

PATENT COOPERATION TREATY (PCT)

PCT RECEIVING OFFICE GUIDELINES

(Guidelines for the processing by receiving Offices
of international applications under the Patent Cooperation Treaty)

as in force from August 1, 2011

1. This document contains the consolidated text of the PCT Receiving Office Guidelines, established by the International Bureau of WIPO and modified after consultation with the receiving Offices under the PCT with a view to implementing the amendments of the PCT Regulations as in force from July 1, 2011.
2. This document supersedes document PCT/GL/RO/8 (dated October 9, 2009).
3. This document may be downloaded from the WIPO website at:
www.wipo.int/pct/en/texts/gdlines.htm.

Receiving Office Guidelines
as in force from August 1, 2011

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Annex A: Transfer of Fees (Document under preparation, please refer to: http://www.wipo.int/pct/en/texts/ro/annex_a.html)

Annex B: Examples of Typical Defects in the Request and Corrections Thereof (Document under preparation, please refer to: http://www.wipo.int/pct/en/texts/ro/annex_b.html)

CHAPTER I INTRODUCTION

1. These Guidelines are intended to assist receiving Offices in carrying out the duties entrusted to them under the Patent Cooperation Treaty (PCT) and provide them with reference material that can assist them in processing international applications under the PCT. They describe the tasks of a receiving Office in relation to relevant PCT procedures.
2. The Guidelines recommend to receiving Offices a system for carrying out their duties under the PCT. Applying that system to the extent possible is of great importance in order to ensure uniform processing of all international applications by all receiving Offices. However, the Guidelines do not cover all possible procedures within a receiving Office and not all tasks referred to need to be performed with regard to each international application. Rarely occurring or particularly complex situations have not been included.
3. For complete information, consultation of the official texts, particularly the PCT itself, the Regulations under the PCT and the Administrative Instructions under the PCT, is indispensable. In case of any inconsistency with these Guidelines, it is those texts which apply.
4. References in these Guidelines to “Articles” are references to those of the Treaty, to “Rules” to those of the Regulations under the PCT, to “Sections” to those of the Administrative Instructions under the PCT, and to paragraphs to those of these Guidelines. The forms to be used by the receiving Office are contained in Part I of Annex A to the Administrative Instructions.
5. These Guidelines contain in some cases references to the Notes to the request form (Form PCT/RO/101); they also contain references to the *PCT Applicant’s Guide* to the extent that they appear to be useful for receiving Offices to carry out their duties.
6. References to “national” Office, “national” phase and “national” fees cover also the procedure before a regional patent Office.
7. A reference to “national law” includes reference to a regional treaty such as the Protocol on Patents and Industrial Designs within the framework of the African Regional Industrial Property Organization (the “ARIPO Harare Protocol”), the Eurasian Patent Convention, the European Patent Convention, or the Agreement establishing the African Intellectual Property Organization (the “OAPI Agreement”).
8. The expression “international phase,” which is not used in the Treaty or the other official texts mentioned above but which has become customary, is commonly used as opposed to the subsequent “national phase” of processing before the national or regional Offices. The international phase encompasses the period from the filing of the international application by the applicant and its processing by the receiving Office, the establishment of the international search report and written opinion by the International Searching Authority, and the international publication of the international application by the International Bureau. It also comprises the (optional) international preliminary examination procedure before the International Preliminary Examining Authority.
9. Whenever the word “applicant” is used, it shall be construed as meaning also the agent (or common representative, where applicable) of the applicant, except where the contrary clearly follows from the wording or the nature of the provision, or the context in which the word is used, for example, in those parts of the Guidelines which deal with representation.

10. The various tasks which a receiving Office may be required to perform when processing an international application are presented in these Guidelines in an order which, in general, corresponds to the chronological sequence in which these tasks are performed. However, some tasks, such as, for example, those relating to the appointment of an agent or the renunciation or revocation of such an appointment, may arise at any time during the international phase; other tasks may, in practice and depending on the case, be more easily carried out concurrently or in a sequence different from that in which they are dealt with in these Guidelines.

11. Formal requirements and corrections of defects are sometimes referred to in separate Chapters or parts thereof, taking into account the fact that there is not always a single or obligatory way of correcting a given defect. In certain cases, the receiving Office may use its discretion and, where appropriate, contact the applicant, before deciding on how to proceed, for example, whether to correct a defect *ex officio* or to invite the applicant to correct that defect.

12. Annex A to these Guidelines contains an example of a table for the transfer of fees to the International Bureau.

13. Annex B to these Guidelines contains examples of typical errors made by applicants in international applications together with an indication of how such defects should be corrected.

CHAPTER II GENERAL

Marking of the Sheets of the International Application, Documents and Correspondence Relating Thereto

14. When marking the sheets of the international application or any document or correspondence relating thereto, the receiving Office should use black ink so that the markings are fit for reproduction by photocopying, scanning, etc. The marking of the date by a perforation stamp is not sufficient.

Use of Facsimile Machine and Other Like Means of Communication; Date of Receipt

15. A document making up the international application, and any later document or correspondence relating thereto, may, if the receiving Office so permits, be transmitted, to the extent feasible, by facsimile machine or other like means of communication resulting in the filing of a printed or written document (Rule 92.4). Note that the receiving Office may, on a case-by-case basis, accept any document transmitted by any of those means even if it has notified the International Bureau that it is not prepared to do so in general.

16. Upon receipt of sheets transmitted by any of the means referred to above, the receiving Office checks whether the document received is legible and appears to be complete. Where part or all of the received document is illegible or part of the document is not received, the document is treated as not having been received to the extent that the received document is illegible or that the attempted transmission failed (Rule 92.4(c)). Where part or all of the received document is illegible or part of the document appears not to have been received, the receiving Office promptly notifies (Form PCT/RO/140) the applicant accordingly.

17. The receiving Office applies its usual national practice to determine the date of receipt of any document (other than a document making up the international application) transmitted by any of the means referred to above if a part of a document was received before, and another part after, midnight, and the transmission therefore spans two calendar days. With regard to a document making up the international application, see Rule 20.2(a) and paragraphs 193 to 207.

18. Where the receiving Office requires, under Rule 92.4(d), or considers it necessary, under Rule 92.4(f), that the original of any document transmitted by any of the means referred to above be furnished, it proceeds as provided for in Rule 92.4(d) to (g). For further details, see paragraphs 37 and 38.

Handling of Requests Prepared Using the PCT-EASY Software

18A. The procedure for the processing by the receiving Office of requests in PCT-EASY format, including entering appropriate indications (international application number, international filing date, etc.) is contained in the *PCT-EASY Manual for PCT Receiving Offices*, available on the PCT-SAFE website; see also paragraphs 165A to 165M. Since PCT-EASY is integrated into PCT-SAFE, all subsequent references in these Guidelines to PCT-EASY would in fact refer to the PCT-EASY features contained within the PCT-SAFE software as of 1 January 2004. A further edition of these Guidelines will include the necessary modifications relating to electronic filing of international applications.

Computation of Time Limits

19. For the computation of periods expressed in years, months or days, see Rules 80.1 to 80.3. For the computation of any period expiring on a non-working day or official holiday, see Rule 80.5. For the determination of the starting date of the computation of any period and the date on which any period expires, see Rules 80.4 and 80.7. For the computation of any period in the case of delay in the mailing or the receipt by the applicant, see Rule 80.6. For the (re)computation of any time limit where the priority date has changed, see Rules 26*bis*.1(c) and 90*bis*.3(d) and paragraphs 192 and 321.

Documents and Correspondence

20. ***Documents and Correspondence Submitted by the Applicant.*** Any paper submitted by the applicant in the course of the PCT procedure, other than the international application itself, must, if not itself in the form of a letter, be accompanied by a letter identifying the international application to which it relates; the letter must be signed by the applicant (Rule 92.1(a)). If those requirements are not complied with, the receiving Office informs the applicant as to the non-compliance and invites (Form PCT/RO/131) the applicant to remedy the omission within a time limit fixed in the invitation. The time limit so fixed must be reasonable in the circumstances; even where the time limit so fixed expires later than the time limit applying to the furnishing of the paper (or even if the latter time limit has already expired), it shall be not less than 10 days and not more than one month from the date of mailing of the invitation. If the omission is remedied within the time limit fixed in the invitation, the omission shall be disregarded; otherwise, the applicant shall be informed (Form PCT/RO/149) that the paper has been disregarded (Rule 92.1(b)). Where non-compliance with those requirements has been overlooked and the paper taken into account for the international procedure, the non-compliance is to be disregarded (Rule 92.1(c)).

21. The language of any letter from the applicant to the receiving Office shall be the same as the language of the international application to which such letter relates, provided that, where the international application is to be published in the language of a translation required under Rule 12.3(a) or 12.4(a), any letter shall be in such language (paragraphs 67, 67A and 68). However, the receiving Office may expressly authorize the use of any other language (Section 104(a)). It may also accept any language on a case-by-case basis.

22. Documents and/or correspondence from the applicant which are to be transmitted to the International Bureau and/or the International Searching Authority shall be transmitted by the receiving Office together with the record copy and/or the search copy, respectively, where those copies have not yet been transmitted to that Bureau or Authority (paragraph 285). Otherwise, later documents and/or, correspondence should be transmitted promptly. Form PCT/RO/118 is

used for transmitting the record copy, the search copy and any other document and correspondence relating thereto. For transmittal of the record copy and search copy, see paragraphs 285 to 293.

23. **Correspondence Intended for the Applicant.** Where the applicant has appointed an agent or agents under Rule 90.1(a), correspondence intended for the applicant is addressed to the applicant's agent or, in the case of two or more agents, to the "first mentioned agent" under Section 108(a) or (b). Where there are two or more applicants and a common agent (that is, an agent appointed by all applicants) has been appointed, correspondence is addressed to that common agent. Where the applicants have not appointed a common agent but have appointed, under Rule 90.2(a), a common representative (that is, one of the applicants appointed to represent all of them and who is entitled to file an international application in accordance with Article 9), correspondence is addressed to that common representative (Section 108(c)). If an appointed common representative has appointed an agent, correspondence is sent to that agent (Section 108(c)(i)). Where a sub-agent has been appointed (Rule 90.1(d)(i)), correspondence intended for the applicant will continue to be sent to the first mentioned agent referred to above; such correspondence will be sent to the sub-agent only if the agent who has appointed the sub-agent specifically requests that correspondence be sent to the sub-agent. In case of doubt, the receiving Office should clarify with the applicant to whom correspondence should be sent. Correspondence intended for the applicant must indicate the applicant's file reference, if any (Section 109 and paragraph 76).

24. Where there are two or more applicants and no common agent or common representative has been appointed, correspondence intended for the applicant is addressed to the "deemed" common representative, that is, the applicant first named in the request who is entitled, in accordance with Rule 19.1, to file an international application with the receiving Office (Rule 90.2(b)). If that "deemed" common representative has appointed an agent, correspondence intended for the applicant is addressed to that agent.

25. Where a special address for correspondence is indicated under Rule 4.4(d) in Box No. IV of the request, correspondence is sent to that address (paragraphs 81 and 118).

26. Where an international application indicates two or more applicants, it shall be sufficient, for the purpose of identifying that application, to indicate, in any form or correspondence relating to such application, the name of the applicant first named in the request (Section 105).

27. **Mailings by Receiving Offices.** Any document or letter emanating from or transmitted by the receiving Office constituting an event from the date of which any time limit under the Treaty and the Regulations commences to run is to be sent by airmail, provided that surface mail may be used instead of airmail in cases where surface mail normally arrives at its destination within two days from mailing or where airmail service is not available (Rule 92.3). In cases where the applicant's attention should be drawn urgently to a notification or other communication, the receiving Office should, to the extent possible, transmit such notification or other communication by facsimile and send a confirmation copy by mail. If the applicant or the agent has authorized either the sending of advance copies of notifications by e-mail or the sending of notifications exclusively by e-mail, by marking the corresponding check-box in Box No. II or Box No. IV of the request form, the receiving Office may, if it wishes to offer this service, send such notifications in respect of the international application to the applicant, thus avoiding postal delays. If an e-mail notification is followed by the official notification on paper, only the paper copy of the notification is considered to be the legal copy of the notification and only the date of mailing of the paper copy will commence any time limit within the meaning of Rule 80. Where the applicant requests the sending of notifications exclusively by e-mail, the date of mailing indicated on the electronic copy will commence any time limit within the meaning of Rule 80.

Irregularities in the Mail Service

28. **Delay or Loss in the Mail of a Document or Letter Sent by the Applicant.** Delay or loss in the mail shall be excused when it is proven to the satisfaction of the receiving Office that the document or letter concerned was mailed at least five days before the expiration of the time limit, provided that the mailing was by registered airmail or, where surface mail would normally arrive at the destination concerned within two days of mailing, by registered surface mail. Evidence of the mailing and, where the document or letter was lost, the substitute document or letter as well as the evidence concerning its identity with the document or letter lost, shall be submitted within one month after the date on which the interested party noticed – or with due diligence should have noticed – the delay or the loss, and in no case later than six months after the expiration of the time limit applicable in the given case (Rule 82.1(a) to (c)).

29. **Use of Delivery Services.** Any receiving Office may accept the use of delivery services other than postal authorities and apply the provisions of Rule 82.1(a) to (c) as if the delivery service was a postal authority, provided the details of the mailing were recorded by the delivery service at the time of mailing. If the receiving Office has notified the International Bureau under Rule 82.1(d) that it accepts the use of delivery services other than postal authorities, it must proceed as outlined in that Rule. The receiving Office may, on a case-by-case basis, accept the use of delivery services even if it has notified the International Bureau that it is not prepared to do so in general.

30. **Interruption in the Mail Service.** The provisions of Rule 82.1(c) apply *mutatis mutandis* for interruptions in the mail service caused by war, revolution, civil disorder, strike, natural calamity or other like reasons in the locality where the interested party resides or has his place of business or is staying (Rule 82.2).

Forms

31. Forms relating to the receiving Office are contained in Part I of Annex A to the Administrative Instructions. The request form (Form PCT/RO/101) is available in Part V of Annex A to the Administrative Instructions. Among those forms for use by the receiving Office, those whose use is mandatory are listed in Section 102(a)(ii). The language of the forms used by the receiving Office must, in general, be the same as the language in which the international application is filed. However, where the international application is to be published in the language of a translation required under Rule 12.3(a) or 12.4(a), the receiving Office shall use the forms in such language, and it may, in its communications to the applicant, use the forms in any other language being one of its official languages (Section 103).

CHAPTER III NATIONAL SECURITY CLEARANCE

32. The receiving Office, where required by the national law, reviews the international application for national security matters (Rule 22.1(a)). Subject to the prescriptions of the national law, international processing may continue. National security clearance should, subject to paragraph 33, be given not later than at the time when the transmittal of the record copy is due under Rule 22.1(a), that is, early enough for the record copy to reach the International Bureau before the expiration of the 13th month from the priority date.

33. If clearance is refused or has, by the end of the 13th month from the priority date, not been obtained and is not expected to be obtained, the receiving Office notifies (Form PCT/RO/147) the applicant and the International Bureau that the record copy and the search copy will not be transmitted and that the international application will not be treated as such. If national security clearance is expected to be obtained soon, the receiving Office may postpone its decision to no

longer treat the international application as such but must make the said decision and send the invitation before the expiration of 17 months from the priority date if no clearance has been received by that time (Section 330 and paragraphs 285 to 287).

34. For refund of fees where any prescriptions concerning national security prevent transmittal of the record copy and search copy, see Rules 15.4(iii) and 16.2(iii) and paragraphs 268 to 271.

CHAPTER IV ARTICLE 11(1) CHECK; REQUIREMENTS FOR INTERNATIONAL FILING DATE

Receipt of Purported International Application

35. **Marking.** Upon receipt of papers purporting to be an international application, the receiving Office indelibly marks the date of actual receipt in the space provided on the last sheet of the request. It then assigns the international application number according to Section 307 and marks that number in the space provided on the first sheet of the request and in the upper right-hand corner of each sheet of the purported international application (Section 308(a) and (b)). Where the request form was not used by the applicant, the receiving Office proceeds as outlined in paragraph 75A. The receiving Office marks the date of receipt also on the fee calculation sheet, in the space provided for that purpose, if such sheet has been submitted.

36. The receiving Office may notify the applicant (Form PCT/RO/125 may be used for this purpose) of the receipt of the purported international application (Section 301). Such notification, which is not to be confused with the notification of the international application number and the international filing date (paragraph 44), is not mandatory but should correspond to the practice of the receiving Office with respect to national applications filed with it. If, according to its national practice, an Office notifies the applicant, before according a filing date, of the receipt of a national application, then it should, in its capacity as a receiving Office, do the same for international applications.

37. **Confirmation Copy of Facsimile Transmission.** Where a receiving Office which accepts the filing of international applications by facsimile machine receives by means other than facsimile machine a purported international application, it checks, before it marks the date of receipt and assigns an international application number, whether it is the first receipt of a new purported international application or whether that purported international application was already received by facsimile transmission. In the latter case, the receiving Office marks such original with the words "CONFIRMATION COPY" or their equivalent in the language of publication of the international application at the bottom of the first page of the request and of the first page of the description. Where only certain sheets are received by facsimile and the applicant subsequently files the original of those sheets only, the words "CONFIRMATION COPY" should be marked on each original sheet so received.

38. The international application as received by facsimile transmission constitutes the record copy. Therefore, the date of receipt to be marked on the last page of the request of the confirmation copy is the date on which the facsimile transmission was received (Section 331). Whether the sheets of the confirmation copy of the facsimile transmission should be marked as substitute sheets in accordance with Section 325 depends on whether the sheets of the facsimile contain any defects with regard to physical requirements (Rule 92.4(e) and paragraphs 208 to 210).

Requirements for According an International Filing Date (Article 11(1))

39. The receiving Office promptly checks whether, at the time of receipt of the purported international application, the requirements for according an international filing date are fulfilled (Article 11(1), Rule 20.1(a)), as outlined in the following paragraphs.

40. **Right to File.** The receiving Office checks whether the applicant does not obviously lack, for reasons of residence and nationality, the right to file an international application with the receiving Office. If there are two or more applicants, it is sufficient that the Office with which the international application is filed is the receiving Office of or acting for a Contracting State of which at least one of them is a resident or national (Rules 18 and 19). See paragraphs 82 to 87 as to how questions of residence and nationality are determined. Where an international application is filed with a national Office, which acts as a receiving Office under the Treaty, by an applicant who is a resident or national of a Contracting State but that Office is not competent, for reasons of nationality or residence of the applicant, to receive that international application, Rule 19.4(a)(i) applies (paragraphs 274 to 277).

41. **Language.** The receiving Office checks whether the international application is in the prescribed language. For the purposes of according an international filing date, it is sufficient that the description, other than any sequence listing part thereof, and the claims are in the language, or one of the languages, which the receiving Office, under Rule 12.1(a), accepts for the filing of international applications.¹ With regard to the language of the request, see paragraph 59. With regard to the language of the abstract and of any text matter of the drawings, see paragraph 62. With regard to any sequence listing part of the application, see paragraph 68. Where an international application is filed with a national Office, which acts as a receiving Office under the Treaty, by an applicant who is a resident or national of a Contracting State and the international application is not in a language accepted by that national Office but is in a language accepted by the International Bureau as receiving Office, Rule 19.4(a)(ii) applies (paragraphs 274 to 277).

42. **Other Minimum Requirements.** The receiving Office checks whether the purported international application contains at least the following elements:

(i) an indication that it is intended to be an international application (this indication is included on the printed request form);

(ii) the name of the applicant; for according an international filing date, it is sufficient if the name is indicated in a way which allows the applicant's identity to be established even if the name is misspelled, the given names are not fully indicated or, in case of legal entities, the indication of the name is abbreviated or incomplete (Rule 20.1(b));

(iii) a part that appears to be a description;

(iv) a part that appears to be a claim or claims.

Positive Determination (Requirements of Article 11(1) Fulfilled)

43. **Accordinging of International Filing Date.** If all the requirements of Article 11(1) are fulfilled, the receiving Office makes a positive determination under that Article and accords an international filing date (Rule 20.2(a)) unless the international application must be transmitted to the International Bureau as receiving Office under Rule 19.4 (see paragraphs 274 to 277). It marks that international filing date, which corresponds to the date of actual receipt of the

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If the international application is filed with the United States Patent and Trademark Office as a receiving Office, all elements of the international application other than any sequence listing part of the description (that is, request, description other than any sequence listing part thereof, claims, abstract, any text matter of the drawings) must be in English (see Rule 20.1(c) and (d)).

international application, the name of the receiving Office and the words “PCT International Application” or “Demande internationale PCT” on the first sheet of the request; 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 those words into (one of) the official language(s) of the receiving Office (Section 308(c)).

44. **Notification of Applicant.** The receiving Office notifies (Form PCT/RO/105) the applicant of the international application number and the international filing date promptly after they have been accorded; it sends to the International Bureau a copy of the notification sent to the applicant, except where the record copy is being sent at the same time (Rule 20.2(c)) (paragraphs 285 to 287). If the priority of an earlier application (or of several earlier applications) is claimed, the (earliest) priority date claimed must be indicated on the copy of the notification which is sent to the International Bureau (Section 324). Even where the national security clearance referred to in paragraphs 32 to 34 has not been given by that time (Form PCT/RO/105 contains a check-box for this purpose), the copy of Form PCT/RO/105 must be sent to the International Bureau which is then, and only then, in a position to monitor the receipt of the record copy and proceed as provided under Rule 22.1(b) and (c).

Defects under Article 11(1)

45. **Invitation to Correct.** If the receiving Office finds that the international application does not comply with any of the requirements of Article 11(1), it invites (Form PCT/RO/103) the applicant to submit the required correction(s) or, where the requirements concerned are those relating to a missing element, to confirm in accordance with Rule 20.6(a) that the element is incorporated by reference under Rule 4.18 (Rule 20.3(a)), unless the receiving Office has notified the International Bureau under Rule 20.8(a) that Rule 20.6 is incompatible with its national law.

46. **Time Limit.** The time limit, according to Rule 20.7, is two months from the date of the invitation. If this time limit expires after the expiration of 12 months from the filing date of the earliest application whose priority is claimed, the receiving Office must draw this circumstance to the attention of the applicant (Rule 20.3(a)); Form PCT/RO/103 contains a check-box for that purpose. This time limit is not extendible. Any correction under Article 11(2) or any notice confirming the incorporation by reference of missing elements under Rule 20.6(a), received by the receiving Office after the expiration of this two-month time limit but before the Office has sent a notification under Rule 20.4(i) to the applicant (Form PCT/RO/104), is considered to have been received within the time limit (Rule 20.7(b)).

