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INTERNATIONAL PATENT COOPERATION UNION (PCT UNION)

ASSEMBLY

Third Session (2nd Extraordinary)
Geneva, April 25 to May 1, 1979

REPORT

Adopted by the Assembly

INTRODUCTION

1. The Assembly of the International Patent Cooperation (PCT) Union (herein- after referred to as “the Assembly”) held its third session (2nd extraordinary) in Geneva from April 25 to May 1, 1979.
2. The following 15 member States were represented at the session: Austria, Brazil, Denmark, France, Germany (Federal Republic of), Japan, Luxembourg, Madagascar, Netherlands, Romania, Soviet Union, Sweden, Switzerland, United Kingdom and United States of America.
3. The following six States participated in the session as special observers: Australia, Canada, Finland, Hungary, Norway and Spain, whereas the following four States were represented by observers: Czechoslovakia, Italy, Mexico and Niger.
4. One intergovernmental organization, the European Patent Organisation (EPO), participated in the session as a special observer and the following five international non-governmental organizations were represented by observers: Council of European Industrial Federations (CEIF), European Federation of Industrial Property Representatives of Industry (FEMIP), International Federation of Inventors Associations (IFIA), International Federation of Patent Agents (FICPI) and Union of Industries of the European Community (UNICE).

5. The number of participants was about 60. The list of participants is contained in Annex I to this Report.

OFFICERS OF THE SESSION

6. The Officers of the PCT Assembly are Mr. Valentin Bykov (Soviet Union), Chairman, and Messrs. H. E. Martin Nzue Nkoghe (Gabon) and Paul Braendli (Switzerland), Vice-Chairmen; Messrs. Bykov and Nkoghe were not present at the session. The session was chaired by Mr. Paul Braendli except for its closing meeting at which, in the absence of Mr. Braendli, Mr. Dieter Hoinkes (United States of America) acted as ad hoc Chairman.

7. Mr. E. M. Haddrick, Head, PCT Division, WIPO, acted as Secretary of the Assembly.

OPENING OF THE SESSION; ADOPTION OF THE AGENDA

8. In opening the session, the acting Chairman expressed the satisfaction of the Assembly at the fact that Australia, Monaco, the Netherlands and Romania had deposited instruments of ratification of the PCT since the second session of the Assembly in September/October 1978.

9. The Assembly adopted its agenda as contained in document PCT/A/III/1.Rev.

LEVEL OF FEES AND PRICES; FINANCIAL CONTRIBUTIONS

10. The Secretariat introduced document PCT/A/III/5 which proposed that the Assembly fix the fees, and note the raising of the price of the pamphlets and the Gazette, to the level which was contemplated before the entry into force of the PCT (see document PCT/A/III/5, paragraph 1) and which would be approximately 100% higher than the amount of the fees and prices in force at the present time.

11. Whereas it was generally, considered that it was desirable that the fees and prices be set at a level which would produce an income for the PCT Union completely covering the expenses of that Union--that is, which would make the PCT Union "self supporting"--most of the Delegations which spoke on the subject expressed the view that an increase of approximately 100% at the present time would carry with it the danger that the number of international applications filed and PCT publications sold would, because of such a sudden and substantial increase in the fees and prices, be considerably less than the numbers expected and necessary for making the PCT Union self supporting. Invoking such considerations, the Delegations of Japan, Switzerland, the United Kingdom, the Soviet Union, Germany (Federal Republic of) , France and Luxembourg proposed that the fees and prices should not be increased to the extent proposed by the International Bureau but to a lesser extent; some of the said Delegations made precise proposals as to the extent of the increases, none of them exceeding 50%. The Delegation of the United States of America urged the International Bureau to reduce the expenses so that it should be possible to completely cover them from the income that can be produced with the present fees and prices; the Secretariat responded that this was not possible since it already worked in the most economical way it was able to devise and with an understaffing that could not be prolonged. Several Delegations, in particular those

of the Soviet Union and the United States of America, asked that the Secretariat furnish detailed calculations in justification of the current expenses and the forecasts of the International Bureau in relation to the situation of the PCT; the Secretariat responded that the calculations developed in that respect by the PCT working Group on Budgetary Questions when planning the budgets of the PCT for 1978, 1979 and 1980, were still generally valid and that an experience longer than the present (merely ten months long) experience in the administration of the PCT operations was necessary for intelligently revising those calculations; consequently, the Director General agreed that the secretariat carry out and report on such a detailed calculation to the September 1980 session of the Assembly.

12. In view of the wish of the great majority of the Delegations to see the fees and prices raised as soon as practicable but to a much lesser extent than proposed in document PCT/A/III/5, the International Bureau made a new proposal, contained in document PCT/A/III/8. According to that proposal, the fees should be raised by 30% in Swiss francs as from July 1, 1979, and the prices by the same percentage as from January 1, 1980.

13. The Delegation of the United States of America stated that it would have preferred no increases whatsoever and, instead, the reduction of the expenses and proposed to leave any decision to the September 1979 session of the Assembly.

14. The Delegations of Switzerland, France, the United Kingdom, Sweden, the Netherlands, Romania, Austria, Germany (Federal Republic of), Luxembourg and Japan expressly approved the new proposal of the International Bureau, although the Delegations of the United Kingdom, Switzerland and the Netherlands said that they would have preferred a somewhat higher increase than 30%.

