(b) [Deleted]

### **Rule 55** **Languages (International Preliminary Examination)**

[No change]

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\* The title has been amended to read “Two or More Applicants” instead of “Several Applicants: Same for All Elected States”.

\*\* The amendment to the title consists in deleting, at the end, the words “or an Election”.

## **Rule 56** **Later Elections**

### 56.1 Elections Submitted Later Than the Demand

(a) The election of States subsequent to the submission of the demand (“later election”) shall be effected by a notice\* submitted to the International Bureau. The notice shall identify the international application and the demand, and shall include an indication as referred to in Rule 53.7(b)(ii).

(b) Subject to paragraph (c), the notice referred to in paragraph (a) shall be signed by the applicant for the elected States concerned or, if there is more than one applicant for those States, by all of them.

(c) Where two or more applicants file a notice effecting a later election of a State whose national law requires that national applications be filed by the inventor and where an applicant for that elected State who is an inventor refused to sign the notice or could not be found or reached after diligent effort, the notice need not be signed by that applicant (“the applicant concerned”) if it is signed by at least one applicant and

(i) a statement is furnished explaining, to the satisfaction of the International Bureau, the lack of signature of the applicant concerned, or

(ii) the applicant concerned did not sign the request but the requirements of Rule 4.15(b) were complied with, or did not sign the demand but the requirements of Rule 53.8(b) were complied with.

(d) An applicant for a State elected by a later election need not have been indicated as an applicant in the demand.

(e) If a notice effecting a later election is submitted after the expiration of 19 months from the priority date, the International Bureau shall notify the applicant that the election does not have the effect provided for under Article 39(1)(a) and that the acts referred to in Article 22 must be performed in respect of the elected Office concerned within the time limit applicable under Article 22.

(f) If, notwithstanding paragraph (a), a notice effecting a later election is submitted by the applicant to the International Preliminary Examining Authority rather than the International Bureau, that Authority shall mark the date of receipt on the notice and transmit it promptly to the International Bureau. The notice shall be considered to have been submitted to the International Bureau on the date marked.

56.2 [Amendment to the French text only]

56.3 [Amendment to the French text only]

56.4 Form of Later Elections

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\* The amendment consists in deleting, after the word “notice”, the words “signed and”.

The notice effecting the later election shall\* preferably be worded as follows: "In relation to the international application filed with ...on ... under No. ...by ...(applicant) (and the demand for international preliminary examination submitted on ...to ...), the undersigned elects the following additional State(s) under Article 31 of the Patent Cooperation Treaty: ..."

56.5 [No change]

## **Rule 57** **The Handling Fee**

### 57.1 Requirement to Pay

(a) [No change]

(b) [~~Deleted~~]

### 57.2 Amount\*\*

(a) The amount of the handling fee is as set out in the Schedule of Fees.\*\*\*

(b) [~~Deleted~~]

(c) [No change]

(d) [No change]

(e) [No change]

### 57.3 Time and Mode of Payment

(a) [Amendment to the French text only]

(b) [~~Deleted~~]

(c) [Amendment to the French text only]

(d) [~~Deleted~~]

### 57.4 Failure to Pay\*\*\*\*

(a) [No change]

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\* The amendment consists in deleting, after the words "election shall", the words "preferably be made on a printed form furnished free of charge to applicants. If it is not made on such a form, it shall".

\*\* The title has been amended to read "Amount" instead of "Amounts of the Handling Fee and the Supplement to the Handling Fee".

\*\*\* The amendment consists in deleting the second sentence.

\*\*\*\* The amendment consists in deleting, at the end of the title, the words "(Handling Fee)".

(b) [No change]

(c) [No change]

57.5 [Deleted]

57.6 Refund

The International Preliminary Examining Authority shall refund the handling fee to the applicant:

(i) if the demand is withdrawn before the demand has been sent by that Authority to the International Bureau, or

(ii) if the demand is considered, under Rule 54.4(a), not to have been submitted.

**Rule 58**  
**The Preliminary Examination Fee**

[No change]

**Rule 59**  
**The Competent International Preliminary Examining Authority**

59.1 Demands under Article 31(2)(a)

For demands made under Article 31(2)(a), each receiving Office of or acting for a Contracting State bound by the provisions of Chapter II shall, in accordance with the terms of the applicable agreement referred to in Article 32(2) and (3), inform the International Bureau which International Preliminary Examining Authority is or which International Preliminary Examining Authorities are competent for the international preliminary examination of international applications filed with it. The International Bureau shall promptly publish such information. Where several International Preliminary Examining Authorities are competent, the provisions of Rule 35.2 shall apply *mutatis mutandis*.

59.2 [No change]

**Rule 60**  
**Certain Defects in the Demand or Elections**

60.1 Defects in the Demand

(a) If the demand does not comply with the requirements specified in Rules 53.1, 53.2(a)(i) to (iv), 53.2(b), 53.3 to 53.8 and 55, the International Preliminary Examining Authority shall invite the applicant to correct the defects within a time limit which shall be reasonable under the circumstances. That time limit shall not be less than one month from the date of the invitation. It may be extended by the International Preliminary Examining Authority at any time before a decision is taken.

(b) If the applicant complies with the invitation within the time limit under paragraph (a), the demand shall be considered as if it had been received on the actual filing date, provided that the demand as submitted contained at least one election and permitted the international application to be identified; otherwise, the demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the correction.

(c) Subject to paragraph (d), if the applicant does not comply with the Invitation within the time limit under paragraph (a), the demand shall be considered as if it had not been submitted.

(d) Where, after the expiration of the time limit under paragraph (a), a signature required under Rule 53.8 or a prescribed indication is lacking in respect of an applicant for a certain elected State, the election of that State shall be considered as if it had not been made.