47. The applicant may respond to an invitation to correct the purported international application (Form PCT/RO/103) either by submitting a correction under Article 11(2), or, where the defect relates to the omission of an element referred to in Article 11(1)(iii)(d) (description) or (e) (claims), by confirming, under Rule 20.6(a), the incorporation by reference of the missing element. The second option is not available if the receiving Office has notified the International Bureau under Rule 20.8(a) that Rule 20.6(a) is incompatible with its national law. Such an Office either proceeds as described in Rule 20.8(a-bis) or promptly requests the International Bureau as receiving Office to agree, in accordance with the procedure outlined in paragraphs 278 to 281, to the transmittal of the international application under Section 333(b) and (c). Missing drawings are treated as “missing parts”, not “missing elements” since they are not required for an international filing date to be accorded under Article 11 (see Chapter VIII).

Correction under Article 11(2)

48. If the receiving Office finds that the applicant has timely responded and the corrections submitted satisfy the requirements, it marks the date on which the corrections were received as the “Date of timely receipt of the required corrections under PCT Article 11(2):” (item 4 in the Box titled “For receiving Office use only”) on the last sheet of the request and marks that date

on the first sheet of the request as the international filing date (Rule 20.3(b)(i)). Where the priority of an earlier application is claimed and, as a result of a positive determination, the international filing date is after the expiration of one year from the (earliest) priority date, the receiving Office proceeds as outlined in paragraphs 167 to 172. For the procedure applicable in the case of later submitted sheets, see paragraphs 200 to 207.

48A. Where, on the basis of the indications given in the request concerning nationality and residence of the applicant(s), no applicant has the right to file an international application and the receiving Office has issued an invitation to correct a defect under Article 11(1)(i) and evidence is submitted indicating to the satisfaction of the receiving Office that, in fact, the applicant had, on the date on which the international application was actually received, the right to file an international application with that receiving Office, the following applies: the invitation is considered to be an invitation to correct a defect under Article 14(1)(a)(ii) and Rule 4.5 in the prescribed indications concerning the applicant's residence and/or nationality, and the applicant may correct those indications accordingly (Section 329). If such correction is made, no defect is considered to exist under Article 11(1)(i).² If the receiving Office is not competent to receive the international application because of the nationality and/or residence of the applicant(s), the receiving Office transmits the application to the International Bureau as receiving Office under Rule 19.4(a)(i) as outlined in paragraphs 274 to 277.

Confirmation of Incorporation by Reference of Missing Elements under Rule 20.6(a)

49. If the receiving Office timely (see paragraph 46) receives a notice confirming the incorporation by reference of a missing element, the Office checks whether all the requirements of Rule 20.6 have been complied with, as outlined in the following paragraphs.

49A. The receiving Offices checks:

(a) whether the request (Form PCT/RO/101) contains a statement under Rule 4.18 or, if such a statement was not in the request at the time of filing, if it was otherwise contained in, or submitted with, the international application;

(b) whether the applicant had claimed priority of an earlier application at the time of filing;

(c) whether the applicant has submitted the priority document for that earlier application or at least a simple copy of that earlier application; and

(d) under the circumstances of Rule 20.6(a)(iii), whether the applicant submitted a translation or translations of the earlier application.

If the applicant has already complied with Rule 17.1(a) to (b-*bis*), the applicant should not be required to furnish another copy of the relevant priority document to the receiving Office. If the priority document has already been submitted by the applicant or transmitted by the receiving Office to the International Bureau, the receiving Office requests a copy of said document from the International Bureau.

49B. The receiving Office checks whether the sheets submitted by the applicant together with the notice confirming the incorporation by reference of the missing element, embody the entire element as contained in the earlier application. For this, the Office compares the relevant element in the earlier application with the later submitted sheets submitted by the applicant under Rule 20.6(a)(i). Where the later submitted sheets seem to go beyond the correction of formal defects and to modify the substantive content of the application, the receiving Office may, where applicable, invite the applicant to request the rectification of an obvious mistake from the competent ISA under Rule 91 (Form PCT/RO/108).

² The United States Patent and Trademark Office as receiving Office has informed the International Bureau that it does not follow the procedure set out in this paragraph and Section 329.

49C. Where the international application contains more than one priority claim at the time of filing, the applicant may incorporate by reference elements from any of these earlier applications. If, in an effort to comply with the physical requirements of Rule 11, the sheets submitted contain a different numbering of claims, pages or paragraphs, differently numbered references or different reference signs in drawings than in the earlier application(s), these modifications as to formal aspects should generally not be considered as changing what was contained in the earlier application(s).

49D. Where the receiving Office finds that all the requirements of Rules 4.18 and 20.6(a) have been complied with, the Office proceeds as described in Section 309(b) and issues Form PCT/RO/114 accordingly. The receiving Office considers that the missing element concerned has already been filed on the date on which one or more elements referred to in Article 11(1)(iii) were first received and grants the international filing date accordingly (Rule 20.3(b)(ii)) (see also paragraph 43).

50. **Negative Determination (Rule 20.4).** If the receiving Office finds that the corrections of defects under Article 11(1) have not been timely received or have been received but the application still does not fulfill the requirements of Article 11(1) or if the defects could not be resolved by way of incorporation by reference of a missing element under Rules 4.18 and 20.6, it proceeds, once the time limit under Rule 20.7 has expired, as follows:

(i) it deletes the letters "PCT" from the indication of the international application number on any papers marked previously with that number, and uses the said number without such letters in any future correspondence relating to the purported international application (Section 308(d));

(ii) it notifies (Form PCT/RO/104) the applicant that the application will not be treated as an international application and that the number marked on the papers will no longer be used as an international application number (Rule 20.4(i) and (ii)); it sends a copy of that notification to the International Bureau;

(iii) it abstains from transmitting the record copy and the search copy but keeps the application and any correspondence relating thereto (Rule 20.4(iii)); it sends a copy of the said papers to the International Bureau only upon special request in case of a review under Article 25(1) (Rule 20.4(iv)); and

(iv) it refunds (Form PCT/RO/119) any international filing fee and/or search fee received, (Rules 15.4(i) and 16.2(i)); it may also refund any transmittal fee received, subject to the provisions applied by the receiving Office; for the procedure for refunding fees, see paragraphs 268 to 271.

Error by the Receiving Office

51. If the receiving Office discovers or, on the basis of the applicant's reply, realizes that it should not have issued an invitation to correct since the requirements under Article 11(1) were fulfilled when the papers were received, it proceeds as outlined in paragraphs 43 and 44 (Rule 20.3(c)).

Later Finding of Non-Compliance with Requirements of Article 11(1)

52. If, within four months from the international filing date, the receiving Office finds that any of the requirements listed in Article 11(1)(i) to (iii) was not complied with on that date, it proceeds in accordance with Article 14(4) and Rules 29.4 and 30. However, the receiving Office does not apply that procedure if the requirements for transmittal of a purported international application to the International Bureau as receiving Office under Rule 19.4(a)(i) or (ii) are fulfilled, in which case it transmits the international application to the International Bureau as receiving Office (paragraphs 274 to 276).

53. Where the receiving Office intends to declare the international application withdrawn under Article 14(4), it notifies (Form PCT/RO/115) the applicant of its intention and the reasons therefor. At the same time, it invites the applicant to submit arguments under Rule 29.4(a) within two months from the notification. Where the defect consists of a missing element referred to in Article 11(1)(iii)(d) or (e), the receiving Office also invites the applicant to confirm, in accordance with Rule 20.6(a), that the element is incorporated by reference under Rule 4.18, unless the receiving Office has notified the International Bureau under Rule 20.8(a) that Rule 20.6(a) is incompatible with its national law. If, following such notification, the receiving Office decides, for example, after having considered the arguments presented by the applicant, and/or after having made a finding under Rule 20.6(b), not to issue such a declaration, it notifies (Form PCT/RO/127) the applicant as provided for in Section 312, and/or it proceeds as described in Section 309(b) and issues Form PCT/RO/114.

54. If, despite the applicant's arguments, or after having refused the incorporation by reference of a missing element (Rule 20.6(c)), the receiving Office declares the international application withdrawn under Article 14(4), it proceeds in compliance with Rule 29.1. A declaration under Article 14(4) may only be issued if the receiving Office has found, within four months from the international filing date, that any of the requirements listed in Article 11(1)(i) to (iii) was not complied with on that date (Rule 30.1). Form PCT/RO/143 is used to notify the applicant. The notification must indicate the reasons for such declaration. Where applicable, Form PCT/RO/114 is issued at the same time, refusing the incorporation by reference.

CHAPTER V LANGUAGE CHECK (ARTICLE 3(4)(i); RULES 12.1, 12.3, 12.4 AND 26.3*ter*)

General

55. Pursuant to Article 3(4)(i), the international application (that is, all elements of the international application: request, description (other than any sequence listing part thereof), claims, abstract, any text matter of the drawings) must be in "a prescribed language." This requirement means that description (other than any sequence listing part thereof), claims, abstract and any text matter of the drawings must be in the language, or one of the languages, which the receiving Office, pursuant to Rule 12.1(a), accepts for the filing of international applications, and that the request must be in any language of publication which the receiving Office accepts for the filing of requests (Rule 12.1(c)). The languages of publication for international applications are Arabic, Chinese, English, French, German, Japanese, Korean, Portuguese, Russian and Spanish (Rule 48.3(a)).

56. With regard to the description (other than any sequence listing part thereof) and claims, compliance with the requirement that the international application be in a prescribed language is a condition for according an international filing date (Article 11(1) and Rule 20.1(c)). If the description and/or the claims, or any part thereof (except any sequence listing part of the description, see paragraphs 68 and 222), are not in such a language, the receiving Office must, subject to any required national security clearance and payment of any required fee, transmit the international application to the International Bureau as receiving Office (paragraphs 41 and 274 to 282).

57. With regard to the abstract, any text matter of the drawings and the request, compliance with requirements as to language is not a condition for according an international filing date. If the abstract or any text matter of the drawings does not comply with Article 3(4)(i) and Rule 12.3(a), that is, if those elements of the international application are not in the same language as the description and claims, the receiving Office proceeds as provided in

Rule 26.3ter(a) (paragraph 63). If the request does not comply with Article 3(4)(i) and Rule 12.1(c), the receiving Office proceeds as provided for in Rule 26.3ter(c) (paragraph 60).³

58. Under Rule 12.1(a), receiving Offices may accept for the filing of international applications languages which are not accepted by the competent International Searching Authority(ies) for the purposes of international search. Where the applicant files an international application in a language not accepted by the competent International Searching Authority chosen in respect of that application, the applicant is required to furnish a translation for the purposes of international search as outlined in paragraph 69. The provisions relating to the language of the international application operate in such a way that either the international application in its original language or any required translation is sufficient for each stage of the procedure during Chapter I of the international phase (for the processing of the international application by the receiving Office, for the carrying out of the international search and establishment of the written opinion by the International Searching Authority and for the international publication) (Rules 12.1(b), 12.3(a) and 12.4(a)); where the international application must be translated, only one translation is required for all the above-mentioned stages.

Language of Request

59. **Requirements.** With regard to the request, the receiving Office checks, within the time limit under Rule 26.3ter(c), whether the request (including any declaration contained in the request under Rule 4.17) complies with Rule 12.1(c), that is, whether it is filed in a language of publication which the receiving Office accepts for the filing of the request.

60. **Correction of Defects.** Where the request does not comply with Rule 12.1(c), the receiving Office invites (Form PCT/RO/106) the applicant to furnish, within the time limit referred to in Rule 26.2 (Rule 26.3ter(c)), the request (including any declaration contained in the request under Rule 4.17) in any language of publication which it accepts for the filing of the request. Where the applicant has the choice between two or more languages, the receiving Office should send to the applicant, together with the invitation, copies of the request form in those languages. A copy of that invitation is sent to the International Bureau.⁴ Any correction of a defect in a translation of the request furnished under Rule 26.3ter(c) must be in the language of the translation (Rule 12.2(c)).

61. **Failure to Correct.** Where the receiving Office has sent to the applicant an invitation under Rule 26.3ter(c) and the applicant has not, within the applicable time limit, furnished the required correction, it proceeds as provided in Rule 26.5 and, if its determination is negative, declares (Form PCT/RO/117) the international application to be considered withdrawn, in which case Rule 29.1 applies *mutatis mutandis*. For the procedure applicable in such case, see paragraph 159.

Language of Abstract and Text Matter of the Drawings

62. **Requirements.** With regard to the abstract and any text matter of the drawings, the receiving Office checks, within the time limit under Rule 26.1 (Rule 26.3ter(a)), whether these elements are filed in the same language as the description and claims.

³ If the international application is filed with the United States Patent and Trademark Office as receiving Office, all elements of the international application other than any sequence listing part of the description (that is, request, description other than any sequence listing part thereof, claims, abstract, any text matter of the drawings) must be in English (see Rule 20.1(c) and (d)).

⁴ With regard to international applications filed with the United States Patent and Trademark Office as receiving Office, see paragraph 57 and the accompanying footnote.

63. **Correction of Defects.** Where the language in which the abstract and/or any text matter of the drawings, or any part thereof, is filed is different from the language of the description and claims, the receiving Office invites (Form PCT/RO/106) the applicant to furnish, within the time limit referred to in Rule 26.2 (Rule 26.3ter(a)), a translation of the abstract and/or any text matter of the drawings into the language in which the international application is to be published under Rule 48.3(a) or (b), unless:

(i) a translation of the (entire) international application is required under Rule 12.3(a) or 12.4(a) (paragraphs 67 or 67A), or

(ii) the abstract and any text matter of the drawings are (already) in the language in which the international application is to be published.

64. In the invitation, the receiving Office indicates the language into which the abstract and/or any text matter of the drawings is to be translated so as to comply with the requirements of Rule 26.3ter(a). Rules 26.3 and 26.3bis concerning physical requirements (paragraphs 132 to 146) apply *mutatis mutandis* to any translation furnished by the applicant under Rule 26.3ter(a).

65. **Failure to Correct.** Where the receiving Office has sent to the applicant an invitation under Rule 26.3ter and the applicant has not, within the applicable time limit, furnished the required translation, it proceeds as provided for in Rules 26.5 and 29.1, which apply *mutatis mutandis* (Rule 26.3ter(a)). For the procedure applicable in such case, see paragraph 159.

Language(s) Accepted for the Purposes of International Search and International Publication

66. **Requirements of the Competent International Searching Authority as to the Language of the International Application.** The receiving Office checks whether the international application is filed in a language which is accepted by the International Searching Authority that is to carry out the international search (*PCT Applicant's Guide*, Volume I, Annex D, *Official Notices (PCT Gazette)* and *PCT Newsletter*). Where more than one International Searching Authority is competent, the applicant must indicate a choice of International Searching Authority (paragraph 114).

67. **Language Not Accepted for the Purposes of International Search.** Where the language in which the international application is filed is not accepted by the competent International Searching Authority chosen by the applicant, the applicant must furnish to the receiving Office, within one month from the date of receipt of the international application by that Office, a translation of the international application into a language which is all of the following:

(i) a language accepted by that Authority, and

(ii) a language of publication, and

(iii) a language accepted by the receiving Office under Rule 12.1(a), unless the international application was already filed in a language of publication.

67A. **Language Not Accepted for the Purposes of International Publication.** Where the language in which the international application is filed is not a language of publication and no translation is required under Rule 12.3(a), the applicant must furnish to the receiving Office, within 14 months from the priority date, a translation of the international application into any language of publication which the receiving Office accepts for the purposes of international publication.

68. The requirements relating to the translation for the purposes of international search and of international publication do not apply to the request (paragraphs 59 to 61) or any sequence listing part of the description (Rules 12.3(b) and 12.4(b) and paragraph 222).

69. Invitation to Furnish Translation for the Purposes of International Search and Late Furnishing Fee. Where the language in which the international application is filed is not accepted by the competent International Searching Authority and the applicant has not, by the time the receiving Office sends to the applicant the notification under Rule 20.2(c), furnished the translation required under Rule 12.3(a) (paragraph 67), the receiving Office invites the applicant (Form PCT/RO/150, a copy of which is sent to the International Bureau), preferably together with the notification under Rule 20.2(c) (that is, Form PCT/RO/105):

(i) to furnish to the receiving Office the required translation within the time limit under Rule 12.3(a), that is, within one month from the date of receipt of the international application by the receiving Office; in the invitation, the receiving Office indicates the language, or the languages, into which the international application may be translated so as to comply with the requirements under Rule 12.3(a);

(ii) in the event that the required translation is not furnished within the one-month time limit referred to under item (i), to furnish that translation and pay, where applicable, the late furnishing fee referred to in Rule 12.3(e), within one month from the date of the invitation or two months from the date of receipt of the international application by the receiving Office, whichever expires later (Rule 12.3(c)).

69A. Invitation to Furnish Translation for the Purposes of International Publication and Late Furnishing Fee. Where the language in which the international application is filed is not a language of publication and no translation is required under Rule 12.3(a), and the applicant has not furnished the translation required under Rule 12.4(a) within the time limit of 14 months from the priority date (paragraph 67A), the receiving Office invites the applicant (Form PCT/RO/157, a copy of which is sent to the International Bureau):

(i) to furnish the required translation,

(ii) to pay, where applicable, the late furnishing fee referred to in Rule 12.4(e),

within 16 months from the priority date (Rule 12.4(c)). In the invitation, the receiving Office indicates the language, or the languages, into which the international application may be translated so as to comply with the requirements under Rule 12.4(a).

70. Checking of Translation. Where the receiving Office has received a translation for the purposes of international search or international publication, it indelibly marks, in the upper right-hand corner of each sheet of that translation, the international application number (Section 308(b)) and, immediately below, the date of receipt. If the receiving Office notices, before the expiration of the applicable time limit (paragraphs 69 and 69A), what appears to be a significant inconsistency between the original text and the translation, for example, when comparing the number of pages, the number of claims, the titles, etc., it should draw the applicant's attention to that inconsistency and give the applicant an opportunity to make any necessary corrections within the applicable time limit (paragraphs 69 and 69A). Within the applicable time limit, the applicant is entitled to furnish a corrected version of the translation that should be stamped as provided for in Section 305bis(c) and 308(b). In case where the receiving Office has already sent the initial version of the translation to the International Bureau, the receiving Office should draw the attention of the International Bureau to the fact that these sheets should replace the previously transmitted version of the translation. For compliance with the requirements for satisfactory reproduction and/or reasonably uniform publication, see paragraphs 132 to 138.

71. Failure to Furnish the Required Translation. Where the receiving Office has sent to the applicant an invitation under Rule 12.3(c) or 12.4(c) and the applicant has not, within the applicable time limit under Rule 12.3(c)(ii) or 12.4(c), furnished the required translation, or the translation furnished does not comply with the above-mentioned requirements, or any required late furnishing fee has not been paid, the receiving Office declares (Form PCT/RO/117) the international application withdrawn, provided that any translation and any payment received

before that declaration is made and before the expiration of 15 months (Rule 12.3(d)) or 17 months (Rule 12.4(d)), from the priority date are considered to have been received before the expiration of the applicable time limit (Rules 12.3(d) or 12.4(d)). A copy of that notification is sent to the International Bureau and to the International Searching Authority if the record copy and the search copy, respectively, have been transmitted.

CHAPTER VI ARTICLE 14 CHECK AND OTHER FORMAL REQUIREMENTS

GENERAL

72. Article 14(1)(a) sets out a number of formal defects for which the receiving Office checks the international application (signature, indications concerning the applicant, title, abstract and physical requirements). Article 14(1)(b) provides that if the receiving Office finds any of those defects, it invites (Form PCT/RO/106) the applicant to correct them within the prescribed time limit, failing which the receiving Office declares the international application withdrawn. The relevant provisions relating to checking by, and correcting before, the receiving Office of the above-mentioned elements of the international application, including time limit for correction, are contained in Rule 26.

73. Some of the requirements referred to in Article 14(1)(a) are set out in Rule 4, which provides for certain indications to be made and, at the applicant's option, for certain declarations to be included, in the request. Rule 4 contains further requirements which are not covered by Article 14(1)(a). Regarding those indications and declarations which are not covered by Article 14(1)(a) – for example, indications concerning the inventor (Rule 4.6), indications concerning an earlier search (Rule 4.11) or declarations relating to national requirements (Rule 4.17) – Article 14(1)(b) and Rule 26 do not apply, that is, compliance with those requirements cannot be enforced and processing of the international application may continue during the international phase even if those requirements are not complied with.

74. For details concerning the invitation procedure under Rule 26 and correction of other defects, including *ex officio* corrections, see paragraphs 153 to 165.

FORMAL REQUIREMENTS

Form of the Request

75. The receiving Office checks whether the request is:

- (a) made on Form PCT/RO/101;
- (b) presented as a computer print-out, the layout and contents of which correspond to the format of Form PCT/RO/101 (Rule 3.1 and Section 102(h));
- (c) presented as a computer print-out which appears to be in PCT-EASY format (Rule 3.1 and Section 102*bis*(a)) accompanied by a PCT-EASY diskette (Section 102*bis*(a)); or
- (d) presented in any other format permitted for the presentation of the request as a computer print-out, as may be determined by the Director General; any such format having been published in the *Official Notices (PCT Gazette)* (Section 102(i)).

75A. Where the request is presented as a computer print-out corresponding to the format of Form PCT/RO/101, the receiving Office checks whether that print-out complies with Section 102(h). Where the request is presented as a computer print-out that appears to be in PCT-EASY format, and/or is accompanied by a PCT-EASY diskette, the receiving Office

proceeds as outlined in paragraphs 165A to 165M. If neither Form PCT/RO/101 nor a computer print-out complying with the requirements under Section 102(h) is used, the receiving Office draws the applicant's attention to that fact and invites (Form PCT/RO/106) the applicant to fill in a copy (sent together with the invitation) of Form PCT/RO/101 and to return the duly filled-in copy to it within a time limit fixed in the invitation. The filled-in request form may not contain differences in relation to the request filed on the international filing date. Where certain indications concerning the applicant (paragraphs 78 to 87A and 91 to 99), the inventor (paragraphs 88 to 99), the agent or the common representative (paragraphs 117 to 121) do not correspond to indications made on the date on which the international application was filed, the procedure outlined in paragraphs 309 to 312 applies. Where two or more languages are accepted by the receiving Office for the filing of international applications, see paragraph 60. All indications which may be contained in the request are dealt with in the following paragraphs except for those relating to claiming priority and declarations relating to national requirements which are dealt with separately, in Chapters VII and VII*bis*, respectively.

75B. The following paragraphs 76 to 130 relate to Form PCT/RO/101 and to computer print-outs corresponding to that Form. As regards requests prepared using the PCT-EASY software, see paragraphs 165A to 165M.