15. In conclusion, the Assembly, without opposition, decided to raise the fees (by approximately 30% as expressed in Swiss currency) as from August 1, 1979, as set forth in the Schedule of Fees, attached to the Regulations, which is contained in Annex II of this Report.* At the same time, the Assembly

(i) noted that the Director General would raise the prices of the pamphlets and the Gazette by approximately 30%, when expressed in Swiss francs, as from January 1, 1980,

(ii) decided that, barring unforeseen circumstances, it would let the new fees and prices remain in effect until the end of 1980 and that, at the latest in September 1980, the Assembly would examine the question of fees, prices and deficit-covering contributions,

(iii) authorized the International Bureau to cover, provisionally, from a loan, any deficit arising before the end of 1980 and not covered by the deficit-covering contributions already voted (see document PCT/A/III/5, paragraph 1).

16. The Assembly noted that the deficit likely to accumulate by the end of 1980 and not covered by the deficit-covering contributions already voted would be approximately 1,600,000 francs and authorized the Director General to ask the Assembly of the Madrid

* After having consulted with the representatives of the receiving Offices and the International Authorities, the Director General established the corresponding amounts in currencies other than Swiss currency (see Annex III to this Report) with effect from August 1, 1979.

Union to give a loan of that amount to the PCT Union. The PCT Union would pay the same interest on the loan as the Swiss Confederation pays to the Madrid Union on the amounts placed by that Union with the Swiss Confederation (3.75% per annum at the present time).

17. The Assembly also noted the contents--forecasts under certain assumptions for the years 1981 and 1982--of paragraph 4 of document PCT/A/III/8. It also noted the statement of the Director General according to which he would propose the voting of contributions to cover the repayment of the loan referred to in the preceding paragraph only if the repayment cannot be effected from the normal income (that is, other than contributions) of the PCT Union within a reasonable time after 1980, and that he would propose the voting of contributions to cover any deficit which may arise after 1980 only in connection with the fixing of the fees and prices applicable after 1980, that is, when the Assembly will fix such fees at its September 1980 session.

AMENDMENT OF THE PCT REGULATIONS

Amendments relating to fees

18. Discussions were based on documents PCT/A/III/2, 7 and 9.

19. Following a detailed discussion of the proposals of the International Bureau as contained in document PCT/A/III/2, and the proposals made by the Delegation of France, as contained in document PCT/A/III/7, and a consideration of the draft texts prepared by the International Bureau at the request of the Assembly, as contained in document PCT/A/III/9, the Assembly adopted, with effect on and from August 1, 1979, the amendments to Rules 15.1, 15.2, 15.3, 15.4, 15.5, 16.1, 57.1, 57.2, 57.3, 57.4, 57.5 and 57.6, and new Rule 96 and the Schedule of Fees referred to therein, as set out in Annex II.

20. The Assembly established in the following terms the directives referred to in Rules 15.2(d), 16.1(d) and 57.2(e), it being understood that, in the light of experience, the Assembly may at any time modify these directives:

(1) At the time of each ordinary session of the Assembly, the Director General shall proceed to the consultations referred to in Rules 15.2(b) and 57.2(c) and shall establish the amounts of the fees in currencies other than Swiss francs according to the exchange rates applicable on the first day of that session, so that their amounts correspond to the amounts of the fees expressed in Swiss currency. Where such adjustment would only slightly affect the income of the International Bureau, the Director General may decide not to proceed with it. Unless otherwise decided by the Assembly, any adjustment under this paragraph shall enter into force on the first day of the calendar year subsequent to the ordinary session referred to above.

(2) Where for more than 30 consecutive days, the exchange rate between Swiss currency and any other currency is by at least 5% higher, or by at least 5% lower, than the last exchange rate applied, any interested Office or Authority, using that currency may ask the Director General to newly establish the amount of the fees in that currency according to the exchange rate prevailing on the day preceding the day on which the request is made. The Director General shall proceed accordingly, as provided in Rules 15.2(d) and 57.2(e).

(3) Where for more than 30 consecutive days, the exchange rate between Swiss currency and any other currency is by at least 10% higher, or by at least 10% lower, than the last exchange rate applied, the Director General shall, after consultation with the interested Office or Authority using that currency and as provided in Rules 15.2(d) and 57.2(e), as the case may be, newly establish the amount of fees in that currency according to the exchange rate prevailing on the day preceding the day on which the consultation is initiated by the Director General. Where such adjustment would only slightly affect the income of the International Bureau, the Director General may decide not to proceed with it.

(4) As far as the establishment of the search fee of any International Searching Authority in any currency other than the currency or currencies fixed by that Authority is concerned, the provisions of paragraphs (1) to (3) shall, to the extent applicable, be applied *mutatis mutandis*.

21. In the course of the establishment of the directives, the Delegation of the United Kingdom noted that it, and at least one other Delegation, had been of the view that in determining whether an exchange rate had exceeded a percentage for more than 30 days, an average exchange rate over that period should be used but, in view of the understanding stated at the beginning of paragraph 20, did not insist on any change at the present time.

22. The Assembly noted a statement by the Representative of the European Patent Organisation (EPO) that it was understood that the provisions under Rule 16.1(b) for consultations between only the receiving Office and the Director General would not preclude that where an International Searching Authority itself had to fix equivalent amounts of its search fee in several currencies, consultations should take place between that Authority and the Director General with a view to facilitating the application of similar principles in both cases.