(e) If the defect is noticed by the International Bureau, it shall bring the defect to the attention of the International Preliminary Examining Authority, which shall then proceed as provided in paragraphs (a) to (d).

(f) If the demand does not contain a statement concerning amendments, the International Preliminary Examining Authority shall proceed as provided for in Rules 66.1 and 69.1(a) or (b).

(g) Where the statement concerning amendments contains an indication that amendments under Article 34 are submitted with the demand (Rule 53.9(c)) but no such amendments are, in fact, submitted, the International Preliminary Examining Authority shall invite the applicant to submit the amendments within a time limit fixed in the invitation and shall proceed as provided for in Rule 69.1(e).

## 60. 2 Defects in Later Elections

(a) If the notice effecting a later election does not comply with the requirements of Rule 56, the International Bureau shall invite the applicant to correct the defects within a time limit which shall be reasonable under the circumstances. That time limit shall not be less than one month from the date of the invitation. It may be extended by the International Bureau at any time before a decision is taken.

(b) If the applicant complies with the invitation within the time limit under paragraph (a), the notice shall be considered as if it had been received on the actual filing date, provided that the notice as submitted contained at least one election and permitted the international application to be identified; otherwise, the notice shall be considered as if it had been received on the date on which the International Bureau receives the correction.

(c) Subject to paragraph (d), if the applicant does not comply with the invitation within the time limit under paragraph (a), the notice shall be considered as if it had not been submitted.

(d) Where, in respect of an applicant for a certain elected State, the signature required under Rule 56.1(b) and (c) or the name or address is lacking after the expiration of the time limit under paragraph (a), the later election of that State shall be considered as if it had not been made.

**Rule 61**  
**Notification of the Demand and Elections**

61.1 Notification to the International Bureau and the Applicant\*

(a) [No change]

(b) The International Preliminary Examining Authority shall promptly inform the applicant in writing of the date of receipt of the demand. Where the demand has been considered under Rules 54.4(a), 57.4(c), 58.2(c) or 60.1(c) as if it had not been submitted or where an election has been considered under Rule 60.1(d) as if it had not been made, the International Preliminary Examining Authority shall notify the applicant and the International Bureau accordingly.

(c) The International Bureau shall promptly notify\*\* the applicant of the receipt, and the date of receipt, of any notice effecting a later election. That date shall be the actual date of receipt by the International Bureau or, where applicable, the date referred to in Rule 56.1(f) or 60.2(b). Where the notice has been considered under Rule\*\*\* 60.2(c) as if it had not been submitted or where a later election has been considered under Rule 60.2(d) as if it had not been made, the International Bureau shall notify the applicant accordingly.

61.2 Notification to the Elected Offices\*\*\*\*

(a) [No change]

(b) The notification shall indicate the number and filing date of the international application, the name of the applicant,\*\*\*\*\* the filing date of the application whose priority is claimed (where priority is claimed), the date of receipt by the International Preliminary Examining Authority of the demand, and--in the case of a later election--the date of receipt\*\*\*\*\* of the notice effecting the later election. The latter date shall be the actual date of receipt by the International Bureau or, where applicable, the date referred to in Rule 56.1(f) or 60.2(b).

(c) The notification shall be sent to the elected Office together with the communication provided for in Article 20. Elections effected after such communication shall be notified promptly after they have been made.

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\* The title has been amended to read "Notification to the International Bureau and the Applicant" instead of "Notifications to the International Bureau, the Applicant, and the International Preliminary Examining Authority".

\*\* The amendment consists in deleting, after the word "notify", the words "the International Preliminary Examining Authority and".

\*\*\* The amendment consists in deleting the words "Rules 57.5(c) or".

\*\*\*\* The title has been amended to read "Notification to the Elected Offices" instead of "Notifications to the Elected Offices".

\*\*\*\*\* The amendment consists in deleting, after the word "applicant", the words "the name of the receiving Office,".

\*\*\*\*\* The amendment consists in deleting, after the word "receipt", the words "by the International Bureau".

(d) Where the applicant makes an express request to an elected Office under Article 40(2) before the communication provided for in Article 20 has taken place, the International Bureau shall, upon request of the applicant or the elected Office, promptly effect that communication to that Office.

### 61.3 Information for the Applicant

The International Bureau shall inform the applicant in writing of the notification referred to in Rule 61.2 and of the elected Offices notified under Article 31(7).

### 61.4 Publication in the Gazette

Where a demand has been filed prior to the expiration of the 19th month from the priority date, the International Bureau shall publish a notice of that fact in the Gazette promptly after the filing of the demand, but not before the international publication of the international application. The notice shall indicate all designated States bound by Chapter II which have not been elected.

## **Rule 62** **Copy of Amendments Under Article 19 for the** **International Preliminary Examining Authority\***

### 62.1 Amendments Made before the Demand is Filed

Upon receipt of a demand from the International Preliminary Examining Authority, the International Bureau shall promptly transmit a copy of any amendments under Article 19 to that Authority, unless that Authority has indicated that it has already received such a copy.

### 62.2 Amendments Made after the Demand is Filed\*\*

(a) If, at the time of filing any amendments under Article 19, a demand has already been submitted, the applicant shall preferably, at the same time as he files the amendments with the International Bureau, also file a copy of such amendments with the International Preliminary Examining Authority. In an case, the International Bureau shall promptly transmit a copy of such amendments to that Authority.

(b) [Deleted]

## **Rule 63** **Minimum Requirements for International Preliminary Examining Authorities**

[No change]

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\* The title has been amended to read “Copy of Amendments Under Article 19 for the International Preliminary Examining Authority” instead of “Copy for the International Preliminary Examining Authority”.

\*\* The title has been amended to read “Amendments Made after the Demand is Filed” instead of “Amendments”.