Applicant's File Reference

76. Where the applicant has indicated a file reference in the request, that reference shall not exceed 12 characters in length (Rule 11.6(f) and Section 109), so that it can be satisfactorily handled in computerized administration systems. If that file reference exceeds 12 characters, and subject to the following sentence, the receiving Office may either truncate that reference *ex officio* to 12 characters and notify the applicant (Form PCT/RO/146; see also paragraph 165) or invite (Form PCT/RO/106) the applicant to amend that reference, so that it conforms to Section 109. The receiving Office may nevertheless, if it so wishes, leave such file reference without truncating it or inviting the applicant to amend it. For corrections, see paragraphs 153 to 165 and Annex B.

Title of the Invention

77. The international application must contain a title (Article 14(1)(a)(iii)). The title of the invention must be indicated twice, in Box No. I of the request and at the beginning of the first page of the description (Rules 4.1(a)(ii) and 5.1(a)). Both indications must be identical. Where the international application does not contain a title, the receiving Office invites (Form PCT/RO/106) the applicant to correct that defect under Rule 26 and sends a copy of the invitation to the International Bureau and also to the International Searching Authority (Rule 37). If the title appears in the request but not on the first page of the description, or vice versa, or the title as indicated on one of those pages contains a spelling mistake, the receiving Office may correct that defect *ex officio* (paragraphs 161 to 165). In all the other cases, the receiving Office invites (Form PCT/RO/106) the applicant to correct the title (paragraphs 153 to 155). It is not the responsibility of the receiving Office to check compliance of the title with Rule 4.3.

Indications in the Request Concerning Applicant and Inventor

Indications Concerning the Applicant

78. The request must contain the prescribed indications concerning the applicant (Article 14(1)(a)(ii)). The relevant prescriptions are contained in Rules 4.4 and 4.5(a) to (d). Where the applicant is registered with the receiving Office, the request may also indicate the number or other indication under which the applicant is so registered (Rule 4.5(e)).

79. **Names and Addresses.** Under Rules 4.4 and 4.5(a)(i) and (ii), the family name must be indicated before the given name(s); titles and academic degrees must be omitted; names of

legal entities must be indicated by their full official designations (generally recognized abbreviations of the legal status of such entities, if part of their full official designations, are however permitted – for example, “Ltd.”, “Inc.”, “GmbH”); the address must be indicated in such a way that it allows prompt postal delivery; if the country can be identified on the basis of the two-letter code and/or postal code (for example, CH-1211 Geneva 20), no further indication of the country is necessary. For corrections, including additional matter to be deleted *ex officio*, see paragraphs 153 to 165 and Annex B.

80. Any name or address written in characters other than those of the Latin alphabet must be indicated also in characters of the Latin alphabet either as a mere transliteration or through translation into English. Names of countries must be translated into English (Rule 4.16). Where such translation or transliteration has not been given or is defective, the receiving Office may make or correct it *ex officio* (paragraphs 161 to 165).

81. Only one address may be indicated per applicant, with the following two exceptions. First, where no agent is appointed in Box No. IV of the request but one of the applicants is appointed as common representative, an address for the latter, other than that appearing in Box No. II or III, may be indicated in Box No. IV of the request (for example, the address of the patent department of a legal entity). Second, where neither an agent nor a common representative is appointed, the applicant may indicate in Box No. IV of the request a special address for correspondence, in which case the corresponding check-box, at the bottom, must be marked (paragraph 118).

82. **Nationality and Residence.** Indications relating to nationality (paragraph 83) and residence (paragraph 84) are required in order to determine whether the applicant is entitled to file the international application with the receiving Office. The question whether an applicant is a resident or national of the Contracting State of which he claims to be a resident or national depends on the national law of that State and is decided by the receiving Office (Rule 18.1(a)). Where neither the State of nationality nor the State of residence of any of the applicants is a State for which the receiving Office is competent, that Office transmits the international application under Rule 19.4 to the International Bureau (paragraphs 274 to 277).

83. For each applicant, the nationality must be indicated by the name of the State of which the person is a national in compliance with Rules 4.5(a)(iii) and (b) and 18.1. In any case, however, a legal entity constituted according to the national law of a State is considered a national of that State (Rule 18.1(b)(ii)).

84. For each applicant, the residence must be indicated by the name of the State of which the applicant is a resident in compliance with Rules 4.5(a)(iii) and (c) and 18.1. In any case, however, possession of a real and effective industrial or commercial establishment in a State is considered residence in that State (Rule 18.1(b)(i)). If no State of residence is expressly indicated in the request, it is assumed that the country of the address indicated for the applicant is the applicant's State of residence (Notes appearing in Boxes Nos. II and III of the request); the receiving Office includes *ex officio* (paragraphs 161 to 165) the indication of the State of residence accordingly. If the address does not contain any indication of the country and the country cannot be identified on the basis of other elements in that address, the receiving Office invites (Form PCT/RO/106) the applicant under Rule 26 to indicate the country of the address and the State of residence.

84A. If there is more than one applicant, according to Rule 26.2*bis*(b), it is sufficient, for the purposes of Article 14(1)(a)(ii), that the indications of address, residence and nationality required under Rule 4.5(a)(ii) and (iii) be provided in respect of one of them who is entitled according to Rule 19.1 to file the international application with the receiving Office. In this case, the receiving Office does not invite the applicant to provide the missing indications in respect of any other applicant under Rule 26.1.

85. Names of States must be indicated by their full name, a generally accepted short title or the two-letter code as appearing in WIPO Standard ST.3 (Section 115). The names and two-letter codes are also listed in Annex K of the *PCT Applicant's Guide*, Volume I.

86. Where an applicant has indicated two or more States of which the applicant is a resident and/or two or more States of which the applicant is a national, the receiving Office does not take any actions as the International Bureau will include in the international application as published only the first State mentioned which is a PCT Contracting State, or, if none of the indicated States is a Contracting State, the first mentioned State.

87. ***Dependent Territories and Other Entities Not Being States.*** Rule 4.5(b) and (c) requires the indication of the State of which the applicant is a national and the State of which the applicant is a resident. Where the applicant has indicated, in lieu of the State of nationality or State of residence, the name of a dependent territory or other entity which is not regarded as a "State" by the United Nations, or where the applicant has made no indication of a State, the receiving Office may invite the applicant to correct the request so as to comply with the requirements of that Rule or, subject to the national law and practice applicable by the receiving Office, and if sufficient information is available to it, make an *ex officio* correction (paragraphs 161 to 165). Such corrections are generally not obligatory, but may be decisive where the request does not otherwise contain an indication, in connection with any applicant, of a State of nationality or State of residence being a PCT Contracting State, so that, without such a correction, no applicant would have the right to file an international application under Article 11(1)(i) (paragraphs 82 to 86). With regard to the international publication of the international application, the practice of the International Bureau is to publish indications of State of nationality and State of residence only where they are of States regarded as such under the practice of the United Nations; otherwise the indication "-" will replace that of a State in the published international application ("[-/-]" will denote no indication of either States of nationality and of residence).

87A. Where the applicant is an intergovernmental organization, such as the World Health Organization, no nationality should be indicated and the receiving Office should not request or make a correction since intergovernmental organizations generally do not possess a nationality.

Indications Concerning the Inventor

88. Indications concerning the inventor must be made where the national law of at least one of the designated States requires that the name of the inventor be furnished at the time of filing a national application (Rule 4.1(a)(iv)). See *PCT Applicant's Guide*, Volume I, Annexes B1 and B2, for those States and regional patent systems which require such indications. Where the national law of none of the designated States requires that the name of the inventor be furnished at the time of filing a national application, the request may nevertheless contain indications concerning the inventor (Rule 4.1(c)(i)). Where indications concerning the inventor are required under Rule 4.1(a)(iv) or included under Rule 4.1(c)(i), they must include the name and address of the inventor, or, if there are several inventors, of each of them, in accordance with Rules 4.4 and 4.6(a) (paragraph 79). It is to be noted that a legal entity cannot be an inventor. For persons named as inventors only, indications of nationality and/or residence are not required. Any such indication should be deleted *ex officio* by the receiving Office.

89. If the applicant is the inventor, the check-box "This person is also inventor" in Box No. II of the request or "applicant and inventor" in Box No. III of the request, as the case may be, must be marked (Rule 4.6(b)). These check-boxes must not be marked if the applicant is a legal entity. A person must not be named more than once in Boxes Nos. II and III of the request, even where that person is both applicant and inventor. In Box No. III of the request, one of the check-boxes on the right-hand side must always be marked for each person named.

90. If no inventor is indicated, although the indications referred to under paragraph 88 are required under Rule 4.1(a)(iv), the receiving Office may draw (Form PCT/RO/132) the applicant's attention to the fact that the law of certain designated States requires that the inventor be named and prescribed data relating thereto be furnished in the request. If no response to the communication has been received from the applicant before the transmittal of the record copy, the receiving Office sends a copy of that communication to the International Bureau. For corrections, including *ex officio* corrections, see paragraphs 153 to 165 and Annex B.

Indications Concerning Applicant and Inventor where the United States of America Is Designated

91. Article 27(3) provides that where the applicant, for the purposes of any designated State, is not qualified according to the national law of that State to file a national application because the applicant is not the inventor, the international application may be rejected by the designated Office concerned. At present, only the national law of the United States of America contains such a provision. Therefore, where the United States of America is one of the designated States, all of the inventors must be named as applicants (as well as inventors) for the purposes of that designation. The check-box "This person is also inventor" (in Box No. II of the request) or "applicant and inventor" (in Box No. III of the request) must be marked. For examples, see Annex B.

92. *[Deleted]*

93. Where, for the purposes of the designation of the United States of America,

- (i) the inventor(s) is (are) named but not also indicated as applicant(s) for the purposes of that designation, and unless the inventor(s) is (are) deceased (see paragraphs 96 to 99 and 161 to 165), or
- (ii) no inventor is indicated,

and the designation of the United States of America has not been withdrawn, the receiving Office notifies the applicant that the application may be rejected by the United States Patent and Trademark Office as a designated Office because only the inventor is qualified to file a national application in the United States of America (Article 27(3)). Any response by an applicant requesting that an inventor be indicated as an applicant for the United States of America will be treated as a request under PCT Rule 92*bis*.

94. Where a legal entity is indicated on the request as an applicant for States including the United States of America and the request also names a person who is an inventor and applicant for the purposes of the United States of America, then the receiving Office should *ex officio* correct the request to indicate the legal entity as an applicant for the purposes of "all designated States except the United States of America." Similarly, any response to the notification referred to in paragraph 93 requesting that an inventor be indicated as an applicant for the United States of America will be considered, in the absence of instructions to the contrary, to include a request to change the indication of any legal entity indicated as an applicant for the United States to that of an applicant for "all designated States except the United States of America".

Different Applicants or Inventors for Different Designated States

95. Rule 4.5(d) provides that the request may, for different designated States, indicate different applicants. Different applicants may also be indicated for different States designated for a regional patent (Section 203(a)). For the purpose of the designation of States for both a national patent and a regional patent, the same applicant or applicants must be indicated (Section 203(b)). Where different persons (natural persons or legal entities) are applicants for different designated States other than the United States of America (paragraphs 91 to 93), that

is, where none of the other three check-boxes in Boxes Nos. II and III of the request fits the circumstances, the check-box “the States indicated in the Supplemental Box” must be marked and the Supplemental Box of the request should be used. In such a case, the name of the person must be repeated in that Supplemental Box with an indication of the designated State or States for which that person is applicant (item 1(ii) in that Box). In that Supplemental Box, different persons may also be indicated as inventors for different designated States (for example, where, in this respect, the requirements of the national laws of the designated States are not the same).

Indications in the Case of a Deceased Applicant or Inventor

96. If the applicant dies, the successor to the rights of that applicant (for example, heir or legal representative) should request to be recorded as the new applicant under Rule 92*bis* (paragraphs 309 to 312). The reason for the requested recording of a change must be indicated.

97. If the inventor died before the international application was filed, the request must indicate only the name of the inventor with an indication that the inventor is deceased, for example: JONES, Bernard (deceased). For the case of a designation for which the inventor must be the applicant, see paragraph 98.

98. For the purpose of the designation of the United States of America, if the deceased applicant was the inventor, the successor to the rights of the deceased applicant/inventor must be indicated in the request as the new applicant (but not inventor) for the United States of America. Where there is a successor to the rights of the deceased inventor, this indication should be made as follows:

SMITH, Alfred, legal representative of JONES, Bernard (deceased) or
JONES, Helen, sole heiress of JONES, Bernard (deceased)

followed by indications of the address, nationality and residence of the legal representative or heir, as the case may be. The nationality and residence of the successor to the rights of the deceased inventor must be indicated.

99. The same applies where the inventor dies during the international phase and a request for the recording of a change in the person of the applicant is made (paragraphs 309 to 312). Where no replacement sheet of the corresponding sheet(s) of the request and/or additional sheet, as the case may be, was filed, the receiving Office transfers the change to the record copy (which may imply adding a sheet to the request form). If the deceased applicant/inventor had appointed an agent or common representative and the successor to the rights of that deceased applicant/inventor intends to be represented by that same agent or common representative, the successor to the rights of the deceased applicant/inventor must appoint that agent and submit a corresponding power of attorney.

Designation of States

100. **States.** Under Rule 4.9(a), the filing of a request constitutes:

(i) the designation of all Contracting States that are bound by the Treaty on the international filing date;

(ii) an indication that the international application is, in respect of each designated State to which Article 43 or 44 applies, for the grant of every kind of protection which is available by way of the designation of that State (see paragraphs 108 to 111); and

(iii) an indication that the international application is, in respect of each designated State to which Article 45(1) applies, for the grant of a regional patent and also, unless Article 45(2) applies, a national patent.

This is also valid where the applicant does not use the request Form PCT/RO/101, where the applicant uses an old request form, issued before 1 January 2004, that does not list all Contracting States, or where the international filing date is changed to a date on or after 1 January 2004. Consequently, the receiving Office does not check whether all Contracting States are designated and is not required to make any *ex officio* corrections by adding designated States.

101. **Exclusion of Certain States from Designation.** Under Rule 4.9(b), the applicant may, by marking the applicable check-box(es), indicate that Germany, Japan and/or the Republic of Korea are not designated for any kind of national protection. This possibility is restricted to those three States. Therefore, no other State can be excluded from the automatic and all-inclusive coverage of designations and no withdrawals of designations are allowed in the request. If the applicant adds in the request explicit indications as to the designation of a specific contracting State or a withdrawal of a designation, such indication should be deleted *ex officio* by the receiving Office, as provided in Rule 4.19(b) and Section 303 (paragraphs 161 to 165). However, the applicant may submit a separate notice of withdrawal of designation under Rule 90*bis*.2. The designation of Germany for the purposes of a European patent is not affected so that this State remains designated for regional protection if the checkbox is marked. Regarding further details concerning the indication that Germany, Japan and/or the Republic of Korea shall not be designated for any kind of national protection, see the Notes to the request form relating to Box No. V.

102. **Priority Claim from Excluded State.** Under Rule 4.9(b), the applicant may only exclude the designation of Germany, Japan and/or the Republic of Korea in Box No. V, if the priority of an earlier national application filed, respectively, in Germany, Japan and/or the Republic of Korea, is claimed in Box No. VI. If, on the date of filing, the request contains an indication under Rule 4.9(b) that the designation of a State is not made, but does not contain a priority claim to an earlier national application filed in that State, the applicant shall be promptly notified and his attention drawn to Rule 26*bis* (Form PCT/RO/132). In accordance with Section 319, if, by the expiration of the time limit under Rule 26*bis*.1(a), no notice correcting or adding such a priority claim has been received, the indication in Box No. V shall be enclosed in square brackets and a line drawn between the square brackets, which leaves the indication legible, and in the margin, shall be indicated the words "CANCELLED EX OFFICIO BY RO". The receiving Office shall promptly notify the applicant and the International Bureau accordingly (Form PCT/RO/146).

103. **States Not Bound by the PCT on the International Filing Date.** States which are not Contracting States on the date of filing the international application are not designated by filing a request and cannot be designated in the request or subsequently. If the applicant has added in Box No. V of the printed request form States which have become party to the PCT after the international filing date, the receiving Office cancels *ex officio* the purported designation of any State which is not a Contracting State (Section 318 and paragraphs 161 to 165).

104. [Deleted]

105. [Deleted]

106. [Deleted]

107. [Deleted]

Kind of Protection or Treatment

108. Under Rule 4.9(a)(ii), the filing of a request shall constitute an indication that the international application is, in respect of each designated State to which Article 43 or 44 applies, for the grant of every kind of protection which is available by way of the designation of that State. Upon filing of the request, the applicant will obtain an automatic and all-inclusive coverage of every kind of protection available in any designated State. The applicant may indicate, under Rule 4.11(a)(i) and (ii), an intention to make an indication under Rule 49*bis*.1 of the wish for the international application to be treated as an application for certain kinds of protection in certain States (this applies only to applications for patents of addition, certificates of addition, inventors' certificates of addition, utility certificates of addition or continuation or continuation-in-part of an earlier application; see paragraph 116), but this does not affect the extent of the designation made under Rule 4.9 (Rule 4.11(b)). Under Rule 4.9(a)(ii), no further specification as to the kind of protection and no exclusion of certain kinds of protection is possible. If such indications are included in the request, they should be deleted by the receiving Office *ex officio*, as provided for in Rule 4.19(b) and Section 303 (paragraphs 161 to 165). However, the applicant may submit a separate notice of withdrawal of certain kinds of protection (paragraphs 314 and 322).

109. *[Deleted]*

110. Where different types of protection are available in the same State, they are available only for the same applicant; for example, where it is possible to obtain a utility model in addition to a patent, it is not possible to indicate different applicants for these different types of protection in respect of the same designated State.

111. The applicant wishes the international application to be treated in any designated State (whose national law provides for that kind of protection) as an application not for a patent but for an inventor's certificate, a utility certificate, a utility model, a "petty patent," a patent of addition, a certificate of addition, an inventor's certificate of addition or utility certificate of addition, he can indicate so to the national Office, under Rule 49*bis*.1, only when performing the acts referred to in Article 22 for entering the national phase (concerning the indications under Rule 4.11(a)(i) and (ii), see paragraph 116).

112. *[Deleted]*

Non-Prejudicial Disclosures

113. As to the procedure concerning declarations as to non-prejudicial disclosures or exceptions to lack of novelty, see paragraphs 192A to 192E.

The Competent International Searching Authority

114. The receiving Office checks whether the International Searching Authority specified by the applicant is competent to carry out the international search. Each receiving Office may declare one or more International Searching Authorities as competent for the searching of international applications filed with it (Article 16 and Rules 35.1 and 35.2).

115. If the International Searching Authority indicated by the applicant is competent, or if only one International Searching Authority is competent, the receiving Office indicates the name of that Authority on the last sheet of the request. Where more than one International Searching Authority is competent and no indication as to the choice of International Searching Authority is made in Box No. VII of the request, the receiving Office checks whether such indication appears on any other paper filed in connection with the international application, such as the fee calculation sheet, or on any translation submitted for the purposes of international search. Where no such indication is made, the receiving Office invites the applicant to indicate a choice

as to the competent Authority. Form PCT/RO/132 may be used for that purpose. The receiving Office proceeds in the same manner where more than one Authority is competent and the applicant has indicated an Authority which is not competent in respect of the application in question. Where more than one International Searching Authority is competent, the applicant may make a change to the choice of Authority if the search copy has not yet been transmitted to the International Searching Authority originally chosen by the applicant. The receiving Office deletes the indication of any non-competent International Searching Authority *ex officio* (paragraphs 161 to 165).

Reference to Continuation or Continuation-in-Part, or Parent Application or Grant

116. If, for purposes of national processing, the applicant intends to make an indication under Rule 49*bis*.1(a) or (b) of the wish that the international application be treated, in any designated State, as an application for a patent of addition, certificate of addition, inventor's certificate of addition or utility certificate of addition under Rule 49*bis*.1(c) (Rule 4.11(a)(i)), or the applicant intends to make an indication under Rule 49*bis*.1(d) of the wish that the international application be treated, as an application for a continuation or a continuation-in-part of an earlier application (Rule 4.11(a)(ii)), the request shall so indicate under item 2 or 3 in the supplemental box and shall, as the case may be, identify the application in respect of which the earlier search was made or otherwise identify the search, or indicate the relevant parent application or parent patent or other parent grant. The inclusion in the request of such an indication shall, with respect to the international phase, only serve the purpose of international search and has no effect on the all inclusive designation for every kind of protection available under Rule 4.9(a).

Reference to Earlier Search

116A. **Reference to Earlier Search.** Where the applicant wishes the International Searching Authority to base the international search report wholly or in part on the results of an earlier international search, international-type search or national search carried out either by the same International Searching Authority, by another International Searching Authority or by a national (regional) Office, the corresponding indications must be made in Box No. VII of the request (Rule 4.12).

116B. Where the applicant has requested the International Searching Authority to take into consideration the results of an earlier search, the receiving Office checks in general whether the applicant has either submitted the results of the earlier search together with the international application or else requested either the receiving Office or the International Searching Authority to retrieve them. This check by the receiving Office is however not necessary where the earlier search referred to was conducted by the Office acting as International Searching Authority since, under Rule 12*bis*.1(d), the submission of the results of the earlier search result is not required in such cases. If the applicant nevertheless checked any boxes in Box No. VII, other than the one requesting the ISA to take into account the results of an earlier search(es), the receiving Office should correct such indications *ex officio*. The receiving Office also checks whether the document(s) correspond to the indications made in Box No. VII of the request and whether the data indicated in Box No. VII is complete and appears to be correct. Furthermore, where the applicant has requested the receiving Office, under Rule 12*bis*.1(c), to prepare and transmit the results of the earlier search to the International Searching Authority, the receiving Office checks whether the earlier search referred to has been completed and, where applicable, whether the fee referred to in Rule 12*bis*.1(c) has been paid.

116C. Where the indications in Box No. VII and the results of the earlier search(es) submitted comply with the requirements mentioned in paragraph 116B, the receiving Office, as applicable, transmits, or prepares and transmits, the results of the earlier search(es) together with the search copy to the International Searching Authority (see Section 337). Where the applicant has furnished any other document in connection with the request under Rule 12*bis*.1(a) together with the international application, the receiving Office either informs the applicant that such

documents should be submitted directly to the International Searching Authority or, at its choice, transmits those documents to the International Searching Authority.