23. The Assembly decided that the directives set forth in paragraph 20 would go into effect as from August 1, 1979.

Amendments relating to communication under Article 20

24. Discussions were based on paragraphs 4 to 8 of document PCT/A/III/4 concerning an interpretation of Rule 47.2 and paragraphs 9 to 12 concerning a proposed amendment of Rule 47.1(b) contained in the Annex to that document.

25. The Assembly discussed the interpretation of Rule 47 according to which the International Bureau uses, to the extent possible, copies of the pamphlet published under Rule 48.1(a) for the purposes of communications under Article 20. In the discussion the Representative of the EPO said that its Office was ready to accept the pamphlet for the purposes of the communication under Article 20 on the condition that the Office received four copies. The Delegation of the United States of America indicated that its Office could not accept the pamphlet for the said purpose since the pamphlet was printed on both sides of the sheet and as a designated Office should, in any event, receive a copy of the request. While no other Delegation which spoke said that it could not accept the pamphlet for the purposes of the communication, some supported the view that the designated Offices should receive a copy of the request particularly since the front page of the pamphlet does not reproduce all items of bibliographic data contained in the request. The Delegation of the Soviet Union said that it had asked for a copy of the request in very limited circumstances involving a special

situation concerning the inventor but otherwise fully accepted the pamphlet for the purposes of communication.

26. In response to a question from the Representative of CEIF concerning the use of a copy of the pamphlet by the applicant when he is required, under Article 22, to send a copy of the international application to the designated Office, the International Bureau said that, in practice, this question would arise only if the designated Office concerned had waived the requirements for communication under Article 20 with a view to obliging the applicant to provide a copy of the application. In practice, no problem arose since the two Offices which had made such a waiver had also requested, under Rule 47.1(e), that the copies of the documents which the International Bureau would have sent to that Office, be sent by it to the applicant. These copies were sent with the notice it sends to the applicant to indicate the designated Offices to which the communication has been effected. The Offices concerned had accepted the copy of the pamphlet which the International Bureau sends to the applicant for this purpose.

27. In response to a question by the Delegation of Japan, the International Bureau said that a separate power of attorney submitted in connection with an International application did not form part of the communication under Article 20. The only apparent purpose for asking for a copy of this document would be to check the proper signing of the application but it was provided in Article 27(2) that the designated Office could require the confirmation of the international application by the signature of the applicant where it had been originally signed by an agent. If the designated Office should have any doubts, it should act under the faculty provided by Article 27(2).

28. After it was proposed to adopt the new Rule 47.2(c) contained in Annex II, the International Bureau indicated that, in the interests of obtaining acceptance of uniform administrative procedures, it would be prepared to print copies of the pamphlet on one side of the sheet only for the purposes of communication to the designated Offices if the proposed amendment were adopted. Also it would be prepared to study with those Offices wishing to receive a copy of the request to see whether, by making additions to the bibliographic information contained on the front page of the pamphlet, all Offices could accept the pamphlet alone for the purposes of communication.

29. The Assembly adopted the new Rule 47.2(c) set out in Annex II with effect on and from May 1, 1979. At the same time, the Assembly decided to recommend, in the light of the declaration of the International Bureau, that all designated Offices accept the pamphlet as sufficient for the purposes of communication under Article 20 and to invite the International Bureau to contact the Offices of those Contracting States which had indicated an interest in different bibliographical data being included on the front page of the pamphlet in order to determine their needs and to see if they could be satisfied by a restructuring of the pamphlet. The International Bureau should report on the results of its enquiries to the next session of the Assembly.

30. In response to a question from the Delegation of Japan as to the interpretation of Rule 47.3, the International Bureau said that it was required primarily to communicate the international application in its language of publication. The designated Offices, nevertheless, had the option, under the said Rule, of specially requesting the communication of the international application in the language in which it was filed or in both the language in which it was published and the language in which it was filed. The International Bureau would, of

course, for those Offices making a special request to that effect, communicate a special copy of the international application in the language of filing in those cases where the pamphlet was an English translation of the original application. For the time being, this question could arise with respect to applications filed in the Danish, Dutch or Swedish languages. It was hoped that the designated Offices would show restraint and only require the International Bureau to make and send copies where there was a real need for them.

31. The Assembly considered the proposal of the International Bureau for the amendment of Rule 47.1 (b). Upon the proposal of several Delegations, the assembly decided to amend Rule 47.1(b) in a form in which, instead of maintaining the existing time limits and merely permitting the International Bureau to delay communication to the time of international publication, communication upon international publication and at the latest by the end of the 19th month after the priority date would be the main principle. The Assembly then adopted the amendment of the said Rule set out in Annex II, with effect on and from May 1, 1979.

Other amendments to the Regulations

32. Having regard to the lack of time for it to consider the other amendments of the PCT Regulations contained in the Annex to document PCT/A/III/4 and relating to Rules 18, 32^{ter}, 54 and 74^{ter}, and considering that those amendments were mainly concerned with communications between the PCT Authorities, the Assembly decided to defer consideration of the other proposed amendments until its next session, at which the International Bureau might present them again, if it so wished, together with other amendments, if any, which it thought desirable for it to present to that session.

Proposals for possible amendments to the Regulations under the PCT and the Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

33. This item of the agenda was considered in a joint session with the Interim Advisory Committee for the Preparation of the Entry Into Force of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest Treaty), under the chairmanship of the Chairman of the Assembly. Discussions were based on documents PCT/A/III/3 and BP/IAC/II/2.