**Rule 64**  
**Prior Art for International Preliminary Examination**

64.1 [No change]

64.2 Non-Written Disclosures

In cases where the making available to the public occurred by means of an oral disclosure, use, exhibition or other non-written means (“non-written disclosure”) before the relevant date as defined in Rule 64.1(b) and the date of such non-written disclosure is indicated in a written disclosure which has been made available to the public on a date which is the same as, or later than, the relevant date, the non-written disclosure shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such non-written disclosure in the manner provided for in Rule 70.9.

64.3 Certain Published Documents

In cases where any application or any patent which would constitute prior art for the purposes of Article 33(2) and (3) had it been published prior to the relevant date referred to in Rule 64.1 was published on a date which is the same as, or later than, the relevant date but was filed earlier than the relevant date or claimed the priority of an earlier application which had been filed prior to the relevant date, such published application or patent shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such application or patent in the manner provided for in Rule 70.10.

**Rule 65**  
**Inventive Step or Non-Obviousness**

[No change]

**Rule 66**  
**Procedure before the International Preliminary Examining Authority**

66.1 Basis of the International Preliminary Examination

(a) Subject to paragraphs (b) to (d), the international preliminary examination shall be based on the international application as filed.

(b) The applicant may submit amendments under Article 34 at the time of filing the demand or, subject to Rule 66.4bis, until the international preliminary examination report is established.

(c) Any amendments under Article 19 made before the demand was filed shall be taken into account for the purposes of the international preliminary examination unless superseded, or considered as reversed, by an amendment under Article 34.

(d) Any amendments under Article 19 made after the demand was filed and any amendments under Article 34 submitted to the International Preliminary Examining Authority shall, subject to Rule 66.4bis, be taken into account for the purposes of the international preliminary examination.

(e) Claims relating to inventions in respect of which no international search report has been established need not be the subject of international preliminary examination.

#### 66.2 First Written Opinion of the International Preliminary Examining Authority

(a) If the International Preliminary Examining Authority

(i) considers that any of the situations referred to in Article 34(4) exists,

(ii) [No change]

(iii) [No change]

(iv) considers that any amendment goes beyond the disclosure in the international application as filed,\*

(v) [No change]

(vi) considers that a claim relates to an invention in respect of which no international search report has been established and has decided not to carry out the international preliminary examination in respect of that claim, or

(vii) considers that a nucleotide and or amino acid sequence listing is not available to it in such a form that a meaningful international preliminary examination can be carried out, the said Authority shall notify the applicant accordingly in writing. Where the national law of the national Office acting as International Preliminary Examining Authority does not allow multiple dependent claims to be drafted in a manner different from that provided for in the second and third sentences of Rule 6.4(a), the International Preliminary Examining Authority may, in case of failure to use that manner of claiming, apply Article 34(4)(b). In such case, it shall notify the applicant accordingly in writing.

(b) [No change]

(c) [No change]

(d) The notification shall fix a time limit for the reply. The time limit shall be reasonable under the circumstances. It shall normally be two months after the date of notification. In no case shall it be shorter than one month after the said date. It shall be at least two months after the said date where the international search report is transmitted at the same time as the notification. It shall not be more than three months after the said date but may be extended if the applicant so requests before its expiration.

#### 66.3 [No change]

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\* The amendment consists in deleting the word “or”.

66.4 Additional Opportunity for Submitting Amendments or Arguments

- (a) [Amendment to the French text only]
- (b) [No change]

66.4bis Consideration of Amendments and Arguments

Amendments or arguments need not be taken into account by the International Preliminary Examining Authority for the purposes of a written opinion or the international preliminary examination report if they are received after that Authority has begun to draw up that opinion or report.

66.5 [No change]

66.6 [No change]

66.7 [No change]

66.8 Form of Amendments

(a) The applicant shall be required to submit a replacement sheet for every sheet of the international application which, on account of an amendment, differs from the sheet previously filed. The letter accompanying the replacement sheets shall draw attention to the differences between the replaced sheets and the replacement sheets. Where the amendment consists in the deletion of passages or in minor alterations or additions, it may be made on a copy of the relevant sheet of the international application, provided that the clarity and direct reproducibility of that sheet are not adversely affected. To the extent that any amendment results in the cancellation of an entire sheet, that amendment shall be communicated in a letter.

- (b) [Remains deleted]

66.9 [No change]

**Rule 67**  
**Subject Matter under Article 34(4)(a)(i)**

[No change]

**Rule 68**  
**Lack of Unity of Invention (International Preliminary Examination)**

68.1 No Invitation to Restrict or Pay

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses not to invite the applicant to restrict the claims or to pay additional fees, it shall proceed with the international preliminary

examination<sup>\*</sup>, subject to Article 34(4)(b) and Rule 66.1(e), in respect of the entire international application, but shall indicate, in any written opinion and in the international preliminary examination report, that it considers that the requirement of unity of invention is not fulfilled and it shall specify the reasons therefor.

68.2 [Amendment to the French text only]

68.3 Additional Fees

(a) [No change]

(b) [No change]

(c) [No change]

(d) [No change]

(e) Where the applicant has, under paragraph (c), paid an additional fee under protest, the International Preliminary Examining Authority may, after a prior review of the justification for the invitation to pay an additional fee, require that the applicant pay a fee for the examination of the protest (“protest fee”). The protest fee shall be paid within one month from the date of the notification to the applicant of the result of the review. If the protest fee is not so paid, the protest shall be considered withdrawn. The protest fee shall be refunded to the applicant where the three-member board, special instance or higher authority referred to in paragraph (c) finds that the protest was entirely justified.

68.4 [No change]

68.5 [No change]

## **Rule 69**

### **Start of and Time Limit for International Preliminary Examination<sup>\*\*</sup>**

69.1 Start of International Preliminary Examination<sup>\*\*\*</sup>

(a) Subject to paragraphs (b) to (e), the International Preliminary Examining Authority shall start the international preliminary examination when it is in possession both of the demand and of either the international search report or a notice of the declaration by the International Searching Authority under Article 17(2)(a) that no international search report will be established.