116D. *Incomplete or Incorrect Indications, or Missing or Inconsistent Earlier Search Results.* Where the receiving Office has found that the indications made in Box No. VII are incomplete, do not correspond to the earlier search results submitted or seem otherwise incorrect, the receiving Office may proceed as outlined in paragraphs 161 to 165 (“*Ex Officio* Corrections”) or refer the applicant to Rule 91.1. The sending of the search copy to the International Searching Authority should, however, not be delayed by any such ongoing proceedings. Where any such incomplete or incorrect indications in Box No. VII cannot be resolved as an *ex officio* correction and/or under Rule 91.1, or where the applicant has failed to submit the results of the earlier search(es) together with the international application under Rule 12*bis*.1(a) or where the receiving Office could not prepare and transmit a copy of the results of the earlier search(es) under Rule 12*bis*.1(c), the receiving Office should inform the applicant (Form PCT/RO/132) that his request for the International Searching Authority to take into account the results of an earlier search could not be acted upon and/or be forwarded to the International Searching Authority. A copy of this notification should be sent to the International Bureau and the International Searching Authority. Where the indications in Box No. VII do not seem to correspond to the earlier search results submitted by the applicant under Rule 12*bis*.1(a), and even if such inconsistencies could not be resolved, the receiving Office should nevertheless transmit the earlier search results to the International Searching Authority.

Agent, Common Representative and Address for Correspondence

117. Only a person who has the right to practice before the receiving Office may be appointed and indicated as agent in Box No. IV of the request. Depending on the national law applicable, the agent may be a natural person, a legal entity, or a firm or partnership that is not a legal entity. Where the person indicated as agent in Box No. IV does not have the right to practice before the receiving Office, the receiving Office deletes *ex officio* the checkbox “agent” and marks instead the checkbox “address for correspondence”. If the person indicated in Box No. IV as an agent has also signed the request in Box No. X, the receiving Office also deletes *ex officio* the signature in Box No. X and invites the applicant to furnish the missing signature (Form PCT/RO/106, see also paragraph 123). The receiving Office notifies the applicant accordingly (Form PCT/RO/146, see also paragraph 165). Where one of the applicants is appointed as common representative that applicant must be entitled to file an international application (that is, that applicant must be a national or resident of a Contracting State); such applicant may be so appointed only if no agent has been appointed by all the applicants (that is, if there is no “common agent”) (Rule 90.2(a)). Regarding signature requirements, see paragraphs 122 to 125A.

117A. The appointment of an agent or common representative may be effected by the applicant signing the request or a separate power of attorney (Rule 90.4(a)). The appointment of an agent may also be effected by referring in the request, or a separate notice, to a general power of attorney (that is, 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) (Rule 90.5). The original of such general power of attorney must be deposited with the receiving Office (that is, it must either have already been deposited with that Office or it must accompany the international application) and a copy of it must accompany the request or separate notice (Rule 90.5(a)).

117B. The receiving Office may waive the requirement that a separate power of attorney be submitted to it (Rule 90.4(d)), or that a copy of a general power of attorney is attached to the request (Rule 90.5(c)). The receiving Office may therefore not require the applicant to submit a separate power of attorney, or a copy of a general power of attorney, or may waive this requirement only for certain cases. Any waiver by a receiving Office is notified to the International Bureau and is published in the *Official Notices (PCT Gazette)* (Sections 336 and

433). To the extent that the receiving Office has waived the requirement of submission of a separate power of attorney, Rule 90.4(c) shall not apply. Nevertheless, if the applicant submits a power of attorney, the receiving Office should check for any defects and, where applicable, bring such defects to the attention of the applicant before it forwards a copy of the submitted separate power of attorney or a copy of the submitted copy of the general power of attorney to the International Bureau and the International Searching Authority (Form PCT/RO/123). Regarding signature requirements, see paragraphs 122 to 125A.

117C. Where the agent or the common representative submits any notice of withdrawal of the international application, of designations, or of priority claims (Rule 90*bis*.1 to 90*bis*.3), the agent or the common representative has to submit, in case he has not done so before, a separate power of attorney, or a copy of the general power of attorney, since the requirement to submit a separate power of attorney, or a copy of the general power of attorney, may not be waived under Rule 90.4(e) and 90.5(d).

118. For the manner of indicating names and addresses, see Rule 4.4 (paragraphs 79 to 81 and 85). Where one of the applicants is appointed as common representative, the address indicated in Box No. IV of the request for that applicant may differ from the address indicated for that same applicant in Box No. II or III of the request. The check-box "Address for Correspondence" should only be marked if neither an agent nor a common representative has been appointed. For *ex officio* corrections, see paragraphs 161 to 165.

119. Where the receiving Office receives a separate document containing the appointment (power of attorney), or the revocation or renunciation of the appointment, of an agent or a common representative, it checks whether that document is signed (Rule 90.4(a)) and complies with Rule 4.4. It notifies (Form PCT/RO/123) the International Bureau and the International Searching Authority and transmits a copy of that document to them. If the record copy and/or search copy have not yet been transmitted, the receiving Office transmits a copy of the power of attorney, or document containing the revocation or renunciation of an appointment, with the record copy and/or search copy (Section 328(b)). Where a change concerning the agent or common representative (for example, the person, the name or the address) is to be recorded, the receiving Office notifies (Form PCT/RO/123) the International Bureau accordingly (Section 328).

120. Where the receiving Office has not waived the requirement for a submission of a power of attorney and the receiving Office does not recognize that document as a valid power of attorney (for example, where power of attorney is not signed properly or where the document is otherwise defective), the receiving Office notifies (Form PCT/RO/124) the applicant, or, in case of a renunciation, the agent, of any defect and of the fact that the document containing the appointment, revocation or renunciation is considered non-existent until the defect is corrected (Rules 90.4(c) and 90.6(e)). If the defect is corrected, the procedure outlined in the preceding paragraph applies.

120A. Where the agent is registered with the national Office acting as the receiving Office, the number or other indication under which the agent is so registered may be indicated (Rule 4.7(b)).

121. Further references to agents and common representatives are made in these Guidelines, in particular, in the following paragraphs: paragraph 9 (meaning of "applicant"), paragraphs 23 to 26 (correspondence intended for the applicant), paragraph 75A (form of the request), paragraph 81 (address), paragraph 99 (deceased applicant), paragraphs 122 to 125A (signature), paragraphs 126 to 128 (signature for legal entity); paragraph 192C (declarations), paragraphs 309 to 312 (recording of changes).

Signature

122. The receiving Office checks whether the international application is signed as provided for in the Regulations (Article 14(1)(a)(i)); the relevant provisions are contained in Rules 2.1, 4.1(d), 4.15, 90.4(a), 90.5(a)(ii) and 90.6(d). The request must be signed by all applicants (Rule 4.15) or, on their behalf, by an appointed agent or appointed common representative for whom a power of attorney signed by all applicants is submitted. However, if there is more than one applicant, it shall be sufficient, for the purposes of Article 14(1)(a)(i), that the request be signed by one of them. The applicant signing does not have to be an applicant entitled to file with the receiving Office (Rule 26.2*bis*(a)). In this case, the receiving Office should not invite the applicant to furnish missing signatures under Rule 26.1.

122A. In case the request is signed by an agent and where the receiving Office has waived the requirement of a separate power of attorney or of a copy of a general power of attorney, it does not check further the signature requirements in this case. The same applies in respect of the appointment of a common representative. If that agent also signs in Box X the signature requirements under Article 14(1) have been fulfilled since he signed the application on behalf of the applicants. A notice of withdrawal, however, has to be signed by or on behalf of all applicants (Rule 90*bis*.5(a), paragraphs 117C and 314).

123. Where the signature requirement is not fulfilled to the extent indicated in paragraph 122, the receiving Office invites (Form PCT/RO/106) the applicant, under Article 14(1)(b) and Rule 26, to correct the defect by sending, together with the invitation to correct, a copy of the relevant sheet of the request, to be returned by the applicant after affixing thereto the prescribed signature(s) (Section 316). Where not all requirements relating to the signature of the international application as outlined in paragraphs 124 to 130 are complied with, see paragraphs 153 to 159.

124. ***Request Signed by Agent or Common Representative.*** Where the request is signed by an agent or common representative, the appointment of that agent or common representative must be valid. The agent must have the right to practice before the receiving Office concerned in accordance with Rule 90.1. An appointed common representative must be a national or resident of a Contracting State (paragraph 117). A power of attorney appointing the agent or the common representative must be signed by each applicant who is to be represented; the original of such power(s) of attorney should be filed with the international application, unless the receiving Office has waived this requirement under Rule 90.4(d) (paragraphs 117B and 117C) (Rule 90.5(c)).

125. Where the agent is appointed in a general power of attorney deposited with the receiving Office (paragraph 117A), that power must similarly be signed by each applicant who is named therein. However, the copy of such power which must be filed with the international application, unless the receiving Office has waived this requirement under Rule 90.5(c) (paragraph 117B), need not itself be separately signed (Rule 90.5(a)(ii)).

125A. If the power of attorney (including an original general power of attorney) is not signed, or if a required power of attorney is missing or is not signed, or if the name and address of the appointed person does not comply with Rule 4.4 the power of attorney is considered non-existent (Rule 90.4(c)). Similarly, the appointment of an agent is not considered to have been effected in a general power of attorney if the original of such power has not been deposited with the receiving Office or if the international application is not accompanied by a copy of such power, unless the receiving Office has waived this requirement under Rule 90.5(c) (paragraph 117B). In any of these cases, the international application is considered not to have been signed and the receiving Office invites (Form PCT/RO/106) the applicant to correct the defect under Rule 26.

126. **Authorization to Sign on Behalf of a Legal Entity.** Where the applicant is a legal entity, the request or the power of attorney must be signed by a person entitled to act on behalf of that entity, and an indication of the name of and the capacity in which that person signs must be made. Where an individual is an applicant and at the same time acts on behalf of a legal entity which is also an applicant, a single signature is sufficient, provided that an indication is made that the person signs in both capacities.

127. If an individual signs the international application in the name of a legal entity (and not as an appointed agent), the receiving Office should, in ordinary circumstances, not require further evidence of the person's right to sign for the applicant. The receiving Office may apply relevant provisions of the national law when deciding whether the mere indication of a certain capacity (such as "president," "secretary," etc.) is sufficient or whether the applicant should be invited to furnish evidence. In ordinary circumstances, however, an indication that the person signs as an "authorized signatory" for the applicant concerned is sufficient. If it is not clear from the wording of the request whether the signatory has signed the request as an authorized signatory of the applicant rather than as an appointed agent, the receiving Office should seek clarification.

128. A person who signs the request in the capacity of an authorized signatory for a legal entity may, in principle, and provided he or she has the right to practice before the receiving Office, appoint himself or herself as an agent by indicating his or her own name in Box No. IV of the request. While such a practice is unusual, there may be sound reasons why the applicant might choose to follow it, for example, where there are two or more applicants and it is desired that the person concerned be appointed as common agent for all the applicants, in addition to being an authorized signatory for one of them, or if it is desired that a number of persons, including the signatory, be appointed as common agents.

129. **Applicant/Inventor for the United States of America Refuses to Sign or Cannot Be Found or Reached.** Where an applicant/inventor for the United States of America refuses to sign the request (or a power of attorney) or cannot be found or reached after diligent effort, the request need not be signed by that applicant if it is signed by at least one other applicant and a statement is furnished explaining, to the satisfaction of the receiving Office, the lack of the signature concerned. If the receiving Office considers that statement to be satisfactory, it sends a copy thereof to the International Bureau with an indication that that statement replaces the missing signature. This would also apply where all the joint applicants/inventors for the United States of America refused to sign or could not be found or reached after diligent effort, provided that at least one other applicant has signed the request or a power of attorney (Rule 4.15(b)). However, the receiving Office does not invite the applicant to furnish missing signatures where at least one applicant has signed the request (paragraphs 122 and 153).

130. While it is the receiving Office which, under Rule 4.15(b), must be satisfied as to the explanation of the lack of signature at the time of filing the international application, the matter is ultimately one to be determined by the United States Patent and Trademark Office as a designated Office, when the application proceeds into the national phase.

131. *[Deleted]*

Compliance with the Physical Requirements Referred to in Rule 11

General

132. The international application must comply to the extent provided for in the Regulations with the prescribed physical requirements (Article 14(1)(a)(v)). Those physical requirements are set out in Rule 11 and relate to fitness for reproduction, size and numbering of sheets, margins, writing of text matter, drawings, etc. The physical requirements of Rules 10 and 11.1 to 11.13 also apply to any other document (for example replacement sheets, amended claims, translations) submitted after the filing of the international application (Rule 11.14).

133. Where the international application is filed in a language of publication (Rule 48.3(a) and paragraph 55), the receiving Office checks whether the application complies with physical requirements to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication (Rule 26.3(a)(i)) including image scanning and optical character recognition (OCR) by the International Bureau, as outlined in paragraphs 139 to 146.

134. Where the international application is filed in a language of publication (Rule 48.3(a)) but a translation is furnished under Rule 12.3 for the purposes of international search (paragraphs 66 to 71), that translation is checked for compliance with the physical requirements referred to in Rule 11 only to the extent that compliance therewith is necessary for the purpose of satisfactory reproduction (Rule 26.3(a)(ii)), since the sheets of the translation will not be used for the purposes of international publication. The receiving Office checks that the sheets are so presented as to admit of direct reproduction by photocopy, scanning or other means in accordance with Rule 11.2 and that the print is dark and well contrasted (Rule 11.9(d)).

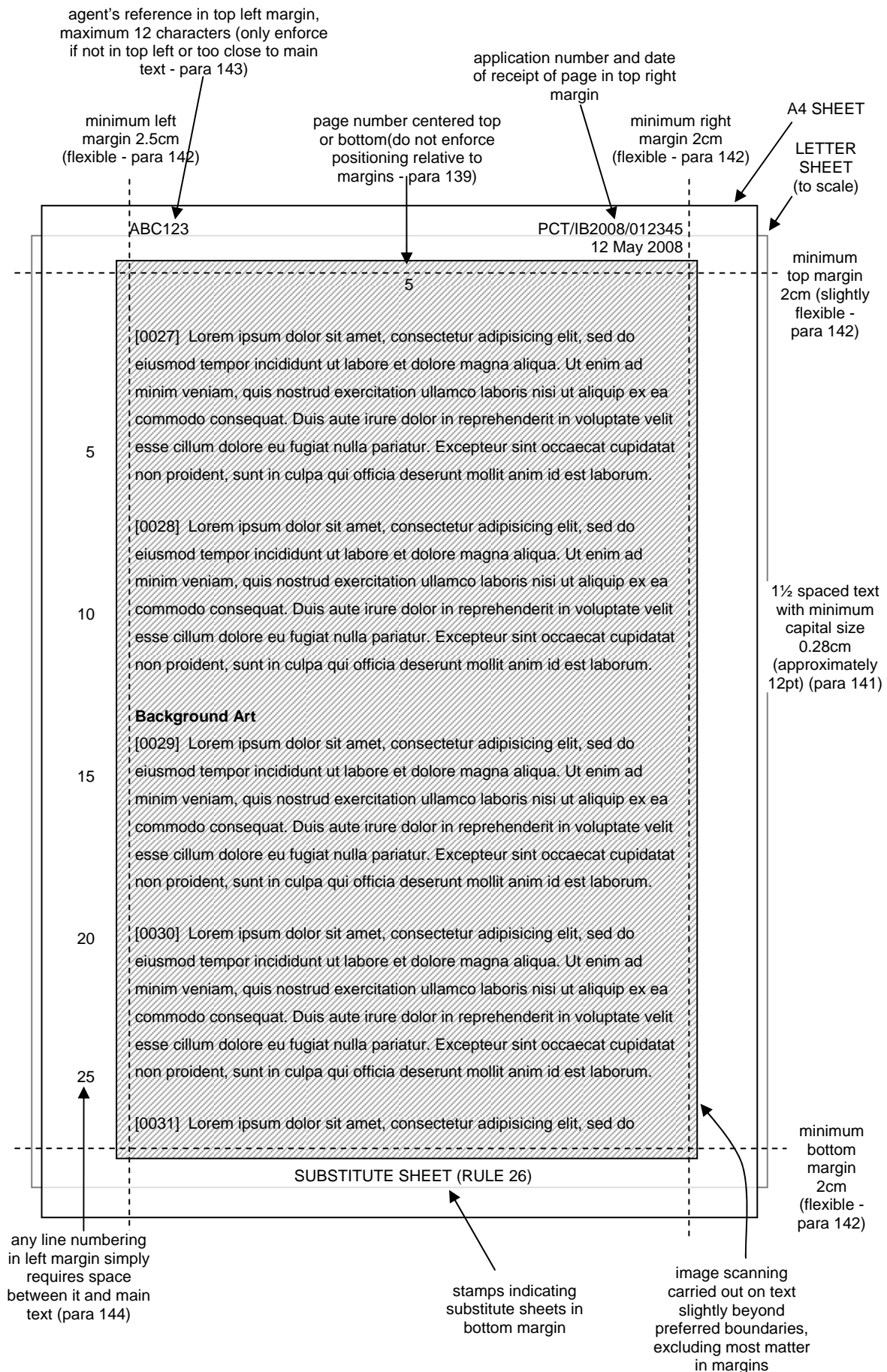
135. Where the international application is filed in a language which is not a language of publication, in which case not the original text but a translation furnished by the applicant under Rule 12.3 or 12.4 will be published, the receiving Office checks that original text of the international application for compliance with the physical requirements referred to in Rule 11 only to the extent that compliance therewith is necessary for the purposes of satisfactory reproduction (Rule 26.3(b)(i) and paragraph 134). The translation and the drawings in the language of publication are checked for compliance with the physical requirements referred to in Rule 11 to the extent that compliance is necessary for the purpose of reasonably uniform international publication (Rule 26.3(b)(ii)), including image scanning and OCR by the International Bureau. This also applies where the applicant has furnished a translation of the abstract or drawings containing the translation of text matter into the language in which the international application is to be published (Rule 26.3*ter*(a)).

136. Where a translation is required under Rule 12.3 or 12.4 and drawings which are filed with the original of the international application do not contain text matter, such drawings need not be filed again with the translation.

137. Where the applicant must furnish a translation of the abstract or any text matter of the drawings into a language of publication, the provisions relating to defects under Article 14, including checking of physical requirements, apply *mutatis mutandis* (Rule 26.3*ter*(a)).

138. If the international application does not meet the physical requirements as outlined in the preceding paragraphs, the receiving Office invites (Form PCT/RO/106) the applicant to correct any defect as provided for in Rule 26 (paragraphs 153 to 159).

Diagram of Page Showing Main Layout Requirements



139. **Arrangement of Elements and Numbering of Sheets.** The elements of the international application must be placed in the following order: the request, the description (if applicable, including the sequence listing free text referred to in Rule 5.2(b) but excluding the sequence listing part of the description), the claim(s), the abstract, the drawings (if any), and, where applicable, the sequence listing part of the description. All sheets constituting the international application must be numbered in consecutive Arabic numerals with the following separate series of numbering: the first applying to the request only and commencing with the first sheet of the request; the second series commencing with the first sheet of the description and continuing through the claims until the last sheet of the abstract; if applicable, a third series applying to the sheets of the drawings only; and, if applicable, a further series applying to the sequence listing part of the description commencing with the first sheet of that part. The number of each sheet of the drawings must consist of two sets of Arabic numerals separated by a slant, the first set being the sheet number and the second set being the total number of sheets of drawings (for example, 1/3, 2/3, 3/3); see Rule 11.7 and Section 207. While Rule 11.7(b) indicates that the numbers must be centered at the top or bottom of the sheet, but not placed in the margin, objections to non-compliance with this specific limitation is unnecessary where the numbers appear in the top or bottom margins but do not interfere with the areas where the receiving Office stamps the sheets with the international application number, date of receipt and any indications relating to substitute sheets.

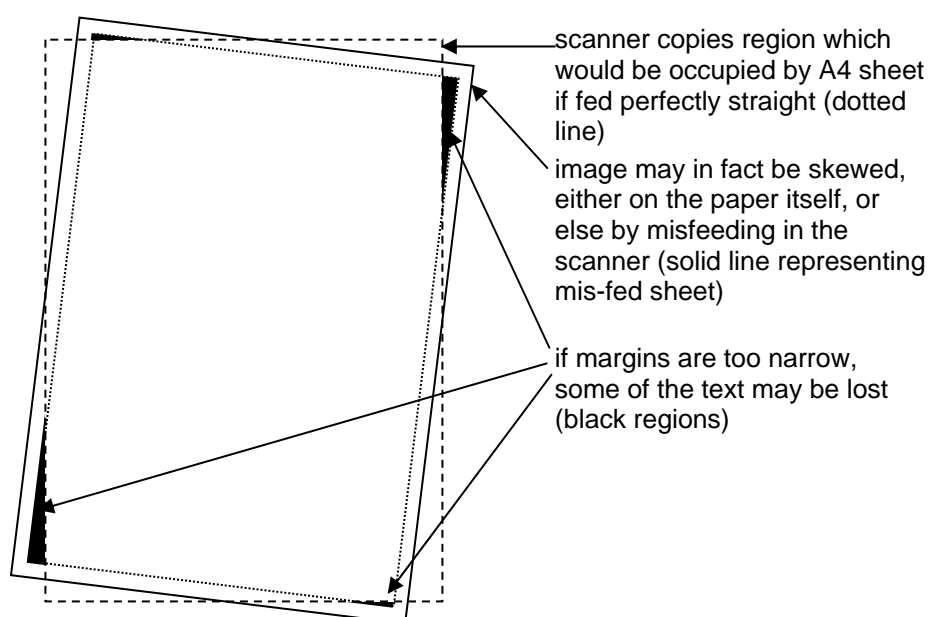
140. Where sheets filed on the international filing date but not numbered as part of the international application are intended to be part of the international application, the receiving Office may renumber the sheets *ex officio* (paragraphs 161 to 165), failing which the International Bureau will do so.

141. **Writing of Text Matter.** The request, the description, the claims, the abstract and any sequence listing part shall be typed or printed in a dark indelible color (Rule 11.9; for the request see also the Notes to the request form). This is very important for the description, claims and abstract because these parts are subject to OCR which does not work effectively on handwriting or light colored text. However, graphic symbols, chemical and mathematical formulae and certain characters in the Chinese or Japanese languages may be hand drawn. The text must be printed in letters the capitals of which are not less than 0.28cm high (Rule 11.9(d)). This equates to approximately 12 point text in Times New Roman font and is important because smaller text is much less reliable for image scanning and OCR. Rule 11.9(c) requires that the typing is 1½ spaced, but this need only be enforced to the extent that the lines of text are clearly separated from one another such that there is a definite vertical gap between the tops of letters and the lower part of letters on the line above. Moreover, indications (in particular, the marking of check-boxes) in the request form, that are, not machine printed should not be objected to if they are legible. Although the request is not published as such, details such as applicant/inventor's names and addresses are captured by OCR at the International Bureau for the purposes of international publication, and therefore Receiving Offices should, in their contacts with applicants, encourage them to respect similar guidelines for text matter in the request as in the description, claims and abstract, but without going as far as objecting to text matter in the request form, provided that it is sufficiently legible so as to allow correct data capture.