34. Rule 13bis.1(a) and (b) of the PCT Regulations. The Delegations of the United Kingdom and the United States of America said that the problems dealt with in paragraphs (a) and (b) of draft Rule 13bis.1 were exclusively a matter for national law, as they related to sufficiency of disclosure. Moreover the draft might, if it were adopted, mislead the applicant, leading him to believe that compliance with the formalities provided for in paragraph (b) would automatically protect him against rejection of the application, whereas in fact that could at best be true in the international phase, but certainly not in the national phase. Both Delegations added that the applicant had in any case to comply with national requirements, in particular those concerning the time of deposit and the time at which reference to the deposit should be made in the application. They further said that paragraph (b) of draft Rule 13bis.1, which provided that certain indications, such as the indication of the name of the depositary institution and that of the date of receipt of the microorganism by that institution, could be furnished after the filing of the international application, was in conflict with their national law, and that a rule of the PCT should not override provisions of national law on matters of substantive law. However, the Delegation of the United Kingdom agreed that it would

perhaps be necessary to include a provision in the PCT Regulations to cover the case of international applications relating to microbiological inventions, and the Delegation of the United States of America said that it would be ready to cooperate in finding an acceptable solution enabling the inclusion of such a provision in the PCT Regulations.

35. The Delegation of France said that it did not have any formal objection to the inclusion of Rule 13*bis* in the PCT Regulations, but that it had doubts as to the need for such a provision.

36. The Delegation of Japan expressed misgivings concerning the last sentence of paragraph (b) of draft Rule 13*bis*.1. In Japan the furnishing of the three indications referred to in that sentence was required at the time of filing the application, as it concerned substantive conditions of patentability, and the application was rejected if the indications were furnished not at the time of the application but only later.

37. The Delegations of Switzerland, the Federal Republic of Germany, Sweden, Norway, Spain, Denmark, the Netherlands, Finland and Hungary and the Representative of the European Patent Organisation, said that in their opinion it was very useful and, in the view of certain of those Delegations, even necessary, to have a provision on the lines of the proposed Rule 13*bis* in the PCT Regulations. The Delegation of the Netherlands expressed, however, its preference for a wording of Rule 13*bis*.1(b) which would not prescribe any time limit. The Delegation of Switzerland in particular expressed the view that draft Rule 13*bis* contained provisions concerning the form and content of the international application, and that to that extent the PCT overrode national law. It added that, if the PCT Regulations did not contain such provisions, applicants would be in danger of being unable to use the PCT for their applications relating to microbiological inventions. The Secretariat subscribed to the statement made by the Delegation of Switzerland.

38. The Delegation of the Soviet Union said that it was advisable to include provisions on international applications relating to microbiological inventions in the PCT Regulations, but that, in the light of the discussion, it found it difficult to accept the wording proposed for Rule 13*bis*.1(a).

39. The Delegation of Sweden said that paragraph (b) of draft Rule 13*bis*.1 could be so worded as to include the maximum of the possible requirements of designated States; moreover, the last sentence of the paragraph should be deleted or should refer only to the accession number of the deposit.

40. Rule 13*bis*.1(c) of the PCT Regulations. The Delegations of the United Kingdom and Sweden said that they saw no reason for including draft Rule 13*bis*.1(c) in the PCT Regulations.

41. The Representative of IFPMA expressed doubts as to the inclusion of draft Rule 13*bis*.1(c) in the PCT Regulations, as that draft provision did not seem to meet the same needs as Rule 11.1 of the Budapest Treaty Regulations.

42. Rule 13*bis*.2 of the PCT Regulations. The Delegation of the United States of America had doubts as to the usefulness of the reference to the Budapest Treaty in Rule 13*bis*.2.

43. The Delegation of Sweden felt it would be useful if the International Bureau were to publish in the PCT Gazette the full list of depositary institutions recognized by each PCT member State.
44. Rule 13bis.3 of the PCT Regulations. The Delegation of France stated that the first sentence of draft Rule 13bis.3 meant that no sample of a deposited microorganism could be communicated to a third party during the period between international publication and the start of the national phase, whereas under French law the applicant could, under certain conditions, enjoy provisional protection as from international publication, but that the microorganism had to be made available to the person in respect of whom the applicant wished to enjoy such provisional protection.
45. The Secretariat, supported by the Delegation of Switzerland, observed that during the period of time from international publication to the start of the national phase there was no competent authority to authorize the furnishing of a sample of the microorganism. The Delegation of Switzerland added that, in order to enjoy provisional protection in France during the period in question, the applicant had himself to authorize the furnishing of a sample to the third party concerned.
46. In answer to a question by the Delegation of the United Kingdom, the Secretariat explained that the first sentence of the English version of draft Rule 13bis.3 ought to be reworded to make it clear that the reference to Rule 13bis.1 concerned the microorganism and not the furnishing of samples.
47. The Delegation of Sweden pointed out that draft Rule 13bis.3 was possibly not in harmony with draft Rule 13bis.1(c) since the latter permitted samples of deposited microorganisms to be furnished prior to the date stipulated by draft Rule 13bis.3 as the moment before which samples could not be furnished.
48. Rule 11 of the Budapest Treaty Regulations. The Delegation of the United Kingdom considered that there was no real necessity for amending Rule 11.1 of the Budapest Treaty Regulations as proposed to extend its application to the designated Offices under the PCT and that this question should be regulated by national law.
49. Future procedure. It was unanimously agreed that the time was not yet ripe to take decisions on the proposed new Rule 13bis of the PCT Regulations or on any amendments to Rule 11 of the Budapest Treaty Regulations, and that the following procedure should be applied:
- (i) all member States of the PCT Union and all member States of the Interim Advisory Committee for the Preparation of the Entry Into Force of the Budapest Treaty would be invited to submit to the International Bureau by August 1, 1979, written comments on the proposals for a new Rule 13bis of the PCT Regulations and on the proposals for amendments to Rule 11 of the Budapest Treaty Regulations, contained in Annex A to documents PCT/A/III/3 and BP/IAC/II/2; the same invitation would be extended to the EPO. The comments should, in particular, state very clearly the elements of the above-mentioned proposals deemed unacceptable because they were considered to be the exclusive domain of substantive law reserved for national legislation;