(b) If the competent International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the competent International Searching Authority, the international preliminary examination may, if the International

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\* The amendment consists in deleting, after the word “examination”, the word “report”.

\*\* The title has been amended to read “Start of and Time Limit for International Preliminary Examination” instead of “Time Limit for International Preliminary Examination”.

\*\*\* The title has been amended to read “Start of International Preliminary Examination” instead of “Time Limit for International Preliminary Examination”.

Preliminary Examining Authority so wishes and subject to paragraph (d), start at the same time as the international search.\*

(c) Where the statement concerning amendments contains an indication that amendments under Article 19 are to be taken into account (Rule 53.9(a)(i)), the International Preliminary Examining Authority shall not start the international preliminary examination before it has received a copy of the amendments concerned.

(d) Where the statement concerning amendments contains an indication that the start of the international preliminary examination is to be postponed (Rule 53.9(b)), the International Preliminary Examining Authority shall not start the international preliminary examination before

(i) it has received a copy of any amendments made under Article 19,

(ii) it has received a notice from the applicant that he does not wish to make amendments under Article 19, or

(iii) the expiration of 20 months from the priority date,

whichever occurs first.

(e) Where the statement concerning amendments contains an indication that amendments under Article 34 are submitted with the demand (Rule 53.9(c)) but no such amendments are, in fact, submitted, the International Preliminary Examining Authority shall not start the international preliminary examination before it has received the amendments or before the time limit fixed in the invitation referred to in Rule 60.1(g) has expired, whichever occurs first.

#### 69.2 Time Limit for International Preliminary Examination\*\*

The time limit for establishing the international preliminary examination report shall be:

(i) 28 months from the priority date if the demand was filed prior to the expiration of 19 months from the priority date;

(ii) nine months from the start of the international preliminary examination if the demand was filed after the expiration of 19 months from the priority date.

### **Rule 70** **The International Preliminary Examination Report**

70.1 [No change]

70.2 Basis of the Report

(a) [No change]

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\* The amendment consists in deleting the second sentence.

\*\* This Rule was renumbered (former Rule 69.1(a)).

(b) [No change]

(c) [No change]

(d) Where claims relate to inventions in respect of which no international search report has been established and have therefore not been the subject of international preliminary examination, the international preliminary examination report shall so indicate.

### 70.3 Identifications

The report shall identify the International Preliminary Examining Authority which established it by indicating the name of such Authority, and the international application \*by indicating the international application number, the name of the applicant, \*\* and the international filing date.

70.4 No change]

70.5 [No change]

70.6 [No change]

70.7 [No change]

70.8 [No change]

70.9 [No change]

70.10 [No change]

70.11 [No change]

### 70.12 Mention of Certain Defects and Other Matters\*\*\*

If the International Preliminary Examining Authority considers that, at the time it prepares the report:

(i) [No change]

(ii) [No change, except the period is replaced by a semi-colon]

(iii) any of the situations referred to in Article 34(4) exists, it shall state this opinion and the reasons therefor in the report;

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\* The amendment consists in deleting the comma after the word “application”.

\*\* The amendment consists in deleting, after the word “applicant”, the words “the name of the receiving Office, ”.

\*\*\* The title has been amended to read “Mention of Certain Defects and Other Matters” instead of “Mention of Certain Defects”.

(iv) a nucleotide and/or amino acid sequence listing is not available to it in such a form that a meaningful international preliminary examination can be carried out, it shall so state in the report.

#### 70.13 Remarks Concerning Unity of Invention

If the applicant paid additional fees for the international preliminary examination, or if the international application or the international preliminary examination was restricted under Article 34(3), the report shall so indicate. Furthermore, where the international preliminary examination was carried out on restricted claims (Article 34(3)(a)), or on the main invention only (Article 34(3)(c)), the report shall indicate what parts of the international application were and what parts were not the subject of international preliminary examination. The report shall contain the indications provided for in Rule 68.1, where the International Preliminary Examining Authority chose not to invite the applicant to restrict the claims or to pay additional fees.

#### 70.14 Authorized Officer\*

The report shall indicate the name of the officer of the International Preliminary Examining Authority responsible for that report.

70.15 [No change]

#### 70.16 Annexes of the Report

Each replacement sheet under Rule 66.8(a) and each replacement sheet containing amendments under Article 19 shall, unless superseded by later replacement sheets, be annexed to the report. Amendments under Article 19 which have been considered as reversed by an amendment under Article 34 and letters under Rule 66.8(a) shall not be annexed.

70.17 [No change]

### **Rule 71** **Transmittal of the International Preliminary Examination Report**

71.1 [No change]

#### 71.2 Copies of Cited Documents

(a) [No change]

(b) [No change]

(c) [Deleted]

(d) Any International Preliminary Examining Authority may perform the obligations referred to in paragraphs (a) and (b) through another agency responsible to it.

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\* The title has been amended to read “Authorized Officer” instead of “Signature”.

**Rule 72**  
**Translation of the International Preliminary Examination Report**

72.1 Languages

(a) Any elected State may require that the international preliminary examination report, established in any language other than the official language, or one of the official languages, of its national Office, be translated into English.\*

(b) [No change]

72.2 Copy of Translation for the Applicant

The International Bureau shall transmit a copy of the translation referred to in Rule 72.1(a) of the international preliminary examination report to the applicant at the same time as it communicates such translation to the interested elected Office or Offices.

72.3 [No change]

**Rule 73**  
**Communication of the International Preliminary Examination Report**

73.1 [No change]

73.2 Time Limit for Communication

The communication provided for in Article 36(3)(a) shall be effected as promptly as possible but not earlier than the communication under Article 20.