142. **Requirements Concerning Margins.** Rule 11.6 prescribes certain minimum requirements for the margins of the sheets containing the description, the claims and the abstract. (top, bottom and right sides: 2cm; left side: 2.5cm). These requirements only need to be checked to the extent necessary to ensure that information is not lost in scanning and, in the case of pages of the description, claims and abstracts filed in a language of publication or in the case of translations furnished under Rule 12.4 for the purposes of international publication, to ensure that image scanning and OCR can be carried out efficiently for the publication of the full text version of the international application. The area normally selected for OCR is based on the "ideal" margins as shown in the diagram above (inserted between paragraphs 138 and 139) in order to separate the text of the description and claims from the administrative text in the

margins. However, as long as there is a clear gap between the main text and matter in the margins, it is generally easier for the International Bureau to adjust the original images to permit effective scanning than to deal with replacement sheets. Consequently, replacement sheets should only be requested for major defects. In practice, this means that there must be sufficient space to add any necessary stamps to the page (such as the international application number or an indication that a page is a replacement sheet) and still to have at least 0.5cm of blank space around the edge to avoid any information being lost if the page is not perfectly aligned when it is scanned (see diagram below). This means that the top margin is quite important, but that the left, right and (for originally filed sheets) bottom margins do not need to be checked carefully as long as any line numbers in the left margin remain well separated from the main text. Sheets with letterheads or stamps with names and addresses of applicants or agents may not be used. Text matter originally prepared on a sheet which is reduced by photocopier to meet the A4 paper size requirements is only acceptable if the margins and character size on the A4 copy comply with the provisions of Rules 11.6 and 11.9(d).

Diagram showing risk of text loss due to paper skew



143. The indication of the applicant's file reference, if any, on pages of the international application other than the first sheet of the request, which is sometimes more than 12 characters in length, causes no problem so far as international publication is concerned, provided that the reference is placed in the left-hand corner of the top margin, within 1.5 cm from the top of the sheet. During the technical preparations for international publication, the top portion of all sheets of the international application is covered by a mask containing the pre-printed international publication number (for example, WO 2004/123456) (Section 404) and international application number. A reference placed as prescribed will be masked and will therefore not appear in the published international application, nor will it interfere with the OCR process.

144. **Line Numbering Sequence.** Rule 11.8(a) strongly recommends that "every fifth line of each sheet of the description, and of each sheet of claims" be numbered, the numbers appearing in the right half of the left margin, but that is not a mandatory requirement and in fact it is more useful for modern publication and identification of particular passages from databases storing the text rather than images if the paragraphs, rather than the lines, are numbered. If lines are not numbered or are numbered according to a sequence different from that recommended in Rule 11.8(a), there is no basis for objection with regard to the requirements of

reasonably uniform international publication (Rule 26.3(a)). The only reason for objection to line numbering is if it appears somewhere other than the left margin or if there is not a clear gap between the numbering and the main text.

145. **Other Physical Requirements Concerning Text.** For reasonably uniform international publication and, in particular, to allow image scanning and OCR, it is important that text matter in the description, claims and abstract should not be presented in more than one column. Furthermore, the text should not be askew (however, text askew by not more than 5 mm is generally acceptable since it can be corrected by the International Bureau for image scanning and OCR). The description claims and abstract may not contain drawings but may contain chemical or mathematical formulae and/or tables to the extent provided under Rule 11.10.

146. **Drawings and Photographs.** Flow sheets and diagrams are considered drawings (Rule 7.1). The Regulations are silent with regard to photographs. Photographs may be filed where it is impossible to represent in a drawing what is to be shown. Where photographs are submitted, they must be presented on sheets of A4 size, respect the minimum margins applicable for drawings (top and left sides: 2.5cm; right side: 1.5cm; bottom: 1cm, but as with text pages, there is some flexibility and the top and left side margins do not need to be enforced strictly as long as there is sufficient room to add the necessary information in the margins such as the international application number) and be black and white; they may be submitted as originals. Regarding the standard to be applied in respect of drawings, including photographs, see Rules 11.10, 11.11, 11.13 and also the *PCT Applicant's Guide*, Volume I, Chapter V.

Abstract

147. The receiving Office checks whether the application contains an abstract as provided for in Article 14(1)(a)(iv) but not whether the abstract complies with Rule 8 (in particular, it is not the receiving Office's responsibility to check whether the abstract contains more than 150 words in English or when translated into English). If the receiving Office invites (Form PCT/RO/106) the applicant to furnish a missing abstract, it notifies the International Bureau and also the International Searching Authority accordingly (Rule 38.1 and paragraph 153). If a request in PCT-EASY format is filed, together with a computer diskette, with a receiving Office which is prepared to accept the filing of the request in that format, the receiving Office also checks that the diskette contains a copy of the abstract in electronic form (paragraphs 165A and 165G).

Matter Not Part of the International Application

148. Apart from the request form (Rule 4.19), the PCT makes no provision for matter which does not appear to be a part of the international application such as appendices or annexes. Where such matter is submitted together with the international application, the receiving Office may contact the applicant by telephone or invite the applicant to clarify within a reasonable time limit whether these sheets are intended to be part of the international application. If the sheets are intended to be part of the application, they should be renumbered so as to comply with Section 207 under a heading which makes their status clear (paragraphs 139 and 140). If the applicant has not confirmed within the time limit set in the invitation that the sheets concerned should form part of the international application, the sheets concerned may be disregarded and therefore should not be considered part of the record copy or be sent to the International Bureau (paragraph 294). As to sheets containing references to deposited biological material and sheets containing nucleotide and/or amino acid sequence listing and/or table(s) relating thereto, see paragraphs 222 to 227.

Check List

149. **Indications Made by the Applicant.** The purpose of the check list in Box No. IX of the request, which should be completed by the applicant, is to allow the receiving Office to verify whether all sheets intended to constitute the international application and all items to

accompany it were filed. The receiving Office checks whether the applicant has correctly completed the check list, failing which it makes the necessary annotations (Rule 3.3, Section 313 and paragraphs 150 to 152). The actual number of sheets constituting each element of the international application as well as their total on the international filing date should be indicated. Thus, the receiving Office counts the sheets of the record copy (which includes the request but not the fee calculation sheet) and checks whether the number of sheets of the international application and the items which accompany it correspond to the indications made by the applicant in Box No. IX of the request. As regards the request, there must be at least three sheets, namely, the "first sheet," the "second sheet" and the "last sheet." As regards any sequence listings, the number of sheets containing such sequence listing must be indicated separately (Rule 3.3(a)(i)). The language of filing of the application should be indicated; if it is not, the receiving Office should preferably make the indication *ex officio* (paragraphs 161 to 165); the applicant should subsequently be invited to indicate the language only if the receiving Office is not in a position to determine in which language the international application was filed.

150. **Annotations by the Receiving Office.** If any item which is indicated in the check list as accompanying the international application has not, in fact, been received at the latest by the time the record copy is transmitted by the receiving Office, that Office so notes on the check list and the said indication is considered as if it had not been made. Where the check list does not indicate all the items which were in fact filed, the receiving Office completes the check list as provided for in Rule 3.3(b) and enters, in the margin, the words "COMPLETED BY RO" or their equivalent in the language of publication of the international application. Where the receiving Office completes only some of the indications, it identifies the said words and each added indication by an asterisk (Section 313, paragraphs 161 to 165 and Annex B).

151. The receiving Office does not check whether the applicant has indicated any figure of the drawings which should accompany the abstract. However, where the receiving Office finds a clear indication of that figure either in the text of the international application, for example on the page of the abstract, or on a separate sheet accompanying the international application, it should include that indication in Box No. IX of the request.

152. Where sheets filed on the international filing date have been renumbered (paragraphs 139 and 140), the total number of sheets indicated in the check list may need to be corrected and the payment of an additional fee for each sheet in excess of 30 required (paragraphs 241 to 249A). The applicant's attention should be drawn to the fact that the check list has been corrected.

CORRECTIONS OF DEFECTS

Corrections under Article 14(1)(b) and Rule 26

153. **Invitation to Correct.** If the receiving Office finds one or more defects under Article 14(1)(a), it invites (Form PCT/RO/106) the applicant to correct them (Article 14(1)(b), Rule 26.1 and Section 316). However, the receiving Office does not invite the applicant to provide a missing signature required under Rule 4.15 if there is more than one applicant and at least one applicant has signed the request (Rule 26.2*bis*(a), Section 316 and paragraph 122), or where the request is only signed by the agent and the receiving Office has waived the requirement to furnish a separate power of attorney or of a copy of the general power of attorney. If the receiving Office sends an invitation under Article 14(1)(b), the receiving Office notifies the International Bureau and, if the title of the invention or if the abstract is missing (Rules 37.1 and 38.1), or if the drawings are defective, also the International Searching Authority, by sending a copy of Form PCT/RO/106. The invitation to correct must fix a time limit for correction which is reasonable under the circumstances; it shall not be less than one month from the date of the invitation (Rule 26.2).

154. The receiving Office checks whether the corrections have been timely filed. Since, under Rule 26.2, the time limit for correcting defects under Article 14(1)(a) may be extended by the receiving Office at any time before a decision under Rule 26.5 is taken, any correction received after the expiration of the fixed time limit but before a decision is taken must still be accepted.

155. When fixing a time limit or when granting an extension of a time limit, the receiving Office takes into account the fact that corrections which may be relevant for the international search are needed by the International Searching Authority before the establishment of the international search report and that all corrections must reach the International Bureau before completion of the technical preparations for international publication. The international search report must be established within three months from the receipt of the search copy by the International Searching Authority or nine months from the priority date, whichever time limit expires later (Article 18(1), Rule 42). Regarding technical preparations for international publication, see paragraph 337.

156. **Procedure to Correct.** A correction in the request (Form PCT/RO/101) may be stated in a letter if it is of such a nature that it can be transferred from the letter to the record copy without adversely affecting the clarity and direct reproducibility of the sheet onto which the correction is to be transferred (Rule 26.4). Where this sheet is to be published, the corrected sheet must also meet the requirements for reasonably uniform publication.

157. Where the correction concerns any element of an international application other than the request, the receiving Office invites the applicant to submit a replacement sheet, together with a letter drawing the attention to the differences between the replaced sheet and the replacement sheet, in compliance with Rule 26.4.

158. Where the applicant must furnish, under Rule 26.3*ter*(c), a translation of the request or, under Rule 26.3*ter*(a), a translation of the abstract or any text matter of the drawings, certain provisions relating to the correction of defects under Article 14 apply *mutatis mutandis* (Rule 26.3*ter*(a) and (c)).

159. **Failure to Correct under Article 14(1)(b) and Rule 26.** If the receiving Office finds that defects under Article 14(1)(a) have not been corrected or have not been timely corrected, it declares the international application withdrawn and promptly notifies (Form PCT/RO/117) the applicant, the International Bureau and (if the search copy has already been transmitted) the International Searching Authority (Rule 29.1(ii) and (iii)). Since international publication can only be stopped if this notification reaches the International Bureau before completion of technical preparations for international publication (Rule 29.1(v)), it is critical that the declaration that the international application is considered withdrawn be made and notified to the International Bureau early enough to be able to have this effect. In urgent cases, it is strongly recommended that such notifications be faxed to the International Bureau. Together with the copy of Form PCT/RO/117 sent to the International Bureau, the receiving Office should enclose copies of all papers and correspondence relating to the decision declaring that the international application is considered withdrawn to facilitate any subsequent review of that decision by a designated Office under Article 25(1). As to a missing signature of an applicant/inventor for the United States of America who is unavailable or refuses to sign the international application, see paragraphs 129 to 130. In any event, in view of Rule 26.3, the receiving Office should, in general, not declare the international application withdrawn for failure to comply with the physical requirements under Rule 11; only in extreme cases of non-compliance with those requirements should the receiving Office make such declaration. Where the international application does not contain all the prescribed indications concerning the applicant (Article 14(1)(a)(ii) and Rules 4.4 and 4.5), the receiving Office should not issue a declaration under Rule 26.5 in a case where, for example, there is a minor error in an address (see the opening words of Rule 4.4(c)), or where the applicant's full name is misspelled or not indicated, even if the applicant fails to correct the defect, upon invitation, within the prescribed time limit. If there is more than one applicant, it is sufficient that the indications required under Rule 4.5(a)(ii)

and (iii) be provided in respect of one of them who is entitled according to Rule 19.1 to file the international application with the receiving Office (Rule 26.2*bis*(b)) (paragraph 84A). Where failure to correct a defect which would affect the reasonably uniform international publication is noticed at a late stage, it would be inappropriate for the receiving Office to declare the international application withdrawn without first issuing a reminder and extending the time limit under Rule 26.2.

Correction of Other Formal Defects

160. Where indications required under Rule 4 but not covered by Article 14 (paragraph 73) are missing or appear to be defective, the receiving Office, where appropriate, brings that fact to the attention of the applicant. Form PCT/RO/132, may be used for such purpose. A time limit for correction may be fixed taking into account the time limit for establishing the international search report or the date of international publication of the international application, depending on the circumstances. However, if the applicant fails to respond to such invitation, the receiving Office does not take any action. In the case of the correction of declarations made under Rule 4.17, Form PCT/RO/156 must be used and not Form PCT/RO/106 or PCT/RO/132, see paragraphs 162, 192E and 192F.

***Ex Officio* Corrections**

161. In certain cases, the receiving Office may, instead of inviting the applicant to submit a correction of a formal defect in the international application, itself correct the defect. The applicant is then notified of the correction which will remain unless the applicant objects.

161A. The International Bureau will make the changes listed below during its processing of the international application. *Ex officio* corrections by the receiving Office need not be made to:

- reduce the number of characters of the file reference number to 12 (Section 109);
- delete any indications of titles, such as Esq., Dr., etc.;
- underline to identify the surname of the applicant, inventor and/or agent;
- modify the order of the information given in addresses, such as street before building number.

162. ***Defects Which May Be Corrected Ex Officio.*** Where the request contains matter other than that specified in Rules 4.1 to 4.18 or permitted in the Administrative Instructions, the receiving Office deletes that matter *ex officio* under Rule 4.19(b). Other specific cases in which *ex officio* corrections may be made are referred to in the Administrative Instructions, for example, renumbering of sheets of the international application (Section 311). *Ex officio* corrections may also be made where the international application contains an inconsistency or a minor defect with regard to formal requirements (Section 327). Where there is more than one possibility of correcting a formal defect, the receiving Office should, depending on the case, contact the applicant by telephone and/or in writing to clarify the applicant's intention before making any *ex officio* correction. Where the receiving Office has, by mistake, changed *ex officio* any indication, it must correct the mistake *ex officio* as soon as it becomes aware of it. If the receiving Office finds that a check-box in Box No. VIII of the request has been incorrectly marked, or that the number of declarations has been incorrectly indicated in the right column of that Box, the check-box or indication concerned may need to be corrected (paragraph 192B). However, the receiving Office must not make any *ex officio* corrections to declarations which are contained in Boxes Nos. VIII (i) to (v) of the request, for example, it must not make any addition to, alter, strikethrough or otherwise delete, the text of a declaration (Section 327(d)).

163. **Manner of Correcting Defects Ex Officio.** The manner of making *ex officio* corrections by the receiving Office is referred to in the Administrative Instructions as follows (see also Annex B of these Guidelines):

- (i) *ex officio* corrections of the request (Section 327);
- (ii) deletion of additional matter in the request (Rule 4.19(b) and Section 303);
- (iii) manner of marking the necessary annotations in the check list (Section 313(b));
- (iv) renumbering in the case of deletion, substitution or addition of sheets of the international application (Section 311);
- (v) cancellation of designations of non-Contracting States (Section 318);
- (vi) the indication of dates if it does not comply with Section 110;
- (vii) cancellation of the exclusion of a designation of a State (Section 319).

163A. **Making Ex Officio Corrections in Requests in PCT-EASY Format.** The procedure for the receiving Office to make *ex officio* corrections in PCT-EASY requests is outlined in the *PCT-EASY Manual for PCT Receiving Offices* available on the PCT-SAFE website.

164. **Notification about Ex Officio Correction.** The receiving Office notifies (Form PCT/RO/146) the applicant of any *ex officio* correction. Where an *ex officio* correction was made following clarification obtained from the applicant, for example, on the basis of a letter from the applicant (or by telephone), the receiving Office should indicate that fact in the notification to the applicant.

165. Form PCT/RO/146 does not give any details about the nature of the *ex officio* correction but merely indicates on which sheet the correction was made by the receiving Office. Therefore, a photocopy of the corrected sheet(s) must be sent together with Form PCT/RO/146 to the applicant. Copies of that form and of the sheet(s) embodying the correction need to be sent to the International Bureau and the International Searching Authority only where the sheet(s) involved has (have) already (that is, before the correction was made) been transmitted to that Bureau and that Authority.

CHAPTER VIbis REQUESTS IN PCT-EASY FORMAT

General

165A. **Requirements for Requests in PCT-EASY Format.** A request may be presented in the form of a computer-generated print-out in PCT-EASY format (Section 102bis). The requirements are that:

- (i) the request is presented as a computer print-out prepared using the PCT-EASY software;
- (ii) the request is filed together with a computer diskette, prepared using that software and containing a copy in electronic form of the data contained in the request and of the abstract;
- (iii) the international application is filed with a receiving Office which is prepared to accept the filing of international applications containing requests in PCT-EASY format together with PCT-EASY diskettes.

165B. **Reduction of International Filing Fee where PCT-EASY Software Is Used.** The international filing fee (paragraphs 241 to 249A) is reduced by an amount set out in item 4 of the

Schedule of Fees, which is annexed to the Regulations, if a request which complies with the requirements of Section 102*bis*(a) is filed using PCT-EASY software and the receiving Office decides to accept the filing of requests in PCT-EASY format (Section 102*bis*(c)).

Receiving Office Review of PCT-EASY Requests

165C. **Acceptance by Receiving Office of Request in PCT-EASY Format.** The question whether the receiving Office does, in fact, accept the filing of requests in PCT-EASY format is a matter for that Office. The receiving Office may decide to accept the filing of a request in PCT-EASY format even if it has not already notified the International Bureau that it accepts such filings (see Section 102*bis*(a)). (In such a case, however, the receiving Office should then promptly notify the International Bureau accordingly.) Conversely, a receiving Office may, in any particular case, decide not to process PCT-EASY diskettes prepared using the PCT-EASY software, even though that Office has decided to accept the filing of requests in PCT-EASY format; in such case the receiving Office should proceed as outlined in paragraph 165E.

165D. **Non-Acceptance by Receiving Office of Request in PCT-EASY Format; Transmittal of International Application under Rule 19.4(a)(iii).** If the receiving Office does not accept the filing of requests in PCT-EASY format but the request is filed in that format, the international application does not comply with the requirements of Article 14 (see Rule 3 and Section 102(a)(i)). The receiving Office may invite the applicant to comply with those requirements by filing a request corresponding to Form PCT/RO/101, as outlined in paragraph 75. If the reduced international filing fee has been paid, the receiving Office also notifies the applicant that the conditions for applying the fee reduction related to the use of PCT-EASY software are not satisfied and invites the applicant to pay the missing amount (Section 304 and, if applicable, Rule 16*bis*; see paragraphs 258 to 265).

165E. Alternatively, the receiving Office promptly requests the International Bureau as receiving Office to agree, in accordance with the procedure outlined in paragraphs 278 to 281, to the transmittal of the international application under Section 333(b) and (c). The receiving Office should also proceed in this manner in any particular case in which it decides not to process PCT-EASY diskettes prepared using the PCT-EASY software, even though it has decided to accept the filing of requests in PCT-EASY format (paragraph 165C).

Correction of Defects in PCT-EASY Requests

165F. **Checking of Request in PCT-EASY Format.** If a request in PCT-EASY format is filed with a receiving Office which is prepared to accept the filing of that request in that format, that Office checks whether the request does indeed appear to be a computer-generated print-out prepared using the PCT-EASY software and is not, for example, a print-out or other paper document prepared using word-processing or other software or a typewriter.

165G. The receiving Office also checks whether the request is accompanied by a computer diskette. If it is, the receiving Office first checks whether that diskette contains any computer viruses before processing it. If the diskette is virus-free, the receiving Office then checks and processes the diskette using the features of the PCT-EASY software designed especially for receiving Office use, as explained in the *PCT-EASY Manual for PCT Receiving Offices* available on the PCT-SAFE website. In particular, the receiving Office checks that the diskette has been prepared using the PCT-EASY software and that it contains both a copy of the data contained in the request and a copy of the abstract.

165H. The receiving Office also carries out the same checks on the contents of a request presented as a computer print-out that are carried out in the case of a request presented on Form PCT/RO/101.

165I. **Request Not in PCT-EASY Format Filed with PCT-EASY Diskette.** If the international application contains a request which is not in PCT-EASY format (for example, a request corresponding to Form PCT/RO/101) but a PCT-EASY diskette is furnished together with the application papers, the receiving Office notifies the applicant that the conditions for applying the fee reduction related to the use of PCT-EASY software are not satisfied and invites the applicant to pay the missing amount (Section 304 and, if applicable, Rule 16*bis*, see paragraphs 258 to 265) unless a substitute request in PCT-EASY format is filed immediately (that is before the receiving Office transmits the record copy to the International Bureau).

165J. If a PCT-EASY diskette is filed with a request that is not in the PCT-EASY format and does not correspond to Form PCT/RO/101, the receiving Office proceeds as outlined in paragraph 75A. If a PCT-EASY diskette is filed alone, the requirements for according an international filing date are not fulfilled and the receiving Office proceeds as outlined in paragraphs 45 to 47. If, in either case, a reduced international filing fee has been paid, the receiving Office notifies the applicant that the conditions for applying the fee reduction related to the use of the PCT-EASY software are not satisfied and invites the applicant to pay the missing amount (Section 304 and, if applicable, Rule 16*bis*, see paragraphs 258 to 265).

165K. **Correction of Request in PCT-EASY Format.** The receiving Office invites (Form PCT/RO/106) the applicant to correct any defects in a request in PCT-EASY format within a time limit fixed in the invitation. A correction which is stated in a letter and is not accompanied by a replacement print-out of the entire request prepared using the PCT-EASY software is acceptable if it is of such a nature that the correction can be transferred *ex officio* by the receiving Office onto the request part of the record copy without affecting the clarity and direct reproducibility of the sheet on to which the correction is to be transferred (Rule 26.4). Otherwise, the applicant should be required to submit a replacement print-out of the entire request, or, as the case may be, one or more replacement sheets embodying the correction in the form of a print-out, prepared using the PCT-EASY software, accompanied by a letter drawing attention to the differences between the replaced print-out and the replacement print-out (Rule 26.4). A replacement diskette is not required, and, if it is furnished, it will not be processed.