(ii) the International Bureau should write a special letter to the International Searching Authorities and to the International Preliminary Examining Authorities to ask them to state, by August 1, 1979, also, whether and, if so, when they might have need of samples of microorganisms;

(iii) in the light of the comments received, the International Bureau should endeavor to draw up new proposals;

(iv) subsequently, the PCT and Budapest Treaty Working Group should be convened by the Director General of WIPO with the task of drawing up new proposals on the basis of the debates recorded in this report and of any new proposals by the International Bureau. In addition to the intergovernmental organizations concerned, the international non-governmental organizations representing the interested circles should be invited, exceptionally, to the Working Group's session, as had been done for its first session;

(v) the proposals drawn up by the above-mentioned Working Group would be submitted to a subsequent session of the PCT Assembly and the Interim Committee meeting once more in joint session.

Other matters discussed during consideration of amendments

50. In the course of the discussion of the level of fees and various amendments to the Regulations, it was suggested that the International Bureau should consider ways to facilitate the use of the PCT by applicants. The Representative of UNICE said that he was disappointed that the potential of the PCT, which was sometimes said by potential users to be too complicated, had not yet been put to full use by them. Efforts should be undertaken by all concerned, the Contracting States, the International Bureau and the organizations representing users of the system, to define and overcome the obstacles to the full use of the PCT. Lack of sufficient information was one of the problems to be considered. The level of fees was another important factor in this context. A further problem was that the geographical coverage of the system so far had not been sufficient to enable the PCT to be regarded by users as being as natural a procedure as using the Paris Convention itself, notwithstanding the fact that the PCT had been the greatest advance since the adoption of that Convention.

51. The Director General said that thought had already been given to the assembling of information specific to the national laws of Contracting States which would facilitate the entry of the national phase by applicants. This information could possibly be published in some connection with the PCT Applicant's Guide. Certain Delegations said that attention should be given to simplifying some of the provisions governing the processing of applications by applicants. The Director General said that many of the provisions which were sometimes categorized as complexities had been included with a view to providing sufficient guarantees to the applicant. The Assembly invited the Director General to keep under review questions affecting the use of the PCT system by applicants, to proceed with the proposed work relating to national requirements and to invite both the Governments and the international organizations representing the users of the PCT system to make specific proposals which could lead to a simplification of the system without necessitating a revision of the Treaty and without prejudicing the safeguards contained in the PCT for applicants.

APPOINTMENT OF THE AUSTRALIAN PATENT OFFICE AS AN INTERNATIONAL SEARCHING AND PRELIMINARY EXAMINING AUTHORITY AND APPROVAL OF THE AGREEMENT BETWEEN THAT OFFICE AND THE INTERNATIONAL BUREAU

52. Discussions were based on document PCT/A/III/6, containing the initialled text of a draft Agreement between the International Bureau and the Patent Office of the Government of Australia and copies of an Exchange of Notes between the International Bureau and the Australian Permanent Mission in Geneva.

53. The Delegation of Australia recalled that its country's association with the Patent Cooperation Treaty had begun with the early preparations for the conclusion of the Treaty and had continued through the Washington Diplomatic Conference to the present time. Its country had always recognized the potential of the PCT for the rationalization of patent procedures in the interests of both applicants and Patent Offices and, in this respect, its enormous potential as an aid to the development of patent systems in developing countries, as well as its potential for the facilitation of the international transfer of technology to the benefit of all countries. The full potential of the PCT would, however, only be realized when most countries, whether developing or developed, were members and, for this reason, its Government believed that to delay in joining the Treaty was tantamount to delaying its success.

54. It had been decided by the Government of Australia that it would seek the appointment of its Patent Office as an International Searching Authority and International Preliminary Examining Authority. In doing so, it had taken into account present and foreseeable needs for such services in the South East Asia/South Pacific region, the population of which equalled that of other regions served by more than one such PCT Authority and having regard to the advantages of the regionalization of such activities. At the present time, there was no PCT Authority in the whole of the Southern hemisphere. If the Office should be appointed, it would offer its facilities as a PCT Authority also to the developing countries. In this regard it had in mind particularly the developing countries of South East Asia and the South Pacific, if they should wish, in due course, to use those facilities.