**Rule 74**  
**Translations of Annexes of the International  
Preliminary Examination Report and Transmittal Thereof**

[No change]

**Rule 75**

[Deleted]

**Rule 76**  
**Copy, Translation and Fee under Article 39(1); Translation of Priority Document**

76.1 [Remains deleted]

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\* The amendment consists in deleting, after the word “English”, the words “, French, German, Japanese, Russian, or Spanish”.

76.2 [Remains deleted]

76.3 [Remains deleted]

76.4 [No change]

76.5 Application of Rules 22.1(g), 49 and 51bis

Rules 22.1(g), 49 and 51bis shall apply, provided that:

- (i) [Amendment to the French text only]
- (ii) any reference in the said Rules to Article 22 or Article 24(2) shall be construed as a reference to Article 39(1) or Article 39(3), respectively;
- (iii) [No change, except the period is replaced by a semi-colon]
- (iv) for the purposes of Article 39(1), where an international preliminary examination report has been established, a translation of any amendment under Article 19 shall only be required if that amendment is annexed to that report.

76.6 Transitional Provision

If, on July 12, 1991, Rule 76.5(iv) is not compatible with the national law applied by the elected Office in respect of claims amended under Article 19, Rule 76.5(iv) shall not apply in that respect to that elected Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1991. The information received shall be promptly published by the International Bureau in the Gazette.

**Rule 77**  
**Faculty under Article 39(1)(b)**

[No change]

**Rule 78**  
**Amendment of the Claims, the Description, and the Drawings, before Elected Offices**

78.1 Time Limit Where Election Is Effected prior to Expiration of 19 Months from Priority Date

(a) Where the election of any Contracting State is effected prior to the expiration of the 19th month from the priority date, the applicant shall, if he so wishes, exercise the right under Article 41 to amend the claims, the description and the drawings, before the elected Office concerned within one month from the fulfilment of the requirements under Article 39(1)(a), provided that, if the transmittal of the international preliminary examination report under Article 36(1) has not taken place by the expiration of the time limit applicable under Article 39, he shall exercise the said right not later than four months after such expiration

date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

(b) In any elected State in which the national law provides that examination starts only on special request, the national law may provide that the time limit within or the time at which the applicant may exercise the right under Article 41 shall, where the election of any Contracting State is effected prior to the expiration of the 19th month from the priority date, be the same as that provided by the national law for the filing of amendments in the case of the examination, on special request, of national applications, provided that such time limit shall not expire prior to, or such time shall not come before, the expiration of the time limit applicable under paragraph (a).

78.2 [No change]

78.3 [No change]

**PART D**  
**Rules Concerning Chapter III of the Treaty**

**Rule 79**  
**Calendar**

[No change]

**Rule 80**  
**Computation of Time Limits**

80.1 [No change]

80.2 [No change]

80.3 [No change]

80.4 [No change]

80.5 [No change]

80.6 [No change]

80.7 End of Working Day

(a) [No change]

(b) [No change]

(c) [Deleted]

**Rule 81**  
**Modification of Time Limits Fixed in the Treaty**

[No change]

**Rule 82**  
**Irregularities in the Mail Service<sup>+</sup>**

82.1 Delay or Loss in Mail

(a) [Amendment to the French text only]

(b) If the mailing, in accordance with paragraph (a), of a document or letter is proven to the satisfaction of the national Office or intergovernmental organization which is the addressee, delay in arrival shall be excused, or, if the document or letter is lost in the mail, substitution for it of a new copy shall be permitted, provided that the interested party proves

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<sup>+</sup> Amendment to the title in the French text only.

to the satisfaction of the said Office or organization that the document or letter offered in substitution is identical with the document-or letter lost.

(c) [Amendment to the French text only]

(d) Any national Office or intergovernmental organization which has notified the International Bureau that it will do so shall, where a delivery service other than the postal authorities is used to mail a document or letter, apply the provisions of paragraphs (a) to (c) as if the delivery service was a postal authority. In such a case, the last sentence of paragraph (a) shall not apply but evidence may be offered only if details of the mailing were recorded by the delivery service at the time of mailing. The notification may contain an indication that it applies only to mailings using specified delivery services or delivery services which satisfy specified criteria. The International Bureau shall publish the information so notified in the Gazette.

(e) Any national Office or intergovernmental organization may proceed under paragraph (d):

(i) even if, where applicable, the deliver service used was not one of those specified, or did not satisfy the criteria specified, in the relevant notification under paragraph (d), or

(ii) even if that Office or organization has not sent to the International Bureau a notification under paragraph (d).

## 82.2 Interruption in the Mail Service

(a) [No change]

(b) [Amendment to the French text only]

### **Rule 82bis**

#### **Excuse by the Designated or Elected State of Delays in Meeting Certain Time Limits**

[No change]

### **Rule 82ter**

#### **Rectification of Errors Made by the Receiving Office or by the International Bureau**

[No change]

### **Rule 83**

#### **Right to Practice before International Authorities**

[No change]

**PART E**  
**Rules Concerning Chapter V of the Treaty**

**Rule 84**  
**Expenses of Delegations**

[No change]

**Rule 85**  
**Absence of Quorum in the Assembly**

[No change]

**Rule 86**  
**The Gazette**

86.1 [No change]

86.2 [No change]

86.3 Frequency

The frequency of publication of the Gazette shall be determined by the Director General.

86.4 Sale

The subscription and other sale prices of the Gazette shall be determined by the Director General.

86.5 Title

The title of the Gazette shall be determined by the Director General.

86.6 [No change]

**Rule 87**  
**Copies of Publications**

87.1 [No change]

87.2 National Offices

(a) [No change]

(b) The publications referred to in paragraph (a) shall be sent on special request.\* If any publication is available in more than one language, the request shall specify the language or languages in which it is desired.