165L. **Request in PCT-EASY Format Filed without PCT-EASY Diskette.** If the PCT-EASY diskette is not filed with the request in PCT-EASY format, the receiving Office informs the applicant that the request does not comply with the requirements of Section 102*bis*(a) and invites the applicant (Form PCT/RO/106) to comply with those requirements, either by filing the required diskette immediately (that is before the receiving Office transmits the record copy to the International Bureau), or by filing a request corresponding to Form PCT/RO/101 (see paragraph 75A). Where a reduced international filing fee has been paid, the receiving Office also notifies the applicant that the conditions for applying the fee reduction related to the use of PCT-EASY software are not satisfied and invites the applicant to pay the missing amount (Section 304 and, if applicable, Rule 16*bis*, see paragraphs 258 to 265) unless such required diskette is filed immediately (that is before the receiving Office transmits the record copy to the International Bureau).

165M. **PCT-EASY Diskette Is Defective or Incomplete.** If the receiving Office finds that a diskette purporting to be a PCT-EASY diskette contains no data (for example, the diskette is blank) or incomplete data (for example, the text of the abstract is missing), or is unreadable (for example, it is found to contain a computer virus), it proceeds as though the request in PCT-EASY format had been filed without a PCT-EASY diskette (see paragraph 165L).

CHAPTER VII PRIORITY CLAIMS AND PRIORITY DOCUMENTS

Requirements for Priority Claims

166. If the request contains (Box No. VI of the request form) a priority claim, the receiving Office checks whether the priority claim is valid, as outlined below.

(a) The earlier application must have been filed either in or for a country which is party to the Paris Convention for the Protection of Industrial Property ("Paris Convention"), or in or for any Member of the World Trade Organization that is not party to the Paris Convention (Article 8(1) and Rule 4.10).⁵

(b) The priority claim must contain the following indications (Rule 4.10):

(i) if the earlier application is a national application:

- the date on which the earlier application was filed;
- the number of the earlier application;
- the country in which the earlier application was filed;

(ii) if the earlier application is a regional application:

- the date on which the earlier application was filed;
- the number of the earlier application;
- the authority entrusted with the granting of regional patents under the applicable regional patent treaty (in practice, the regional Office concerned); and,
- where at least one of the countries party to the regional Treaty concerned is neither party to the Paris Convention nor a Member of the World Trade Organization, at least one country party to the Paris Convention or a Member of the World Trade Organization for which the earlier application was filed (Rule 4.10(b)(ii));

(iii) if the earlier application is an international application:

- the international filing date;
- the international application number;
- the receiving Office with which it was filed (in practice, this is indicated by the two-letter code which is part of the international application number).

(c) In addition, where the earlier application is a regional application or an international application, the applicant may, if desired, indicate one or more countries party to the Paris Convention for which that earlier application was filed (Rule 4.10(b)(i)), even if it is not required by Rule 4.10(b)(ii) (see item (b)(ii), above). Such optional indication must be made in the Supplemental Box.

⁵ Rule 4.10(a) and (b) as amended with effect from January 1, 2000, does not apply in respect of the European Patent Office as this Office has informed the International Bureau of incompatibility of Rule 4.10(a) and (b) with the national law applied by that Office, as provided by paragraph (d) of that Rule. Paragraphs (a) and (b) as in force until December 31, 1999, continue to apply after that date in respect of that Office for as long as those paragraphs as amended continue not to be compatible with the applicable national law. Information received by the International Bureau concerning any such incompatibility is published in the *Official Notices (PCT Gazette)*.

(d) PCT Article 8(2)(a) and Article 4C(1) of the Paris Convention require that the date on which the earlier application was filed must be a date falling within the period of 12 months preceding the international filing date. Rule 2.4(a) defines the “priority period” accordingly. It should be noted, however, that Rule 26bis.2(c)(iii) provides that a priority claim shall not be considered void if the international filing date is within two months from the date on which the priority period expired. It should be further noted that Article 4C(3) of the Paris Convention provides that if the last day of the priority period is an official holiday or a day when the Office is not open for the filing of applications, the period shall be extended until the next working day of the Office. Rule 80.5, implementing extensions of time periods which expire while the relevant Office is closed or no mail is delivered, applies *mutatis mutandis* to the priority period (Rule 2.4(b)) and directly to the two-month period from its expiry.

Restoration of the Right of Priority

166A. **Restoration of the Right of Priority – Non-Acceptance by Receiving Office.** Where a receiving Office has notified the International Bureau under Rule 26bis.3(j) of the incompatibility of Rule 26bis.3(a) to (i) with the national law applied by that Office, but nevertheless receives a request to restore the priority right, the receiving Office promptly requests the International Bureau as receiving Office to agree, in accordance with the procedure outlined in paragraphs 278 to 281, to the transmittal of the international application under Section 333(b) and (c). An Office may also proceed in this manner if it only applies one of the applicable criteria.

166B. **Restoration of the Right of Priority.** The receiving Office checks if the request form contains a request by the applicant to restore the right of priority in Box No. VI. If such a request to restore is filed subsequently, the receiving Office promptly notifies the International Bureau of the request (item 6 of Form PCT/RO/118). The receiving Office then checks whether the following requirements are met:

(a) A priority claim to an earlier application is made in the international application or is subsequently added, pursuant to Rule 26bis.1(a).

(b) A statement of reasons for failure to file the international application within the priority period has been furnished (see also paragraph 166F below).

(c) The fee for requesting restoration, if applicable, has been paid (Rule 26bis.3(d)). The time limit for payment of the fee may be extended for a period of up to two months from the expiration of the time limit under Rule 26bis.3(e).

(d) If required by the receiving Office, a declaration or evidence in support of the statement of reasons for failure to file the international application within the priority period has been furnished.

If any of the above requirements are not complied with, the receiving Office notifies the applicant (Form PCT/RO/158) of the deficiency. If the receiving Office intends to refuse the request to restore the right of priority, it should so indicate in detail in Form PCT/RO/158 and provide the applicant an opportunity to make observations within a reasonable time limit.

166C. **Separate Request to Restore the Right of Priority.** A request to restore the right of priority may also be submitted separately from the request form. The receiving Office should process such separate requests in the same manner and according to the procedures outlined in paragraphs 166A to 166I.

166D. **Time Limit for Requesting Restoration of the Right of Priority.** The time limit to request to restore the priority right and to comply with the requirements listed in paragraphs (a), (b) and (c) of paragraph 166B above is two months from the date on which the priority period

expired. Where the applicant makes a request for early publication under Article 21(2)(b), any request to restore the right of priority must be submitted and the requirements mentioned above must be complied with before the technical preparations for international publication have been completed (Rule 26bis.3(e)). If the receiving Office requires the applicant to provide a declaration or evidence in support of the statement of reasons for failure to timely file the international application (Rule 26bis.3(f)), it invites the applicant within a time limit which is reasonable under the circumstances, to furnish such documents. If the receiving Office intends to refuse the request to restore the right of priority (Rule 26bis.3(g)), it allows the applicant to make observations within a time limit which is reasonable under the circumstances (Form PCT/RO/158). In this notification, the receiving Office may also request that a declaration or evidence be furnished (see paragraph 166G).

166E. **Decision to Restore the Right of Priority.** The receiving Office, when deciding on a request for restoration, is free to apply either the more strict criterion of “due care” or the less strict criterion of “unintentionality” (Rule 26bis.3(a)). The receiving Office may also apply both criteria. In such a case, the Office is free to apply, upon request by the applicant or at its own initiative, first the “due care” criterion and, if it finds that that criterion is not satisfied, the “unintentionality” criterion. If the receiving Office applies both criteria and finds that the failure to timely file the international application was unintentional but that due care had not been exercised, the receiving Office may indicate this intent to partially refuse restoration of priority under the due care criterion in Form PCT/RO/158, and explain that restoration will nevertheless be allowed under the unintentional criterion, by text in the Annex to that Form. If the applicant requests the restoration of multiple priority claims, and where the use of a single Form (PCT/RO/158 and/or PCT/RO/159) would not be sufficiently clear, the receiving Office should use a separate Form for each priority claim concerned.

166F. **Statement of Reasons.** Rule 26bis.3(b)(ii) requires that a request to restore the right of priority should state the reasons for failure to timely file the international application. The applicant should therefore provide a summary of the facts or circumstances surrounding the failure to file the international application in time including, where applicable, actions that were taken by the applicant to prepare and file the international application.

166G. **Declaration and Evidence.** Under Rule 26bis.3(f), the receiving Office may require a declaration or other evidence in support of the statement of reasons be furnished or, if some evidence has already been provided, that additional evidence be furnished. For the **unintentionality criterion**, a statement indicating that the failure to comply with the priority period was not intentional should generally be sufficient. The receiving Office may, however, require that this statement be submitted in the form of a declaration. For the **due care criterion**, the receiving Office may require that the statement of reasons is substantiated with a declaration or evidence. The submitted declaration or evidence should enable the receiving Office to determine whether the failure to file the international application within the priority period occurred in spite of due care, that is, if all reasonable care was taken under the circumstances to ensure that the priority period would not be missed.

166H. The receiving Office restores the right of priority if the Office finds that a criterion applied by it is satisfied. Since a positive finding of due care in effect encompasses a finding of unintentional conduct, if the receiving Office applies both criteria, and unless the applicant requests otherwise, it should generally first apply the due care criterion, and only if this standard has not been complied with, apply the unintentionality criterion.

166I. As soon as the receiving Office has come to a decision on the request to restore the priority right, it notifies the applicant of its decision (Form PCT/RO/159) and furnishes a copy thereof to the International Bureau (Rule 26bis.3(h)).

Requirements Not Fulfilled

167. **Invitation to Correct or Restore.** Where the receiving Office finds that any priority claim does not comply with the requirements of Rule 4.10 (paragraph 166), or that any indication in a priority claim is not the same as the corresponding indication appearing in the priority document, the receiving Office invites (Form PCT/RO/110, Annex A) the applicant to correct the priority claim concerned and sends a copy of the invitation to the International Bureau. Where the defect consists in the fact that the international filing date is outside the priority period but within two months from the date on which the priority period expired, the receiving Office also informs (Form PCT/RO/110, Annex B) the applicant of the possibility of submitting a request for the restoration of the right of priority in accordance with Rule 26*bis*.3. This second part of the invitation procedure is not applicable to a receiving Office which has provided a notice to the International Bureau under Rule 26*bis*.3(j) of the incompatibility of Rule 26*bis*.3(a) to (i) with the national law applied by that Office.

168. Where, in the case of a regional or international application, the indication of the Office of filing is missing or inconsistent with the corresponding indication on the priority document, that indication may be made or corrected *ex officio* if the receiving Office or the International Bureau possesses sufficient information, for example from the priority document, to make such indication or correction. The same applies where, in the case of a national application, the indication of the country in which the earlier application was filed is missing or inconsistent with the corresponding indication on the priority document.

169. **Time Limit for Correction.** A priority claim may be corrected within a time limit of 16 months from the priority date or, where the correction would cause a change in the priority date, 16 months from the priority date as so changed, whichever 16-month period expires first, provided that such notice may, in any event, be submitted until the expiration of four months from the international filing date (Rule 26*bis*.1(a)).

169A. **Time Limit for Requesting Restoration.** See paragraph 166D above.

170. **Correction by Applicant.** Upon receipt of a response to the invitation to correct a priority claim, the receiving Office checks whether the indications furnished by the applicant have been received within the time limit provided for in Rule 26*bis*.1(a) and comply with Rule 4.10. In the affirmative, and unless the applicant has submitted a substitute sheet (paragraphs 208 to 212), the receiving Office enters the correct indication in the request, encloses within square brackets any previously made indication, draws a line through it while still leaving legible any indication deleted as a result of the correction, and enters, in the margin, the letters "RO" (Section 314(a)). The receiving Office notifies (Form PCT/RO/111) the applicant accordingly and sends to the International Bureau and the International Searching Authority, respectively, a copy of that notification and a copy of the corresponding sheet of the request containing the corrections.

171. **Failure to Correct.** If, in response to an invitation to correct a priority claim, the applicant does not, before the expiration of the time limit under Rule 26*bis*.1(a), submit a notice correcting the priority claim, that priority claim is, for the purposes of the procedure under the Treaty, considered void and the receiving Office so declares (Form PCT/RO/111). If a response correcting the priority claim is received before the receiving Office declares the priority claim void and not later than one month after the expiration of the time limit, the response shall be considered to have been received before the expiration of that time limit (Rule 26*bis*.2(b)). However, a priority claim is not to be considered void only because the indication of the number of the earlier application is missing, an indication in the priority claim is not the same as the corresponding indication appearing in the priority document, or the international filing date is within two months from the date on which the priority period expired; in such cases, the international application proceeds with the priority claim as indicated by the applicant (Rule 26*bis*.2(c)).

172. Where the receiving Office declares that a priority claim is considered void, it encloses the priority claim concerned within square brackets, draws a line between the square brackets, while still leaving legible the indications concerned and enters in the margin, the words "NOT TO BE CONSIDERED FOR PCT PROCEDURE (RO)" or their equivalent in the language of publication of the international application (Section 302). The receiving Office notifies (Form PCT/RO/111) the applicant accordingly and sends to the International Bureau and the International Searching Authority, respectively, a copy of that notification and a copy of the corresponding sheet of the request containing the marking.

Correction or Addition of Priority Claim on the Applicant's Own Initiative

173. A priority claim may be corrected or added on the applicant's own initiative by a notice submitted to the receiving Office or the International Bureau within the time limit provided for under Rule 26*bis*.1(a); the correction of a priority claim made by the applicant may include the addition of any indication referred to in Rule 4.10 (Rule 26*bis*.1(a)).

174. Where the applicant furnishes such indications to the receiving Office, that Office enters them in the space provided therefor in the request and, as to markings in the margin, it proceeds as outlined in paragraph 170.

175. Where the priority claim, as corrected or added, does not comply with the requirements of Rule 4.10 and the time limit for correction (Rule 26*bis*.1(a)) has not yet expired, the receiving Office invites the applicant to correct the (remaining) defect(s) (Form PCT/RO/110).

176. Where, after the expiration of the time limit under Rule 26*bis*.1(a), a priority claim still does not comply with the requirements under Rule 4.10 (see paragraph 171), it is, for the purposes of the PCT procedure, considered void (Rule 26*bis*.2) and the receiving Office proceeds as set out in Rule 26*bis*.2(b), Section 302 and paragraph 172, provided that corrections furnished by the applicant after the expiration of that time limit, but before the receiving Office makes the declaration under Rule 26*bis*.2(b) and not later than one month after the expiration of the time limit, are considered to have been received before the expiration of that time limit. Moreover, in respect of a priority claim which on the face of it complies with the requirements of Rule 4.10 or which, because of the operation of Rule 26*bis*.2(c)(i) or (ii), could not be considered void, any correction furnished by the applicant after the expiration of the time limit under Rule 26*bis*.1(a) but not later than one month after the expiration of the time limit, is considered to have been received before the expiration of that time limit (Rule 26*bis*.2(b)).

176A. Where the applicant furnishes information concerning a priority claim to be added after the expiration of that time limit, the receiving Office declares (Form PCT/RO/111) that the priority claim can not be added since the applicable time limit has expired (Form PCT/RO/111).

177. Where corrections and/or additions are received by the receiving Office after the expiration of the time limit provided for under Rule 26*bis*.1(a), and, where applicable, after the receiving Office has made the declaration under Rule 26*bis*.2(b), and are therefore not to be taken into account, the receiving Office draws the applicant's attention (Form PCT/RO/111) to the possibility of requesting the International Bureau, prior to the expiration of 30 months from the priority date and subject to the payment of a special fee (Section 113(c)), to publish information concerning the matter (Rule 26*bis*.2(e)).

178. *[Deleted]*

Transmittal to the International Bureau of a Priority Document Furnished by the Applicant

179. Where the priority of an earlier national, regional or international application is claimed, a copy of that earlier application, certified by the authority (that is, a national or regional Office

with which it was filed or, in the case of an earlier international application, the receiving Office with which that earlier international application was filed) (“the priority document”) must, unless already filed with the receiving Office together with the international application in which the priority claim is made, be submitted by the applicant to the International Bureau or to the receiving Office within the time limit provided for in Rule 17.1(a).

180. Upon receipt of a priority document, the receiving Office indelibly marks the international application number and the date of receipt on the document in the top right corner of the first sheet.

181. The receiving Office checks whether the indications in the request relating to the priority claim correspond to the indications on that document. In the affirmative, the receiving Office promptly transmits the priority document to the International Bureau with a notification (Form PCT/RO/135) of the date of receipt (Section 323(a) and (c)). It does not check whether the priority document has been received within the time limit of 16 months from the priority date provided for in Rule 17.1(a).

182. Where indications given in the request relating to the priority claim and the corresponding indications on the priority document are inconsistent or incomplete, the receiving Office invites (Form PCT/RO/110) the applicant to correct or furnish the indication(s) concerned and draws the applicant's attention to the time limit under Rule 26bis.1 (paragraphs 167 to 172). It transmits the priority document with a copy of that invitation to the International Bureau. Where indications given in the request are incomplete (for example, the number of the priority application is missing), and the receiving Office possesses sufficient information concerning the missing indications (for example, from the priority document) it may make the indication *ex officio* before transmitting the priority document to the International Bureau. For notifications concerning that *ex officio* correction, see paragraph 170.

Certification of an Earlier Application and Transmittal to the International Bureau

183. Where the earlier (national, regional or international) application was filed with the same Office that acts as receiving Office and the priority document is therefore to be issued by that Office, the applicant may, instead of obtaining the priority document from that Office and submitting it subsequently to that same Office or the International Bureau, request that Office as receiving Office to prepare the priority document and transmit it directly to the International Bureau. Such a request (“request for priority document”) must not be made later than 16 months from the priority date and may be subjected by the receiving Office to the payment of a fee (Rule 17.1(b)). The request for priority document may be made on the request form by marking the appropriate set of check-boxes in Box No. VI, or by making a request to that effect on any other paper, such as a letter accompanying the international application or on the fee calculation sheet. The latter contains a space for including the amount of the fee concerned. Such a request may also be submitted subsequently within the prescribed time limit by sending a letter to this effect.

184. Where a request for priority document has been made on any sheet other than the request form and the record copy has not yet been transmitted, the receiving Office marks *ex officio* (paragraphs 161 to 165) the corresponding check-boxes in Box No. VI of the request form.

185. Where a request for priority document was not made on the date on which the international application was filed but was received on a later date, prior to the expiration of 16 months from the priority date, the receiving Office notifies (Section 323(c) and Form PCT/RO/135) the International Bureau of that fact. On that form, the receiving Office marks the corresponding check-box and date of receipt of the request for priority document.

186. Where, prior to the expiration of 16 months from the priority date, a request for priority document has been made (paragraphs 183 to 185), and any required fee has been paid, the receiving Office promptly prepares and transmits that document together with Form PCT/RO/135 to the International Bureau (Section 323(b) and (c)). It marks the international application number indelibly in the top right corner of the first sheet.

187. Where the request for priority document has been received by the receiving Office prior to the expiration of 16 months from the priority date but the required fee has not been paid, the receiving Office promptly notifies (Form PCT/RO/128) the applicant that that request will be considered not to have been made unless the fee is paid within 16 months from the priority date or, in the case referred to in Article 23(2), not later than at the time the processing or examination of the international application is requested (Section 323(b)) and invites the applicant to pay the unpaid fee.

188. Where, after the expiration of 16 months from the priority date, no fee has been paid, the receiving Office promptly notifies (Form PCT/RO/128) the applicant that the request for priority document is considered not to have been made. A copy of that notification is sent to the International Bureau (Section 323(b) and (d)). Where that fee has not been paid but the receiving Office fails to inform the International Bureau, within 17 months from the priority date, that the request is considered not to have been made, the receiving Office must prepare and transmit the priority document to the International Bureau even though the fee has not been paid (Section 323(b) and (d)).

189. Where the receiving Office receives a request for priority document later than 16 months from the priority date, or where such request has been considered not to have been made (Section 323(b)), the receiving Office promptly notifies (Form PCT/RO/128) the applicant accordingly, drawing attention to the requirements of Rule 17.1(a) (Section 323(e)).

190. If, however, after the expiration of 16 months from the priority date, the applicant pays the fee and no notification has yet been sent to the International Bureau, the receiving Office may, upon request of the applicant, nevertheless prepare and transmit the priority document. If the priority document reaches the International Bureau before the date of international publication of the international application, it will be considered to have been received by the International Bureau on the last day of the 16-month time limit provided for under Rule 17.1(a).

191. Where a request for priority document has not been validly made because the earlier application was not filed with the receiving Office, the receiving Office *ex officio* deletes the corresponding mark in the check-box in Box No. VI and notifies the applicant accordingly (Form PCT/RO/146); the receiving Office may explain the reasons for this correction using Form PCT/RO/132.

Effect of a Change of Priority Date

192. Where the priority date of the international application has changed following a correction or addition of a priority claim under Rule 26*bis*, any date which is computed from the original priority date and which has not already expired is computed from the priority date resulting from that change, but time limits computed from the original priority date and which have already expired are not reinstated (Rule 26*bis*.1(c)).

CHAPTER VIIbis DECLARATIONS RELATING TO NATIONAL REQUIREMENTS

Requirements for Declarations

192A. The applicant may include in Box No. VIII of the request one or more of the following declarations concerning:

(i) declaration as to the identity of the inventor (Box No. VIII (i)) (Rule 4.17(i) and Sections 211 and 212(b));

(ii) declaration as to the applicant's entitlement, as at the international filing date, to apply for and be granted a patent (Box No. VIII (ii)) (Rule 4.17(ii) and Section 212);

(iii) declaration as to the applicant's entitlement, as at the international filing date, to claim priority of the earlier application (Box No. VIII (iii)) (Rule 4.17(iii) and Section 213);

(iv) declaration as to inventorship (only for the purposes of the United States of America) (Box No. VIII (iv)) (Rule 4.17(iv) and Section 214(a));

(v) declaration as to non-prejudicial disclosures or exceptions to lack of novelty (Box No. VIII (v)) (Rule 4.17(v) and Section 215).

192B. The receiving Office examines the check-boxes in Box No. VIII for reference to declarations and checks whether any declarations indicated in those check-boxes are included in Box No. VIII (i) to (v) and any Continuation of Box No. VIII (i) to (v). If the receiving Office finds that a check-box in Box No. VIII of the request has been incorrectly marked, or that the number of declarations referred to in Rule 4.17 has been incorrectly indicated in the right column of that Box, the check-box or indication concerned may need to be corrected.

192C. Where the request contains one or more declarations referred to in Rule 4.17, the receiving Office may check (Rule 26ter.2(a)) that:

(i) each declaration is worded as prescribed by Sections 211 to 215, as applicable (as explained in the Notes to the request form). The standardized wording of the declaration of inventorship which is applicable only for the purpose of the designation of the United States of America is pre-printed in Box No. VIII (iv) since no part of that wording may be omitted by the applicant;

(ii) any declaration of inventorship in Box No. VIII (iv) is signed and dated directly by the inventor for the United States of America – a signature by an appointed agent is not sufficient for that purpose.