55. The Australian Patent Office was comparable, in terms of its national functions and responsibilities, with some other national Patent Offices which had been appointed as PCT Authorities. It was a Patent Office which followed in a long tradition of examining Offices, the first such Office in Australia having been established more than 130 years ago and the present Office itself having taken over, at the time of the Australian Federation, the functions of that and other such offices and having itself performed such functions for over 75 years. The Office had a staff which greatly exceeded, in terms of numbers of qualified staff and language facilities, the PCT minimum requirements. The Office had the required PCT minimum documentation.

56. The Delegation added that it was the intention of its Government to introduce into its national Parliament the legislation necessary for implementation of the PCT and for its Patent Office to function as an International Searching and Preliminary Examining Authority. Present planning was based on all legal requirements being met in time to enable the Treaty to come into operation in Australia on January 1, 1980. Thus, it was expected that the necessary legislation would be introduced in Parliament by June and passed not later than August of this year.

57. The Chairman stated that the appointment was sought before the deposit of the instrument of accession and before the signature of the Agreement with the International Bureau contained in Annex I to document PCT/A/III/6. The Assembly could, therefore, make the requested appointment subject to the conditions specified in paragraph 8 of the said document.

58. The Delegation of the Netherlands said that it welcomed the prospective accession by Australia to the PCT and that it would be useful and desirable to have another International Searching and Preliminary Examining Authority in Australia's part of the world. However, even though it was confident that the Patent Office of Australia would be in a position to fulfil its obligations at the time the proposed appointment would take effect, more information should be supplied as to compliance with the PCT minimum requirements. In the case of previous appointments, more information had been available through the participation of the Offices concerned in the PCT Interim Committee for Technical Cooperation.

59. The Delegation of Australia said that the Patent Office of its country had 140 examiners and, in addition, a further 80 technically qualified members on its staff. Its documentation greatly exceeded the PCT minimum in terms of coverage and arrangements for proper access to it for purposes of search under the PCT had been in the process of being completed for some time. These and other organizational arrangements had been and would be continued in order to assure the proper performance of the functions of the Office in full compliance with the requirements of the PCT by the time the proposed appointment would take effect. The Assembly could be confident that its country would not have undertaken the commitments made in the draft Agreement and Exchange of Notes unless it was sure of meeting them fully by the time of entry into force of the Treaty for Australia.

60. Upon questions raised by the Delegations of the Netherlands and France as to whether the Committee for Technical Cooperation should be convened in order to seek its advice before making the proposed appointment, the Assembly, as in the case of the previous appointments of International Searching Authorities and International Preliminary Examining Authorities made by it, did not consider it necessary to seek the advice of that Committee.

61. The Delegations of the Soviet Union, Austria, the United Kingdom, Japan, Romania and Germany (Federal Republic of) supported the proposed appointment and the approval of the draft Agreement.

62. The Assembly decided,

(i) to approve the Agreement between the Patent Office of the Government of Australia and the International Bureau contained in Annex I to document PCT/A/III/6,

(ii) to note the Exchange of Notes contained in Annex II to the said document, and

(iii) to appoint the said Office as an International Searching Authority and International Preliminary Examining Authority for a period of ten years from the date of entry into force of the Agreement referred to above, it being understood that such appointment will only take effect when both of the following conditions are fulfilled:

(a) the said draft Agreement has been signed by both parties without modification of the text approved by the Assembly, according to the intention of both parties reflected in the Exchange of Notes contained in Annex II and subject only to the exception referred to in that Exchange of Notes;

(b) the Government of Australia deposits its instrument of accession to the PCT.

PARTICIPATION OF SPAIN IN THE PCT

63. The Delegation of Spain made a declaration in which it said that, although its country had not signed the PCT, it nevertheless did not wish to be separated, in the long run, from such an important Treaty. Consequently, Spain had sought participation in the Interim Committees and had made voluntary contributions to the PCT budget while the PCT was still not yet in force. The competent Spanish Authorities had considered, at a meeting with the Director General in the previous year in Madrid, possible solutions to language questions which would facilitate Spain's accession to the PCT. These solutions would probably lead to proposals for changes to the PCT Regulations. At present, the Spanish industrial property administration was preparing proposals to the Spanish Government on accession to the PCT and the necessary amendments of the national legislation. Once these preparations had been completed, more precise indications would be given to the Assembly concerning concrete proposals relating to Spain's full participation in the Treaty.

ADOPTION OF THE REPORT

64. The Assembly unanimously adopted this Report at its closing meeting on May 1, 1979.

[Annexes follow]

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LISTE DES PARTICIPANTS

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[Annex II follows/
L'annexe II suit]

ANNEX II

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 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.

15.2 Amounts

- (a) The amounts of the basic fee and of the designation fee are as set out in the Schedule of Fees.
- (b) The amounts of the basic fee and of the designation fee shall be established, for each receiving Office which, under Rule 15.3, prescribes the payment of those fees in a currency or currencies other than Swiss currency, by the Director General after consultation with that Office and in the currency or currencies prescribed by that Office (“prescribed currency”). The amounts in each prescribed currency shall be the equivalent, in round figures, of the amounts in Swiss currency set out in the Schedule of Fees. They shall be published in the Gazette.
- (c) Where the amounts of the fees set out in the Schedule of Fees are changed, the corresponding amounts in the prescribed currencies shall be applied from the same date as the amounts set out in the amended Schedule of Fees.
- (d) Where the exchange rate between Swiss currency and any prescribed currency becomes different from the exchange rate last applied, the Director General shall establish new amounts in the prescribed currency according to directives given by the Assembly. The newly established amounts shall become applicable two months after the date of their publication in the Gazette, provided that the interested Office and the Director General may agree on a date falling during the said two-month period in which case the said amounts shall become applicable for that Office from that date.