## **Rule 88** **Amendment of the Regulations**

### 88.1 Requirement of Unanimity

Amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment:

- (i) [No change]
- (ii) [Deleted]
- (iii) [No change]
- (iv) [No change]
- (v) [No change]
- (vi) [No change]
- (vii) [No change]

88.2 [Remains deleted]

88.3 [No change]

88.4 [No change]

## **Rule 89** **Administrative Instructions**

89.1 [No change]

### 89.2 Source

- (a) [No change]
- (b) [Amendment to the French text only]
- (c) [No change]

89.3 [No change]

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\* The amendment consists in deleting, after the words “special request”, the words “, which shall be made, in respect of each year, by November 30 of the preceding year”.

**PART F**  
**Rules Concerning Several Chapters of the Treaty**

**Rule 90\***  
**Agents and Common Representatives\*\***

90.1 Appointment as Agent

(a) A person having the right to practice before the national Office with which the international application is filed may be appointed by the applicant as his agent to represent him before that Office acting as the receiving Office and before the International Bureau, the International Searching Authority and the International Preliminary Examining Authority.

(b) A person having the right to practice before the national Office or intergovernmental organization which acts as the International Searching Authority may be appointed by the applicant as his agent to represent him specifically before that Authority.

(c) A person having the right to practice before the national Office or intergovernmental organization which acts as the International Preliminary Examining Authority may be appointed by the applicant as his agent to represent him specifically before that Authority.

(d) An agent appointed under paragraph (a) may, unless otherwise indicated in the document appointing him, appoint one or more sub-agents to represent the applicant as the applicant's agent:

(i) before the receiving Office, the International Bureau, the International Searching Authority and the International Preliminary Examining Authority, provided that any person so appointed as sub-agent has the right to practice before the national Office with which the international application was filed;

(ii) specifically before the International Searching Authority or the International Preliminary Examining Authority, provided that any person so appointed as sub-agent has the right to practice before the national Office or intergovernmental organization which acts as the International Searching Authority or International Preliminary Examining Authority, as the case may be.

90.2 Common Representative

(a) Where there are two or more applicants and the applicants have not appointed an agent representing all of them (a "common agent") under Rule 90.1(a), one of the applicants

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\* Rule 90 has been substantially amended, with renumbering of those provisions which are retained, and modification of titles. The text is therefore presented as a new Rule (i.e., the whole text being underlined). For the purposes of comparison with the text of present Rule 90, however, it should be noted that the substance of Rules 90.3, 90.4 and 90.6 is derived from present Rules 90.2, 90.3 and 90.4, respectively, and that deletions are not separately indicated.

\*\* The title has been amended to read "Agents and Common Representatives" instead of "Representation".

who is entitled to file an international application according to Article 9 may be appointed by the other applicants as their common representative.

(b) Where there are two or more applicants and all the applicants have not appointed a common agent under Rule 90.1(a) or a common representative under paragraph (a), the applicant first named in the request who is entitled according to Rule 19.1 to file an international application with the receiving Office shall be considered to be the common representative of all the applicants.

#### 90.3 Effects of Acts by or in Relation to Agents and Common Representatives

(a) Any act by or in relation to an agent shall have the effect of an act by or in relation to the applicant or applicants concerned.

(b) If there are two or more agents representing the same applicant or applicants, any act by or in relation to any of those agents shall have the effect of an act by or in relation to the said applicant or applicants

(c) Subject to Rule 90bis.5(a), second sentence, any act by or in relation to a common representative or his agent shall have the effect of an act by or in relation to all the applicants.

#### 90.4 Manner of Appointment of Agent or Common Representative

(a) The appointment of an agent shall be effected by the applicant signing the request, the demand or a separate power of attorney. Where there are two or more applicants, the appointment of a common agent or common representative shall be effected by each applicant signing, at his choice, the request, the demand or a separate power of attorney.

(b) Subject to Rule 90.5, a separate power of attorney shall be submitted to either the receiving Office or the International Bureau, provided that, where a power of attorney appoints an agent under Rule 90.1(b), (c) or (d)(ii), it shall be submitted to the International Searching Authority or the International Preliminary Examining Authority, as the case may be.

(c) If the separate power of attorney is not signed, or if the required separate power of attorney is missing, or if the indication of the name or address of the appointed person does not comply with Rule 4.4, the power of attorney shall be considered non-existent unless the defect is corrected.

#### 90.5 General Power of Attorney

(a) Appointment of an agent in relation to a particular international application may be effected by referring in the request, the demand or a separate notice to an existing separate power of attorney appointing that agent to represent the applicant in relation to any international application which may be filed by that applicant (i.e., a “general power of attorney”), provided that:

(i) the general power of attorney has been deposited in accordance with paragraph (b), and

(ii) a copy of it is attached to the request, the demand or the separate notice, as the case may be; that copy need not be signed.

(b) The general power of attorney shall be deposited with the receiving Office, provided that, where it appoints an agent under Rule 90.1(b), (c) or (d)(ii), it shall be deposited with the International Searching Authority or the International Preliminary Examining Authority, as the case may be.

#### 90.6 Revocation and Renunciation

(a) Any appointment of an agent or common representative may be revoked by the persons who made the appointment or by their successors in title, in which case any appointment of a sub-agent under Rule 90.1(d) by that agent shall also be considered as revoked. Any appointment of a sub-agent under Rule 90.1(d) may also be revoked by the applicant concerned.

(b) The appointment of an agent under Rule 90.1(a) shall, unless otherwise indicated, have the effect of revoking any earlier appointment of an agent made under that Rule.

(c) The appointment of a common representative shall, unless otherwise indicated, have the effect of revoking any earlier appointment of a common representative.

(d) An agent or a common representative may renounce his appointment by a notification signed by him.