The receiving Office carries out no further checks on any declarations contained in the request form. In particular, it does not check that the name(s) and address(es) of the person(s) making a declaration correspond to the name(s) and address(es) of the applicant(s) or inventor(s) indicated in Boxes Nos. II and III of the request form. It also does not check for the purposes of which State a given declaration is made under Rule 4.17.

Requirements Not Fulfilled

192D. Where the receiving Office finds that any declaration does not comply with one or more of the requirements referred to in paragraph 192C, the receiving Office may invite (Form PCT/RO/156) the applicant to correct the declaration concerned (Rule 26ter.2(a)). It also sends a copy of the invitation to the International Bureau. The receiving Office must not make any *ex officio* corrections to declarations referred to Rule 4.17 which are contained in the request, for example, it must not make any addition to, alter, strikethrough or otherwise delete, the text of a declaration (Section 327(d)).

Correction or Addition of Declarations

192E. The applicant may only correct a declaration, or add a declaration to the request, by submitting a notice to the International Bureau within a time limit of 16 months from the priority date, provided that any notice which is received by the International Bureau after the expiration of that time limit shall be considered to have been received on the last day of that time limit if it reaches it before the technical preparations for international publication have been completed (Rule 26*ter*.1). This applies whether the correction or addition is on the applicant's own initiative or in response to an invitation to correct issued by the receiving Office or the International Bureau under Rule 26*ter*.2(a).

192F. Where a notice under Rule 26*ter*.1 is submitted to the receiving Office, the receiving Office indelibly marks the date of receipt on it and transmits it promptly to the International Bureau (Section 317). The receiving Office does not check whether the notice was submitted within the time limit under Rule 26*ter*.1 or whether it complies with the requirements of Sections 211 to 216.

CHAPTER VIII MISSING PARTS IN THE INTERNATIONAL APPLICATION

Missing Parts and Reference to Drawings in the International Application

193. The receiving Office checks whether the international application appears to be complete and that no pages are missing or appear not to contain all the information intended by comparing the number of pages indicated in the check list with the number of pages actually received, by checking the page numbering throughout and by checking the individual pages for any obvious omissions and legibility of all parts. See paragraphs 45 to 50 for the processing of international applications where entire elements appear to be missing. See paragraphs 39 to 54 for the processing of international applications which appear to have an Article 11(1) defect.

194. The receiving Office examines the check list in the request and the text of the international application for reference to drawings (including flow sheets and diagrams (Rule 7.1)) and checks whether drawings are included. If the receiving Office finds a reference to drawings and those drawings are not included or not all drawings referred to are included in the international application, it indicates that fact on the last sheet of the request, in the right-hand side of the box "for receiving Office use only" by marking the check-box relating to the non-receipt of drawings. That check-box must only be marked where a reference to drawings is made and any of the drawings referred to is missing. Where that check-box is marked, the receiving Office indicates in that same box, under the marked check-box, which sheet(s) or figure(s) has (have) not been received. The check list (Box No. IX of the request) may need to be corrected (paragraphs 149, 150 and 161 to 165). If the record copy and the search copy have already been transmitted, the receiving Office sends a copy of that last sheet to the International Bureau and the International Searching Authority.

Invitation to Applicant

195. If the receiving Office finds that any part of the international application appears to be missing, it invites (Form PCT/RO/107) the applicant under Rule 20.5(a) either to complete the purported international application by furnishing the missing parts, or, where a statement of incorporation by reference under Rule 4.18 was contained in the request or submitted with the international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received, to confirm, in accordance with Rule 20.6(a), that the missing parts are incorporated by reference. The second option is not available if the receiving Office has notified the International Bureau under Rule 20.8(a) that Rule 20.6(a) is incompatible with its national law. Such an Office either proceeds as described in Rule 20.8(a-*bis*) or promptly requests the International Bureau as receiving Office to agree, in accordance with the

procedure outlined in paragraphs 278 to 281, to the transmittal of the international application under Section 333(b) and (c). A copy of the invitation (Form PCT/RO/107) is sent to the International Bureau and to the International Searching Authority.

196. **Time Limit to Respond.** The applicant may, within two months from the date of the invitation (Rule 20.7(a)), respond by either completing the international application according to Rule 20.5(a)(i), or by confirming, under Rule 20.5(a)(ii), the incorporation by reference of the missing part. Where the time limit for responding to the notification expires later than one year from the filing date of the earliest application whose priority is claimed, the receiving Office draws the applicant's attention to that fact (Rule 20.3(a)). Form PCT/RO/107 contains a check-box for that purpose.

Sheets Completing the International Application Received without Prior Invitation

197. The receiving Office may receive other sheets pertaining to a purported international application submitted on a date later than the date on which papers were first received, even though there has been no invitation under Rule 20.5(a).

198. **Time Limit.** Where no invitation has been issued by the receiving Office under Rule 20.5(a), the time limit to submit sheets completing the international application is two months from the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office (Rule 20.7(a)(ii)).

Processing of Later Received Sheets

199. Where the receiving Office receives sheets pertaining to an international application after the date on which one or more elements referred to in Article 11(1)(iii) were first received, following an invitation under Rule 20.5(a) or without such invitation, the receiving Office determines whether these sheets are furnished to complete the international application or whether the applicant intends to confirm the incorporation by reference of those sheets in accordance with Rule 20.6(a). The second option is not available if the receiving Office has notified the International Bureau under Rule 20.8(a) that Rule 20.6(a) is incompatible with its national law.

Sheets Completing an International Application under Rule 20.5(b) or (c)

200. Where the applicant did not confirm the incorporation by reference of missing parts but nevertheless furnished sheets completing the international application within the time limit under Rule 20.7, the receiving Office marks each later submitted sheet in accordance with Section 308*bis*. The receiving Office marks the date of receipt of the sheets completing the international application in the relevant box on the last sheet of the request, where applicable, corrects the international filing date marked on the first sheet of the request, still leaving legible the earlier date (Section 310 and 310*bis*) and notifies (Form PCT/RO/126) the applicant accordingly. Since Rule 20.5(e) permits the applicant, after the international filing date has been corrected, to request that the missing part concerned be disregarded in order to retain the initial international filing date, the receiving Office should preferably not transmit the later submitted sheets to the International Bureau and the International Searching Authority before the expiration of one month from the date of the notification (Form PCT/RO/126), unless the applicant has already confirmed his position before the expiration of that time limit.

200A. Where the applicant requests that the missing part concerned be disregarded, the receiving Office restores the international filing date to that which had applied prior to its correction, proceeds as outlined in Section 310*bis*(b) and notifies the applicant (Form PCT/RO/126) that the initial filing date has been reinstated. A copy of this form should be sent to the International Bureau and, where the search copy has already been transmitted, to the International Searching Authority.

201. Where the later submitted sheets concern drawings, the receiving Office deletes on the last sheet of the request, in the right-hand side of the box “for receiving Office use only”, the marking of the check-box relating to the non-receipt of drawings and marks the check-box relating to the receipt of drawings. The earlier marking should remain legible.

202. If it appears, after clarification with the applicant, that a reference in the text of the international application to a missing drawing is the result of a clerical error (for example, it appears that no drawing is in fact missing and the reference was intended to be a reference to a drawing which is in fact included in the international application), the applicant's attention should be directed to the fact that a request for rectification of an obvious mistake may be submitted by the applicant directly to the International Searching Authority under Rule 91.

Procedure where No Drawings Are Received in Response to the Invitation

203. Where an invitation has been issued as outlined in paragraph 195 but no drawings are submitted, any reference to the said drawings is considered non-existent (Article 14(2)) and no further action is required from the receiving Office.

Confirmation of Incorporation by Reference of Missing Parts under Rule 20.6(a)

204. If, within the time limit under Rule 20.7, the receiving Office receives a notice confirming the incorporation by reference of a missing part, it checks whether all the requirements of Rule 20.6 have been complied with, as outlined in the following paragraphs.

205. The receiving Office checks whether:

(a) the request (Form PCT/RO/101) contains a statement under Rule 4.18 or, if such a statement was not in the request at the time of filing, if it was otherwise contained in, or submitted with, the international application;

(b) sheets embodying the part concerned as contained in the earlier application have been submitted;

(c) the applicant had claimed priority of an earlier application at the time of filing;

(d) the applicant has submitted the priority document for that earlier application or at least a simple copy of that earlier application;

(e) under the circumstances of Rule 20.6(a)(iii), the applicant submitted a translation or translations of the earlier application (see Section 305*ter*); and

(f) the applicant has submitted an indication as to where the missing part is contained in the earlier application and, where applicable, in any translation of the earlier application.

205A. The receiving Office checks whether the sheets submitted by the applicant are completely contained in the earlier application. For that purpose, the Office compares the relevant part in the earlier application with the sheets submitted by the applicant under Rule 20.6(a)(i). Where the later submitted sheets seem to go beyond the correction of formal defects and to modify the substantive content of the application, the receiving Office may, where applicable, invite the applicant to request the authorization of the rectification of an obvious mistake from the competent ISA under Rule 91(Form PCT/RO/108).

205B. Where the international application contains more than one priority claim at the time of filing, the applicant may incorporate by reference parts from any of these earlier applications. If, in an effort to comply with the physical requirements of Rule 11, the sheets submitted contain a different numbering of claims, pages or paragraphs, differently numbered references or different reference signs in drawings than in the earlier application(s), these modifications as to formal aspects of the application should generally not be considered as changing what was contained in the earlier application(s).

205C. **Positive Finding.** Where the receiving Office finds that all the requirements of Rules 4.18 and 20.6(a) have been complied with, the Office proceeds as described in Section 309(b) and issues Form PCT/RO/114 accordingly. A copy of the notice, which should also include the indication by the applicant as to where the relevant part is contained in the earlier application, is sent to the International Bureau and to the International Searching Authority. The receiving Office considers that the missing parts concerned have already been filed on the date on which one or more elements referred to in Article 11(1)(iii) were first received and maintains (or grants, if at this point this has not yet been done) the international filing date accordingly. In case the receiving Office does not receive all subsequently furnished sheets on the same day, the receiving Office issues as many Forms PCT/RO/114 as required, indicating on each Form on which date the later submitted sheets were received.

205D. **Negative Finding.** Where the receiving Office finds that not all the requirements of Rules 4.18 and 20.6(a) have been complied with or that the part concerned is not completely contained in the earlier application, the receiving Office issues Form PCT/RO/114 accordingly and treats the subsequently furnished sheets as if the incorporation by reference had not been confirmed and proceeds, after the expiration of the time limit under Rule 20.7, as described in Section 309(c) (see also paragraphs 200 to 202). A copy of the notice (Form PCT/RO/114) is sent to the International Bureau and to the International Searching Authority.

Sheets Submitted under Rule 20.6(a)(i) Which Contain Matter Not Completely Contained in Earlier Application

205E. Where the applicant timely confirms the incorporation by reference of missing elements or parts and furnishes a sheet or sheets containing such missing elements or parts, but such sheets contain matter which was not completely contained in the earlier application and therefore cannot be incorporated by reference, the receiving Office may, according to its own practice, and depending on the case, correct the sheets *ex officio* with a view to bring them into conformity with the earlier application. The general manner of making *ex officio* corrections by the receiving Office is provided in paragraphs 161 to 163. Where there is more than one possibility of correcting the defect, the receiving Office should contact the applicant by telephone and/or in writing to clarify the applicant's intention before making any *ex officio* correction. Alternatively, the receiving Office may informally contact the applicant informing him that he should re-submit the sheet(s) the contents of which correspond with the earlier application within the applicable time limit under Rule 20.7(a); otherwise the receiving Office proceeds under Rule 20.6(c).

Incorporation by Reference Cannot Replace Elements/Parts of the International Application as Originally Filed

205F. Where the applicant wishes to completely replace an element or all elements of an international application as originally filed with different elements through incorporation by reference of missing parts, the receiving Office may only add any elements of the international application as missing parts but may not perform a substitution of the international application as filed with the subsequently furnished missing parts. The description, claims or drawings from the earlier application, which are to be incorporated by reference, cannot replace the description, claims or drawings of the international application as filed. The parts to be incorporated by reference (Rule 20.5) should be combined with the elements of the international application originally submitted and should be checked for compliance with the physical requirements referred to in Rule 11 to the extent that compliance is necessary for the purpose of reasonably uniform international publication (Rule 26.3(b)(ii)), including image scanning and OCR by the International Bureau. The receiving Office should invite the applicant to, or, if at all feasible and if the Office so wishes, by way of an *ex officio* correction, order the pages of the combined international application in such a manner that the sheets incorporated by reference are placed first, sequentially followed by the pages which were originally filed such as in the following example:

Description incorporated from earlier application

Description as originally filed

Claims incorporated from earlier application

Claims as originally filed

Drawings incorporated from earlier application

Drawings as originally filed

Procedure Where Later Submitted Sheets Are Received outside the Time Limit

206. Where the date of receipt of the later submitted sheets is not within the applicable time limit under Rule 20.7, the later submitted sheets are not taken into account for the purposes of international processing. The date of receipt of the application and the international filing date remain those accorded earlier. Form PCT/RO/126 is used to notify the applicant (Section 310*ter*).

Later Receipt of Abstract

207. The receiving Office may receive a sheet containing a missing abstract. The late receipt of the abstract does not affect the date of receipt of the international application and consequently does not affect the international filing date.

SUBSTITUTE SHEETS UNDER RULE 26 AND OTHER REPLACEMENT SHEETS

Substitute Sheets under Rule 26

208. Where sheets containing corrections of formal defects are submitted to the receiving Office under Rule 26.4, the receiving Office checks whether:

(i) the defects have been corrected;

(ii) the contents of the proposed replacement sheet are identical with those of the sheet to be replaced; in case of doubt as to the identity of text matter or drawings contained in the proposed sheet with the relevant part of the international application other than the request, the receiving Office does not accept the proposed replacement sheet and invites the applicant to submit to it a new sheet containing only the corrections of the formal defects concerned. It may draw the applicant's attention to the possibility of submitting to the International Searching Authority a request for rectification of any obvious mistake which may be contained in the original sheet (paragraphs 302 to 308). Alternatively, with the applicant's consent, the receiving Office may itself forward the sheet containing the discrepancy to the International Searching Authority. In any event, the receiving Office does not insert a copy of that sheet into the home copy and does not send the sheet to the International Bureau. If replacement sheets filed by the applicant result in a change in the total number of sheets of the international application, the numbers of sheets indicated upon filing in Box No. IX of the request (check list) need not be changed; if the applicant files a replacement sheet for the last sheet of the request containing corrected numbers of sheets, such sheet should not be inserted into the international application;

(iii) the corrections have been filed within the time limit under Rule 26.2 (paragraphs 153 to 155) and in time to be included for publication of the international application, provided that any corrections received after the expiration of the time limit (and eventually even after international publication) but before a decision under Rule 26.5 is taken by the receiving Office must still be accepted (paragraph 154) (in such a case, the international application will be republished).

209. If the above requirements are fulfilled, the procedure set out in Section 325(a) applies. Substitute sheets under Rule 26 may also be submitted on the applicant's own initiative.

Other Replacement Sheets

210. For the receipt of sheets containing corrections of defects under Article 3(4)(i) regarding the admitted language for elements other than the description and claims, see Rule 26.3*ter*.

211. If replacement sheets are submitted under Rule 9 (Expressions, Etc., Not to Be Used), see Section 325(c).

Replacement Sheets of the Request Submitted Together with Request for Recording of Change

212. In the case where the applicant submits a replacement sheet of the request together with a request for the recording of a change (in the request) under Rule 92*bis*, the receiving Office should mark in the upper right-hand corner of the replacement sheet the international application number and the date on which it was received and in the middle of the bottom margin the words "SUBSTITUTE SHEET" or "SUBSTITUTE SHEET (RULE 92*bis*)". For further details, see paragraphs 309 to 312.

Rectified Sheets

213. For rectified sheets in connection with rectifications of obvious mistake under Rule 91, see paragraphs 218 to 221 and 302 to 308.

Procedure in the Case of Correction of Defects under Rule 9, 26 or 91

214. The procedure to be applied in case of correction of defects under Rule 26.4, rectification of obvious mistakes under Rule 91 and correction under Rule 9.2 is set out in detail in Section 325.

215. Where renumbering of sheets is necessary due to deletion, substitution or addition of sheets of the international application, the procedure to apply is described in detail in Section 311.

216. A copy of any replaced sheet is kept in the home copy together with a copy of any letter accompanying the replacement sheet or containing a correction or rectification (Section 325(a)(iv)).

Replacement Sheet Containing Correction under Rule 26 and Rectification of Obvious Mistakes under Rule 91

217. If the receiving Office receives a sheet in response to an invitation to correct formal defects under Rule 26 and notices a discrepancy between the proposed replacement sheet and the sheet to be replaced, it proceeds as outlined in the following paragraphs.

218. If the discrepancy is in the request, the receiving Office may, after having obtained confirmation from the applicant, consider the proposed replacement sheet as constituting also a request for the rectification of an obvious mistake under Rules 91.1(b)(i) and 91.2. Where the receiving Office authorizes such rectification and that sheet complies with the formal requirements, the receiving Office marks that sheet "RECTIFIED SHEET (RULE 91)"; it notifies the applicant (Form PCT/RO/109) of the authorization of the rectification and sends a copy of that notification to the International Bureau and the International Searching Authority (Section 325(a)).

219. Where such discrepancy is on a sheet of any part of the international application other than the request, the receiving Office proceeds as outlined in paragraph 208(ii).

220. Where, following the invitation of the receiving Office, the applicant submits a request for rectification of an obvious mistake, and the International Searching Authority authorizes the rectification and sends to the receiving Office a copy of the sheet concerned marked "RECTIFIED SHEET (RULE 91)", the receiving Office inserts that sheet into the home copy.

221. The procedure outlined in the preceding paragraphs also applies where the applicant submits a replacement sheet containing both a correction of a formal defect under Rule 26 and also a rectification of an obvious mistake, together with a request for rectification of the obvious mistake concerned.

CHAPTER IX NUCLEOTIDE AND/OR AMINO ACID SEQUENCE LISTING

General

222. The receiving Office examines the check list in Box No. IX(f) of the request for reference to any nucleotide and/or amino acid sequence listings filed on paper and checks whether such sequence listings have been filed as part of the description (that is, as far as the sequence listing is concerned, not for the purposes of international search under Rule 13*ter* only). It also checks that the copy indicated in item 9, and the statement indicated in item 10, accompany the international application. It also checks that the type and number of physical data carriers on which the sequence listing is contained is as indicated in item 9. If there is any inconsistency, the check list may need to be corrected. The receiving Office need not check for compliance of any sequence listing part of the description with the prescribed requirements set out in the standard contained in Annex C of the Administrative Instructions since that check is made by the International Searching Authority (Rule 13*ter*). Consequently, the receiving Office need not check the language of the sequence listing, nor need it check compliance with the requirements as to presentation of the sequence listing; in particular, it need not check whether the sequence listing complies with Rule 5.2. However, the receiving Office must check the sheets containing the sequence listing to a limited extent, for example, in relation to the compliance with the physical requirements necessary for the purpose of a reasonably uniform international publication as required by paragraph 3(i) of the said Annex C; the receiving Office must also check the appropriate marking in the check list of the request. In addition, the receiving Office must check that the correct international filing fee has been paid (paragraph 242).

222A. The receiving Office transmits to the International Searching Authority any sequence listing furnished to it in electronic form (for the purposes of international search only) (Rule 23.1(c) and Section 313(c)) and any sequence listing in printed form furnished to it subsequent to the filing of the international application (Section 313(c) as outlined in paragraph 290).

Sheets Containing Sequence Listings

223. Sheets of a sequence listing included in the international application must be presented as a separate part ("sequence listing part of the description") and should preferably be sequentially numbered in a series separate from that used in numbering the sheets of the request (first series), the sheets of the description, claims and abstract (second series), and any sheets of drawings (third series) (Section 207 and paragraph 139). For the purposes of the check list in Box No. IX of the request form, the receiving Office checks whether the number of sheets of such sequence listing is indicated separately in the check list (Rule 3.3(a)(i)). If that number is not indicated, the receiving Office includes it *ex officio* (paragraphs 161 to 165).

224. Tables related to a sequence listing contained in the international application must be included as an integral part of the description. Pages containing such tables are counted as sheets of the international application (paragraph 243).

225. If the applicant furnishes sheets containing a sequence listing on the same date as the international application, but separately from the international application, the receiving Office, if in doubt, clarifies with the applicant whether those sheets are intended to form part of the international application. If the applicant so confirms, the receiving Office corrects the check list *ex officio* and invites the applicant to pay any required fee for sheets in excess of the previously calculated total number of sheets. Form PCT/RO/102 or PCT/RO/133, as the case may be, is used for that purpose (paragraphs 252 to 265).

Sheets Not Numbered or Incorrectly Numbered

226. If sheets containing a sequence listing are not numbered or are incorrectly numbered, the receiving Office may either renumber them *ex officio* or invite the applicant under Rule 26 to do so by submitting replacement sheets (Rule 26.4 and paragraphs 153 to 159). Where sheets are renumbered, the total number of sheets indicated in the check list may need to be corrected and the receiving Office invites the applicant to pay any required additional fee for sheets in excess of the previously calculated total number of sheets (paragraphs 241 and 252 to 265).

Subsequently Furnished Sequence Listing

227. Sheets containing a sequence listing which are furnished after the filing of the international application would not normally be intended to form part of the international application. However, where the applicant indicates to the receiving Office that those sheets are intended to form part of the international application, for example, in response to an invitation for clarification whether the papers were erroneously omitted from the papers constituting the international application, the procedure under Rule 20.5 applies (paragraphs 200 to 206). In other cases, the applicant may have erroneously submitted to the receiving Office corrected sheets intended for the International Searching Authority (Rule 13*ter*.1). In such case, the receiving Office should either send those sheets promptly to that Authority and inform the applicant accordingly (see paragraph 290) or inform the applicant that those sheets should be sent by the applicant directly to the International Searching Authority.

CHAPTER X REFERENCES TO DEPOSITED MICROORGANISMS OR OTHER BIOLOGICAL MATERIAL

General

228. Where the international application relates to deposited microorganisms or other biological material, it is not the responsibility of the receiving Office to check whether indications containing references to such deposited microorganisms or other biological material must be made in the application itself or in relation to it. However, where such references have been furnished, the receiving Office checks them to the extent outlined below and, in certain cases, invites the applicant to correct them or draws the applicant's attention to certain circumstances.