15.3 Mode of Payment

The international fee shall be payable in the currency or currencies prescribed by the receiving Office, it being understood that, when transferred by the receiving Office to the International Bureau, the amount transferred shall be freely convertible into Swiss currency.

15.4. Time of Payment

- (a) Subject to paragraph (c) , the basic fee shall be due on the date of receipt of the international application.

(b) Subject to paragraph (c), the designation fee shall be paid on the date of receipt of the international application or on any later date prior to the expiration of one year from the priority date.

(c) The receiving Office may permit applicants to pay either the basic fee or the designation fee or both of the fees later than on the dates provided for in paragraphs (a) and (b), provided that:

(i) permission shall not be given to pay the basic fee or the designation fee later than one month after the date of receipt of the international application;

(ii) permission may not be subject to any extra charge.

Such later payment of the said fees shall be without loss, in the case of the basic fee, of the international filing date, or, in the case of the designation fee, of the designations to which the payment relates.

15.5 Partial Payment

(a) Where the amount of the international fee received by the receiving Office is not less than that of the basic fee and at least one designation fee but less than the amount required to cover the basic fee and all the designations made in the international application, the amount received shall be applied as follows:

(i) to cover the basic fee, and

(ii) to cover as many designation fees as, after deduction of the basic fee, may be covered in full by the amount received in the order indicated in paragraph (b).

(b) The order in which the said amount shall be applied to the designations shall be established as follows:

(i) where the applicant indicates to which designation or designations the amount is to be applied, it shall be applied accordingly but, if the amount received is insufficient to cover the designations indicated, it shall be applied to as many designations as are covered by it in the order chosen by the applicant in indicating the designations;

(ii) to the extent that the applicant has not given the indications under item (i), the amount or the balance thereof shall be applied to the designations in the order in which they appear in the international application;

(iii) where the designation of a State is for the purposes of a regional patent and provided that the required designation fee is, under the preceding provisions, available for that designation, the designation of any further States for which the same regional patent is sought shall be considered as covered by that fee.

15.6 [No change]

Rule 16 **The Search Fee**

16.1 Right to Ask for a Fee

(a) [No change]

(b) The search fee shall be collected by the receiving Office. The said fee shall be payable in the currency or currencies prescribed by that Office (“the receiving Office currency”), it being understood that, if any receiving Office currency is not that, or one of those, in which the International Searching Authority has fixed the said fee (“the fixed currency or currencies”), it shall, when transferred by the receiving Office to the International Searching Authority, be freely convertible into the currency of the State in which the International Searching Authority has its headquarters (“the headquarters currency”). The amount of the search fee in any receiving Office currency, other than the fixed currency or currencies/shall be established by the Director General after consultation with that Office. The amounts so established shall be the equivalents, in round figures, of the amount established by the International Searching Authority in the headquarters currency. They shall be published in the Gazette.

(c) Where the amount of the search fee in the headquarters currency is changed, the corresponding amounts in the receiving Office currencies, other than the fixed currency or currencies, shall be applied from the same date as the changed amount in the headquarters currency.

(d) Where the exchange rate between the headquarters currency and any receiving Office currency, other than the fixed currency or currencies, becomes different from the exchange rate last applied, the Director General shall establish the new amount in the said receiving Office currency according to directives given by the Assembly. The newly established amount shall become applicable two months after its publication in the Gazette, provided that any interested receiving Office and the Director General may agree on a date falling during the said two-month period in which case the said amount shall become applicable for that Office from that date.

(e) Where, in respect of the payment of the search fee in a receiving Office currency, other than the fixed currency or currencies, the amount actually received by the International Searching Authority in the headquarters currency is less than that fixed by it, the difference will be paid to the International Searching Authority by the International Bureau, whereas, if the amount actually received is more, the difference will belong to the International Bureau.

(f) As to the time of payment of the search fee, the provisions of Rule 15.4 relating to the basic fee shall apply.

16.2: [No change]

16.3: [No change]

Rule 47
Communication to Designated Offices

47.1 Procedure

(a) [No change]

(b) Such communication shall be effected promptly after the international publication of the international application and, in any event, by the end of the 19th month after the priority date. Where the time limit under Rule 46.1 has not expired when the communication is effected and the International Bureau has neither received amendments from the applicant nor a declaration that the applicant does not wish to make amendments before the International Bureau, the International Bureau shall/at the time of the communication, notify the applicant and the designated Offices accordingly; it shall, immediately after receipt, communicate any amendment received subsequently to the designated Offices and notify the applicant accordingly. Where, under Article 17(2) (a), the International Searching Authority has made a declaration that no international search report will be established, the communication shall be effected, unless the international application is withdrawn, within 1 month from the date on which the International Bureau has been notified of the said declaration by the International Searching Authority; such communication shall be accompanied, by an indication of the date of the notification sent to the applicant under Article 17(2) (a).

(c) [No change]

(d) [No change]

(e) [No change]

47.2 Copies

(a) [No change]

(b) [No change]

(c) Except to the extent that any designated Office notifies the International Bureau otherwise, copies of the pamphlet under Rule 48 may be used for the purposes of the communication of the international application under Article 20.