(e) Rule 90.4(b) and (c) shall apply, *mutatis mutandis*, to a document containing a revocation or renunciation under this Rule.

### **Rule 90bis Withdrawals**

#### 90bis.1 Withdrawal of the International Application

(a) The applicant may withdraw the international application at any time prior to the expiration of 20 months from the priority date or, where Article 39(1) applies, prior to the expiration of 30 months from the priority date.

(b) Withdrawal shall be effective on receipt of a notice addressed by the applicant, at his option, to the International Bureau, to the receiving Office or, where Article 39(1) applies, to the International Preliminary Examining Authority.

(c) No international publication of the international application shall be effected if the notice of withdrawal sent by the applicant or transmitted by the receiving Office or the International Preliminary Examining Authority reaches the International Bureau before the technical preparations for international publication have been completed.

#### 90bis.2 Withdrawal of Designations

(a) The applicant may withdraw the designation of any designated State at any time prior to the expiration of 20 months from the priority date or, where Article 39(1) applies in respect of that State, prior to the expiration of 30 months from the priority date. Withdrawal of the designation of a State which has been elected shall entail withdrawal of the corresponding election under Rule 90bis.4.

(b) Where a State has been designated for the purpose of obtaining both a national patent and a regional patent, withdrawal of the designation of that State shall be taken to mean withdrawal of only the designation for the purpose of obtaining a national patent, except where otherwise indicated.

(c) Withdrawal of the designations of all designated States shall be treated as withdrawal of the international application under Rule 90bis.1.

(d) Withdrawal shall be effective on receipt of a notice addressed by the applicant, at his option, to the International Bureau, to the receiving Office or, where Article 39(1) applies, to the International Preliminary Examining Authority.

(e) No international publication of the designation shall be effected if the notice of withdrawal sent by the applicant or transmitted by the receiving Office or the International Preliminary Examining Authority reaches the International Bureau before the technical preparations for international publication have been completed.

#### 90bis.3 Withdrawal of Priority Claims

(a) The applicant may withdraw a priority claim, made in the international application under Article 8(1), at any time prior to the expiration of 20 months from the priority date or, where Article 39(1) applies, 30 months from the priority date.

(b) Where the international application contains more than one priority claim, the applicant may exercise the right provided for in paragraph (a) in respect of one or more or all of the priority claims.

(c) Withdrawal shall be effective on receipt of a notice addressed by the applicant, at his option, to the International Bureau, to the receiving Office or, where Article 39(1) applies, to the International Preliminary Examining Authority.

(d) Where the withdrawal of a priority claim causes a change in the priority date, any time limit which is computed from the original priority date and which has not already expired shall, subject to paragraph (e), be computed from the priority date resulting from that change.

(e) In the case of the time limit referred to in Article 21(2)(a), the International Bureau may nevertheless proceed with the international publication on the basis of the said time limit as computed from the original priority date if the notice of withdrawal sent by the applicant or transmitted by the receiving Office or the International Preliminary Examining Authority reaches the International Bureau after the completion of the technical preparations for international publication.

#### 90bis.4 Withdrawal of the Demand, or of Elections

(a) The applicant may withdraw the demand or any or all elections at any time prior to the expiration of 30 months from the priority date.

(b) Withdrawal shall be effective upon receipt of a notice addressed by the applicant to the International Bureau.

(c) If the notice of withdrawal is submitted by the applicant to the International Preliminary Examining Authority, that Authority shall mark the date of receipt on the notice and transmit it promptly to the International Bureau. The notice shall be considered to have been submitted to the International Bureau on the date marked.

#### 90bis.5 Signature

(a) Any notice of withdrawal referred to in Rules 90bis.1 to 90bis.4 shall, subject to paragraph (b), be signed by the applicant. Where one of the applicants is considered to be the common representative under Rule 90.2 (b), such notice shall, subject to paragraph (b), require the signature of all the applicants.

(b) Where two or more applicants file an international application which designates a State whose national law requires that national applications be filed by the inventor and where an applicant for that designated State who is an inventor could not be found or reached after diligent effort, a notice of withdrawal referred to in Rules 90bis.1 to 90bis.4 need not be signed by that applicant (“the applicant concerned”) if it is signed by at least one applicant and

(i) a statement is furnished explaining, to the satisfaction of the receiving Office, the International Bureau or the International Preliminary Examining Authority, as the case may be, the lack of signature of the applicant concerned, or

(ii) in the case of a notice of withdrawal referred to in Rule 90bis.1(b), 90bis.2(d) or 90bis.3(c), the applicant concerned did not sign the request but the requirements of Rule 4.15(b) were complied with, or

(iii) in the case of a notice of withdrawal referred to in Rule 90bis.4(b), the applicant concerned did not sign the demand but the requirements of Rule 53.8(b) were complied with, or did not sign the later election concerned but the requirements of Rule 56.1(c) were complied with.

#### 90bis.6 Effect of Withdrawal

(a) Withdrawal under Rule 90bis of the international application, any designation, any priority claim, the demand or any election shall have no effect in any designated or elected Office where the processing or examination of the international application has already started under Article 23(2) or Article 40(2).

(b) Where the international application is withdrawn under Rule 90bis.1, the international processing of the international application shall be discontinued.

(c) Where the demand or all elections are withdrawn under Rule 90bis.4, the processing of the international application by the International Preliminary Examining Authority shall be discontinued.

#### 90bis.7 Faculty under Article 37(4)(b)

(a) Any Contracting State whose national law provides for what is described in the second part of Article 37(4)(b) shall notify the International Bureau in writing.

(b) The notification referred to in paragraph (a) shall be promptly published by the International Bureau in the Gazette, and shall have effect in respect of international applications filed more than one month after the date of such publication.

## **Rule 91** **Obvious Errors in Documents**

### 91.1 Rectification

- (a) [No change]
- (b) [No change]
- (c) [Amendment to the French text only]
- (d) [No change]
- (e) No rectification shall be made except with the express authorization:
  - (i) [No change]
  - (ii) [No change]
  - (iii) [Amendment to the French text only]
  - (iv) [No change]
- (f) [No change]
- (g) [No change]
- (g-*bis*) [No change]
- (g-*ter*) [No change]
- (g-*quater*) [No change]

## **Rule 92** **Correspondence**

### 92.1 Need for Letter and for Signature

- (a) [Amendment to the French text only]
- (b) [No change]
- (c) [No change]

## 92.2 Languages

(a) Subject to Rules 55.1 and 66.9 and to paragraph (b) of this Rule, any letter or document submitted by the applicant to the International Searching Authority or the International Preliminary Examining Authority shall be in the same language as the international application to which it relates. Where the international application has been translated under Rule 12.1(c), the language of such translation shall be used.

(b) [No change]

(c) [Remains deleted]

(d) [No change]

(e) [No change]

## 92.3 Mailings by National Offices and Intergovernmental Organizations

Any document or letter emanating from or transmitted by a national Office or an intergovernmental organization and constituting an event from the date of which any time limit under the Treaty or these Regulations commences to run shall be sent by \* air mail, provided that surface mail may be used instead of air mail in cases where surface mail normally arrives at its destination within two days from mailing or where air mail service is not available.

## 92.4 Use of Telegraph, Teleprinter, Facsimile Machine, Etc.\*\*

(a) A document making up the international application, and any later document or correspondence relating thereto, may, notwithstanding the provisions of Rules 11.14 and 92.1(a), but subject to paragraph (h), be transmitted, to the extent feasible, by telegraph, teleprinter, facsimile machine or other like means of communication producing a printed or written document.\*\*\*

(b) A signature appearing on a document transmitted by facsimile machine shall be recognized for the purposes of the Treaty and these Regulations as a proper signature.

(c) Where the applicant has attempted to transmit a document by any of the means referred to in paragraph (a) but part or all of the received document is illegible or part of the document is not received, the document shall be treated as not having been received to the extent that the received document is illegible or that the attempted transmission failed. The national Office or intergovernmental organization shall promptly notify the applicant accordingly.

(d) Any national Office or intergovernmental organization may require that the original of any document transmitted by any of the means referred to in paragraph (a) and an

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\* The amendment consists in deleting, before the words "air mail" (first instance), the word "registered".

\*\* The title has been amended to read "Use of Telegraph, Teleprinter, Facsimile Machine, Etc. " instead of "Use of Telegraph, Teleprinter, Etc.".

\*\*\* The amendment consists in deleting the second sentence.

accompanying letter identifying that earlier transmission be furnished within 14 days from the date of the transmission, provided that such requirement has been notified to the International Bureau and the International Bureau has published information thereon in the Gazette. The notification shall specify whether such requirement concerns all or only certain kinds of documents.

(e) Where the applicant fails to furnish the original of a document as required under paragraph (d), the national Office or intergovernmental organization concerned may, depending on the kind of document transmitted and having regard to Rules 11 and 26.3,

(i) waive the requirement under paragraph (d), or

(ii) invite the applicant to furnish, within a time limit which shall be reasonable under the circumstances and shall be fixed in the invitation, the original of the document transmitted,

provided that, where the document transmitted contains defects, or shows that the original contains defects, in respect of which the national Office or intergovernmental organization may issue an invitation to correct, that Office or organization may issue such an invitation in addition to, or instead of, proceeding under item (i) or (ii).

(f) Where the furnishing of the original of a document is not required under paragraph (d) but the national Office or intergovernmental organization considers it necessary to receive the original of the said document, it may issue an invitation as provided for under paragraph (e)(ii)

(g) if the applicant fails to comply with an invitation under paragraph (e)(ii) or (f):

(i) where the document concerned is the international application, the latter shall be considered withdrawn and the receiving Office shall so declare;

(ii) where the document concerned is a document subsequent to the international application, the document shall be considered as not having been submitted.

(h) No national Office or intergovernmental organization shall be obliged to receive any document submitted by a means referred to in paragraph (a) unless it has notified the International Bureau that it is prepared to receive such a document by that means and the International Bureau has published information thereon in the Gazette.

#### **Rule 92bis**

#### **Recording of Changes in Certain Indications in the Request or the Demand**

[No change]

#### **Rule 93**

#### **Keeping of Records and Files**

[No change]

**Rule 94**  
**Furnishing of Copies by the International Bureau and**  
**the International Preliminary Examining Authority**

[No change]

**Rule 95**  
**Availability of Translations**

[No change]

**Rule 96**  
**The Schedule of Fees**

[No change]

SCHEDULE OF FEES

Fees	Amounts
1. Basic Fee: Rule 15.2(a)	
(a) if the international application contains not more than 30 sheets	706 Swiss francs
(b) if the international application contains more than 30 sheets	706 Swiss francs plus 14 Swiss francs for each sheet in excess of 30 sheets
2. Designation Fee: (Rule 15.2(a))	
(a) <u>for designations made under         Rule 4.9(a)</u>	171 Swiss francs per designation, <u>provided that any designation made under Rule 4.9(a) in excess of 10 shall not require the payment of a designation fee</u>
(b) <u>for designations made under         Rule 4.9(b) and confirmed under         Rule 4.9(c)</u>	<u>171 Swiss francs per designation</u>
3. <u>Confirmation Fee:</u> (Rule 15.5(a))	<u>50% of the sum of the designation fees payable under item 2(b)</u>
4. Handling Fee: (Rule 57.2(a))	216 Swiss francs
*[Heading deleted]	
5. [Deleted]	

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\* The amendment consists in deleting the heading "Surcharges".