Rule 57
The Handling Fee

57.1 Requirement to Pay

(a) Each demand for international preliminary examination shall be subject to the payment of a fee for the benefit of the International Bureau (“handling fee”) to be collected by the International Preliminary Examining Authority to which the demand is submitted.

(b) Where, because of a later election or elections, the international preliminary examination report must, in application of Article 36(2), be translated by the International

Bureau into one or more additional languages, a “supplement to the handling fee” shall be collected by the International Bureau.

57.2 Amounts of the Handling Fee and the Supplement to the Handling Fee

(a) The amount of the handling fee is as set out in the Schedule of Fees. The amount payable in any particular case shall be the amount as so set out, increased by as many times the same amount as the number of languages into which the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau.

(b) The amount of the supplement to the handling fee is as set out in the Schedule of Fees. The amount payable in any particular case shall be the amount as so set out, multiplied by the number of additional languages referred to in Rule 57.1(b).

(c) The amount of the handling fee shall be established for each International Preliminary Examining Authority which, under Rule 57.3(c), prescribes the payment of the handling fee in a currency or currencies other than Swiss currency, by the Director General after consultation with that Authority and in the currency or currencies prescribed by that Authority ("prescribed currency"). The amount in each prescribed currency shall be the equivalent, in round figures, of the amount of the handling fee in Swiss currency set out in the Schedule of Fees. The amounts in the prescribed currencies shall be published in the Gazette.

(d) Where the amount of the handling fee set out in the Schedule of Fees is changed, the corresponding amounts in the prescribed currencies shall be applied from the same date as the amount set out in the amended Schedule of Fees.

(e) Where the exchange rate between Swiss currency and any prescribed currency becomes different from the exchange rate last applied, the Director General shall establish the new amount in the prescribed currency according to directives given by the Assembly. The newly established amount shall become applicable two months after its publication in the Gazette, provided that the interested International Preliminary Examining Authority and the Director General may agree on a date falling during the said two-month period in which case the said amount shall become applicable for that Authority from that date.

57.3 Time and Mode of Payment

(a) The handling fee shall be due at the time the demand is submitted.

(b) Any supplement to the handling fee shall be due at the time the later election is submitted.

(c) The handling fee shall be payable in the currency or currencies prescribed by the International Preliminary Examining Authority to which the demand is submitted, it being understood that, when transferred by that Authority to the International Bureau, it shall be freely convertible into Swiss currency.

(d) Any supplement to the handling fee shall be payable in Swiss currency.

57.4 Failure to Pay (Handling Fee)

(a) Where the handling fee is not paid as required, the International Preliminary Examining Authority shall invite the applicant to pay the fee within one month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the fee, unless, under Rule 60.1(b), a later date is applicable.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the demand shall be considered as if it had not been submitted.

57.5 Failure to Pay (Supplement to the Handling Fee)

(a) Where the supplement to the handling fee is not paid as required, the International Bureau shall invite the applicant to pay the supplement within one month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the later election shall be considered as if it had been received on the date on which the International Bureau receives the supplement, unless, under Rule 60.2(b), a later date is applicable.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the later election shall be considered as if it had not been submitted.

57.6 Refund

In no case shall the handling fee, or the supplement to the handling fee, be refunded.

Rule 96
The Schedule of Fees

96.1 Schedule of Fees Annexed to Regulations

The amounts of the fees referred to in Rules 15 and 57 shall be expressed in Swiss currency. They shall be specified in the Schedule of Fees which is annexed to these Regulations and forms an integral part thereof.

SCHEDULE OF FEES

Kind of Fee	Amount
1. <u>Basic Fee:</u> (Rule 15.2(a))	
if the international application contains not more than 30 sheets	325 Swiss francs
if the international application contains more than 30 sheets	325 Swiss francs plus 6 Swiss francs for each sheet in excess of 30 sheets
2. <u>Designation Fee:</u> (Rule 15.2(a))	78 Swiss francs
3. <u>Handling Fee:</u> (Rule 57.2(a))	100 Swiss francs
4. <u>Supplement to the Handling Fee:</u> (Rule 57.2(b))	100 Swiss francs

[Annex III follows]

ANNEX III

Equivalent Amounts of Fees Established by
the Director General Following Consultations with Receiving Offices*

Country Currency	Basic Fee	Supplement for each sheet over 30 sheets	Designation Fee	Handling Fee
Switzerland Swiss franc	325	6	78	100
Austria Austrian Schilling	2650	50	635	815
Denmark Danish Kroner	1000	19	240	Not applicable
France French franc	825	15	200	Not applicable
Germany, (Federal Republic of) Deutsche Mark	360	7	86	110
Japan Yen	41300	800	9900	12700
Luxembourg, Luxembourg franc or Belgian franc	5750	105	1380	Not applicable
Malawi Kwacha	155	3	37	**
Netherlands Dutch Guilder	390	7	95	120
Soviet Union Rouble	126	2.30	30	39
Sweden Swedish Kronor	830	15	200	255
United Kingdom Pound Sterling	92	1.70	22	28
United States of America US dollar	190	3.50	45	Not applicable

[End of Annex and of document]

* No equivalent amount established in Cruzeiros; fees in that currency are collected in the exact equivalents of Swiss currency on the day of payment.

** To be paid in currency of the competent International Preliminary Examining Authority.