References to Deposited Microorganisms or Other Biological Material as Part of the Description

229. The national law of certain States requires that references to deposited microorganisms or other biological material furnished under Rule 13*bis*.3(a) be included in the description (*PCT*

Applicant's Guide, Volume I, Annex L). Where indications are presented on a separate sheet such as Form PCT/RO/134 (which may be prepared using the PCT-EASY software), the applicant should number that sheet as a sheet of the description (preferably at the end of the description within the second series referred to in Section 207). In such a case, the check-box in Box No. IX of the request referring to separate indications relating to deposited microorganisms or other biological material should not be marked. Where references to deposited microorganisms or other biological material are made on a separate sheet, that sheet shall preferably be furnished together with the request and referred to in the check list (Section 209(a)).

230. Where sheets containing references to deposited microorganisms or other biological material, as defined in Rule 13*bis*, are filed on the same date as the international application but separately from the description, that is, not numbered as part of the international application (for example, on Form PCT/RO/134), the receiving Office may draw the applicant's attention to the fact that the national law of certain States requires that the indications concerned be included in the description.

231. If the applicant confirms that those sheets are intended to be part of the description they should be inserted at the end of the description and renumbered in accordance with Section 207. The receiving Office may renumber those sheets *ex officio* or invite (Form PCT/RO/106) the applicant to correct the defect (paragraphs 153 to 165). The total number of pages indicated in the check list may need to be corrected and the payment of an additional fee for sheets in excess of 30 may be required (paragraphs 235 to 273). The receiving Office, where appropriate, draws the applicant's attention to such circumstance.

232. If, in any of the situations described above, the applicant does not respond to the receiving Office communication, the processing of the international application nevertheless continues and no further action on this matter is required from the receiving Office.

233. Any separate sheet containing references to deposited microorganisms or other biological material received by the receiving Office after transmittal of the record copy to the International Bureau must be promptly transmitted to that Bureau so that it reaches it preferably before the technical preparations for international publication have been completed (Rule 13*bis*.4(d)).

Requirements as to the Language of Sheets Containing References to Deposited Microorganisms or Other Biological Material

234. Sheets containing references to deposited microorganisms or other biological material must, if they are part of the description, be in the language of filing, or, where a translation of the international application is required under Rules 12.3(a) or 12.4(a), both in the language of filing and the language of the translation. If the receiving Office notices that such sheets are not furnished also in the language of the translation, it promptly invites the applicant (Form PCT/RO/150 or Form PCT/RO/157) to furnish the translation of such sheets.

CHAPTER XI FEES

General

235. The receiving Office checks whether the fees due under Article 3(4)(iv) have been paid. If the applicant has submitted the Fee calculation sheet (Annex to the request), the receiving Office uses that sheet to check whether the applicable amounts of those fees have been indicated by the applicant; it marks the column reserved for that purpose on the right-hand side of that sheet. The fees to be collected by the receiving Office include, in every case:

(i) the transmittal fee (Box T of the Fee calculation sheet), to which the receiving Office is entitled under Rule 14 for performing the tasks which it must perform in connection with the international application in its capacity as receiving Office;

(ii) the international filing fee, collected under Rule 15 for the benefit of the International Bureau (Box I of the Fee calculation sheet); and

(iii) the search fee (Box S of the Fee calculation sheet), collected under Rule 16 for the benefit of the International Searching Authority.

236. Other fees which may be payable to the receiving Office, where applicable, include the fee for requesting restoration of the right of priority (Rule 26*bis*.3(d)), the fee for preparation of additional copies of the international application (Rule 21.1(c), Section 305*bis* and paragraphs 283 and 284), the fee for preparation and transmittal of priority documents (Rule 17.1), the late payment fee (Rule 16*bis*), the fees for late furnishing of a translation of the international application (Rules 12.3(e) or 12.4(e), respectively, and paragraphs 69 or 69A, respectively), and the fee for transmittal of a purported international application to the International Bureau as receiving Office (Rule 19.4 and paragraphs 275 and 281).

Amounts, Prescribed Currencies and Reductions of Certain Fees

The Transmittal Fee

237. The amount of the transmittal fee, if any, is fixed by the receiving Office and payable in the currency or currencies prescribed by it. The receiving Office also fixes any conditions for reduction of that fee.

The Search Fee

238. The amount of the search fee is fixed by the International Searching Authority which is competent to carry out the international search. For the competent International Searching Authority, see paragraphs 114 and 115. For the amounts fixed by the various International Searching Authorities and the currencies in which they may be paid, see Annex D of the *PCT Applicant's Guide*, Volume I.

239. Some International Searching Authorities grant reductions of the search fee; for details, see the *PCT Applicant's Guide*, Volume I, Annex D.

240. The search fee is payable in the currency or one of the currencies prescribed by the receiving Office ("prescribed currency", see Rule 16.1(b)). To the extent that the prescribed currency is freely convertible, the amounts of the search fee in those currencies are established as set out in Rule 16.1(d) and the Directives of the PCT Assembly Relating to the Establishment of New Equivalent Amounts of Certain Fees and notified by the International Bureau to each receiving Office prescribing payment in that prescribed currency.

The International Filing Fee

241. ***The International Filing Fee.*** The amount of the international filing fee is set out (in Swiss francs) in the Schedule of Fees, which is annexed to the Regulations, and is payable in the currency or one of the currencies prescribed by the receiving Office. The amount of the international filing fee depends on the total number of sheets of the international application at the time of filing, which appears under "Total number of sheets" in Box No. IX (check list) of the request. If the international application contains more than 30 sheets, a supplement to the international filing fee must be paid for each sheet in excess of 30 (Rules 15.2(a) and 96 and the Schedule of Fees). This supplement is also due for the sheet containing the abstract, even where such abstract is missing at the time of filing the international application.

242. Where an international application containing a sequence listing is filed on paper⁶, any sheet of the sequence listing is counted as a regular page of the international application (Section 707).

243. Where tables, including those related to a sequence listing, are contained in the international application, any sheet containing those tables is counted as a regular page of the description.

244. *[Deleted]*

245. *[Deleted]*

246. *[Deleted]*

246A. Reduction of International Filing Fee where the Request Is Filed Using PCT-EASY Software. The international filing fee is reduced by an amount set out in item 4(a) of the Schedule of Fees, which is annexed to the Regulations, if a request which complies with the requirements of Section 102*bis*(a) is filed using PCT-EASY software and the receiving Office decides to accept the filing of requests in PCT-EASY format (Section 102*bis*(c); see also paragraphs 165A and 165B).

247. Reduction of International Filing Fee for Applicants from Certain States. An applicant who is a natural person and who is a national of and resides in a State whose per capita national income is below 3,000 US dollars (according to the average per capita national income figures used by the United Nations for determining its scale of assessments for the contributions payable for the years 1995, 1996 and 1997), or who is a national of and resides in one of the following States: Antigua and Barbuda, Bahrain, Barbados, the Libyan Arab Jamahiriya, Oman, the Seychelles, Singapore, Trinidad and Tobago and the United Arab Emirates, or an applicant, whether a natural person or not, who is a national of and resides in a State that is classed as a least developed country by the United Nations is entitled, in accordance with the Schedule of Fees, to a reduction of 90% of certain PCT fees including the international filing fee. Information about the PCT Contracting States whose nationals and residents are entitled to such reduction is contained in the *PCT Applicant's Guide*, International Phase, Annex C. If there are several applicants, each must satisfy the above-mentioned criteria. The reduction of the international filing fee applies automatically to any international application whose applicant or applicants are so entitled on the basis of the indications of name, nationality and residence given in Boxes Nos. II and III of the request. No specific request for such reduction need to be made by the applicants concerned.

248. The fee reduction is available even if one or more of the applicants are not from Contracting States, provided that each of them is a national and resident of a State that meets the above-mentioned criteria and that at least one of the applicants is a national or resident of a Contracting State and thus is entitled to file an international application. For the Contracting States whose nationals and residents are eligible, see the *PCT Applicant's Guide*, Volume I, Annex C. For States which are not Contracting States, the receiving Office should contact the International Bureau.

⁶ Where the international application is filed in electronic form, the pages of the sequence listing part of the description will not be considered for the purposes of the calculation of the international filing fee if they are submitted in Annex C/ST. 25 compliant text format. However, if the sequence listing part is submitted in any other format (e.g. PDF), these pages of sequence listing will count as any other pages of the description for the purposes of calculating the international filing fee.

249. Where the applicant is, or all applicants are, as the case may be, entitled to the reduction of the international filing fee, the amount payable (Box I of the Fee calculation sheet) is 10% of international filing fee (Box I of the Fee calculation sheet).

249A. The reduction of the international filing fee for applicants from certain States is calculated on the basis of the amount of the international filing fee payable after any separate reduction related to the use of the PCT-EASY software (see paragraph 246A).

250. *[Deleted]*

251. *[Deleted]*

Time Limits for Payment

252. The receiving Office checks whether the fees due under Article 3(4)(iv) have been paid within the prescribed time limit.

253. The transmittal fee, the international filing fee and the search fee are payable within one month from the date of receipt of the international application by the receiving Office. The amount payable is the amount applicable on that date of receipt (Rules 14.1(c), 15.3 and 16.1(f)).

254. *[Deleted]*

255. *[Deleted]*

255A. *[Deleted]*

256. *[Deleted]*

257. Regarding the fee for preparing and transmitting a priority document to the International Bureau, see Rule 17.1(b).

Notification Concerning Payment of Fees before the Date on Which They Are Due

258. The receiving Office, upon receipt of a (purported) international application, checks whether any payment of fees has been made and notifies the applicant accordingly (payment of all, or only part of, the prescribed fees or overpayment to be refunded). Where no or insufficient fees have been paid, the receiving Office may invite (Form PCT/RO/102) the applicant to pay the balance due within the applicable time limit(s) (Section 304).

Invitation to Pay Fees after the Date on Which They Are Due

259. Where the receiving Office finds that, by the time they are due under Rules 14.1(c), 15.3 and 16.1(f), no fees were paid, or the amount paid is not sufficient to cover the transmittal fee, the international filing fee and the search fee, it invites (Form PCT/RO/133) the applicant to pay the amount required to cover those fees within one month from the date of the invitation and sends to the International Bureau a copy of that invitation (Rule 16*bis*.1(a)).

260. *[Deleted]*

261. *[Deleted]*

262. Where the receiving Office issues an invitation under Rule 16*bis*.1(a) to pay fees after the date on which they are due and it has received moneys from the applicant before the due date, it informs the applicant to which fees those moneys have been applied (Section 320). For the

application to fees due of moneys received, see Section 321 and paragraph 266. Form PCT/RO/133 is used for that purpose.

263. Any payment received by the receiving Office before the invitation (Form PCT/RO/133) is issued must be considered as having been received before the expiration of the applicable time limit. In other words, if the payment received covers the total amount due, no invitation should be sent and no late payment fee should be required; if the payment received covers only part of the total amount due, an invitation should be sent in respect of the recalculated missing amount and a late payment fee calculated on that missing amount may be required.

264. **Late Payment Fee.** When inviting (Form PCT/RO/133) the applicant to pay fees after the date on which they are due, the receiving Office may (but is not obliged to) require the applicant to pay a late payment fee. The amount of the late payment fee depends on the amount of the unpaid fees indicated in the invitation to pay: it is 50% of the unpaid amount, subject to minimum and maximum amounts. The minimum is equal to the transmittal fee and applies where the unpaid amount of fees is less than the amount of the transmittal fee; the maximum is equal to 50% of the international filing fee corresponding to 30 sheets (even if the international application contains more than 30 sheets) and must be calculated on the basis of the international filing fee as reduced, where applicable, under items 4 and/or 5 of the Schedule of Fees (Rule 16*bis*.2 and Schedule of Fees).

265. The invitation procedure (under Rule 16*bis*) described above does not apply to any other fee payable to the receiving Office, in particular, not to the fee due for preparing and transmitting a priority document to the International Bureau.

Application of Moneys Received

266. The receiving Office applies the moneys received according to the instructions received from the applicant as outlined in Section 321 and Rule 16*bis*.1(c). Where the moneys received by the receiving Office are not sufficient to cover the fees due, and the receiving Office has not received instructions from the applicant as to the fees to which it shall apply the moneys, the receiving Office shall apply the moneys received in payment, successively, of the fees in the following order and to the extent that they are due and unpaid:

- (i) the transmittal fee;
- (ii) the international filing fee;
- (iii) the search fee.

Failure to Pay the Prescribed Fees under Article 14(3)

267. If the applicant has failed to pay to the receiving Office the amount required under Rule 16*bis* or has paid less than what is needed to cover the transmittal fee, the international filing fee, where required, the late payment fee, and the search fee, the receiving Office declares the international application withdrawn under Article 14(3) and promptly notifies the applicant using Form PCT/RO/117. It sends a copy of that notification to the International Bureau and, where the search copy has already been transmitted, to the International Searching Authority (Rules 16*bis*.1(c) and 29.1). Since international publication can only be stopped if this notification reaches the International Bureau before completion of technical preparations for international publication (Rule 29.1(v)), it is critical that this declaration be made and notified to the International Bureau early enough to be able to have this effect. In urgent cases, it is strongly recommended that such notifications be faxed to the International Bureau.

Refund of Fees

268. The receiving Office refunds (Form PCT/RO/119) to the applicant, in compliance with Rule 15.4, any amount paid to cover the international filing fee:

(i) if the determination under Article 11(1) is negative (and, therefore, an international filing date cannot be accorded);

(ii) if the international application is withdrawn or considered withdrawn before the record copy has been transmitted to the International Bureau; or

(iii) if, due to prescriptions concerning national security, the international application is not treated as such.

269. The receiving Office refunds (Form PCT/RO/119) to the applicant, in compliance with Rule 16.2, any amount paid to cover the search fee:

(i) if the determination under Article 11(1) is negative (and, therefore, an international filing date cannot be accorded);

(ii) if the international application is withdrawn or considered withdrawn before the search copy has been transmitted to the International Searching Authority (Section 326(c)); or

(iii) if, due to prescriptions concerning national security, the international application is not treated as such.

270. The receiving Office may, before making a refund of the search fee under Rule 16.2, first invite the applicant to submit a request for the refund (Section 322).

271. For refund of the transmittal fee by a non-competent receiving Office, see paragraph 276.

Transfer of Fees

272. The receiving Office should, each month, transfer to the International Bureau and the International Searching Authority, respectively, moneys received as international filing fee (Rule 15.2(c) and (d)) and search fee (Rule 16.1(c) and (d)) during the preceding month. The receiving Office keeps for its own benefit any moneys received as transmittal fee (Rule 14) and late payment fee (Rule 16*bis*.2).

273. When transferring the international filing fee, the receiving Office should, by letter, facsimile transmission or in electronic form, communicate to the International Bureau the following information: the international application number, the name of the applicant (that is, the applicant first named in the request), and the total amount of the international filing fee. As an example of a table containing the indications mentioned above, see Annex A to these Guidelines.

CHAPTER XII TRANSMITTAL OF INTERNATIONAL APPLICATION TO INTERNATIONAL BUREAU AS RECEIVING OFFICE (RULE 19.4)

Transmittal of International Application for Reasons of Nationality and Residence of the Applicant or Language of the Application (Rule 19.4(a)(i) and (ii))

274. Where a purported international application is filed by an applicant who is a national or resident of a Contracting State with a national Office which acts as a receiving Office under the Treaty, but

(i) that national Office is not competent for reasons of nationality or residence of the applicant to receive that purported international application (Rule 19.1 or 19.2), or

- (ii) the purported international application is not in a language accepted under Rule 12.1(a) by that national Office but is in a language accepted under that Rule by the International Bureau as receiving Office (see Annex C (IB) of the *PCT Applicant's Guide*, Volume I, for the language accepted by that Bureau),

the national Office applies the procedure outlined in Rule 19.4(b).

275. The national Office does not check any further whether the purported international application fulfills the requirements for being accorded an international filing date. Where the national Office requires payment of the fee referred to in Rule 19.4(b) and that fee has not already been paid, the national Office promptly invites (Form PCT/RO/151) the applicant to pay that fee within a time limit of 15 days from the date of the invitation (Section 333(a)). The national Office is not obliged to wait for the fee to be paid to transmit the purported international application. However, if the required fee is not paid, the national Office need not transmit the purported international application but should proceed under Rule 20.4 by notifying the applicant that the purported international application does not comply with Article 11(1) and is not and will not be treated as an international application.

276. Any fees already paid by the applicant are to be refunded except for the amount necessary to cover any fee required under Rule 19.4(b). The transmittal fee, the international filing fee and the search fee are payable to the International Bureau as receiving Office in a currency prescribed by it (paragraphs 237 to 243). For the purposes of calculation of the time limit(s) for payment of those fees, the date of receipt of the international application is considered to be the date on which it is actually received by the International Bureau as receiving Office (Rule 19.4(c)).

277. Where payment of a fee is not required or where the applicant has paid any required fee, the purported international application is to be transmitted to the International Bureau as receiving Office, unless prescriptions concerning national security prevent the purported international application from being so transmitted (Rule 19.4(b) and Section 333(a) and (c)). The national Office notifies (Form PCT/RO/151) the applicant about the transmittal of the purported international application and transmits it to the International Bureau as receiving Office together with a copy of the notification sent to the applicant, the date of receipt of the purported international application at the national Office being marked on the last sheet of the request in the space provided for that purpose (paragraph 35). The purported international application so transmitted is considered to have been received by that Office on behalf of the International Bureau as receiving Office under Rule 19.1(a)(iii) on the date of receipt of the international application by that national Office.

Transmittal of International Application for Other Reasons (Rule 19.4(a)(iii))

278. Where a purported international application is filed with a national Office which acts as a receiving Office under the Treaty, that national Office and the International Bureau may agree, for any reason other than those specified under Rule 19.4(a)(i) and (ii), and with the authorization of the applicant, that the purported international application is to be transmitted to the International Bureau as receiving Office under Rule 19.4(b).

279. Where a national Office intends to proceed under Rule 19.4(b), having regard to Rule 19.4(a)(iii), it promptly requests the International Bureau as receiving Office to agree to the transmittal of the purported international application. Where, upon request from the Office, the International Bureau agrees to the proposed transmittal, and unless the proposed transmittal has already been authorized by the applicant, the national Office promptly invites the applicant to submit to that Office, within a time limit of 15 days from the date of the invitation, an authorization for the proposed transmittal (Section 333(b)). Where the International Bureau as receiving Office agrees to, and the applicant authorizes, the proposed transmittal, the procedure outlined in paragraphs 275 to 277 applies. Form PCT/RO/152 is used for those purposes.

280. Where the International Bureau as receiving Office does not agree to, or where the applicant does not authorize, the proposed transmittal under Rule 19.4(a)(iii), or where the authorization of the applicant is not received within the time limit, the national Office does not transmit the purported international application to the International Bureau as receiving Office but processes the purported international application itself.

281. Where a national Office which is competent to receive the international application intends to proceed under Rule 19.4(b), having regard to Rule 19.4(a)(iii), that national Office should preferably not subject the transmittal of the purported international application to the payment of a fee. If, however, the receiving Office does charge such a fee and the applicant does not pay that fee, the receiving Office proceeds, with regard to the unpaid fees, as outlined in paragraph 275, and, in the case of non-payment, processes the purported international application itself.

Request for Priority Document

282. Rule 17.1(b), concerning preparation and transmittal to the International Bureau of a priority document upon request of the applicant, does not apply where a purported international application is transmitted under Rule 19.4.

CHAPTER XIII RECORD COPY, SEARCH COPY AND HOME COPY

Preparation of Record Copy, Search Copy and Home Copy

General

283. Where the international application and documents referred to in the check list (Rule 3.3(a)(ii)) are required to be filed in more than one copy and the receiving Office has not received the number of copies required, the receiving Office prepares the required additional copies (Rules 11.1 and 21.1). Where a translation is furnished for the purposes of international search under Rule 12.3, the search copy consists of the request and the translation (Rule 23.1(b)). The procedure for preparation, identification and transmittal of the copies of the international application is outlined in detail in Sections 305 (for the international application as filed) and 305*bis* (for any required translation).

284. Where the receiving Office has prepared any additional copies required under Article 12(1), it is entitled to charge a fee for performing that task (Rule 21.1(c) and Section 305*bis*). However, in most receiving Offices that fee is regarded as covered by the transmittal fee and no extra fee is charged for the preparation of additional copies. The receiving Office may use Form PCT/RO/120 to invite the applicant to pay that fee where that fee is required to be paid.

284A. **Requests in PCT-EASY Format.** Where the request is presented in PCT-EASY format (paragraph 165A), the receiving Office prepares additional copies of the computer print-out of that request as part of any additional copies of the international application that it is responsible for preparing under Rule 21.1, as outlined in paragraphs 283 and 284.

Transmittal to the International Bureau of the Record Copy of the International Application and Other Items

285. **Items to Accompany the Record Copy.** Items which should accompany the record copy are listed in Section 313(a). Form PCT/RO/118 is used to transmit the record copy and items to accompany it (paragraph 22). A copy of any required power of attorney should always

be transmitted. Where an international application has been received by facsimile transmission and a confirmation copy has been received subsequently, both the facsimile copy (which is the record copy) and the confirmation copy are transmitted to the International Bureau (Section 331). Where a translation of the international application is furnished under Rule 12.3 or 12.4, that translation is transmitted together with the record copy (that is, the international application in the original language) (Section 305*bis*). A statement, if available, explaining the lack of signature of an inventor/applicant furnished under Rule 4.15(b) and accompanied by a communication to the effect that it satisfies the receiving Office must also be transmitted. The transmittal of the record copy must also be effected if the international application is considered withdrawn by the receiving Office or has been withdrawn by the applicant, in which case the notice effecting withdrawal must also be transmitted (paragraphs 314 to 324).

285A. Where the request is in PCT-EASY format (paragraph 165A), the receiving Office transmits the computer print-out of the request, as part of the record copy, together with the PCT-EASY diskette. The receiving Office should not transmit a copy of the PCT-EASY computer diskette, or a copy of any replacement PCT-EASY computer diskette, filed by the applicant.

286. ***Time Limit for Transmittal of the Record Copy.*** The receiving Office transmits the record copy and the items listed in Section 313(a) to the International Bureau promptly after according an international filing date. Unless any necessary national security clearance has not been obtained (paragraphs 32 to 34), the receiving Office must transmit the record copy in time for it to reach the International Bureau by the expiration of the 13th month from the priority date; if the transmittal is effected by mail, the receiving Office must mail the record copy not later than five days prior to the expiration of the 13th month from the priority date (Rule 22.1(a), last sentence).

287. ***Failure to Transmit the Record Copy.*** Where the record copy has not been received by the International Bureau within 14 months from the priority date and the applicant requests the receiving Office to furnish a certified copy of the international application, Rule 22.1(c) to (f) applies.

Transmittal to the International Searching Authority of the Search Copy and Other Items

General

288. If the search fee has been paid, the receiving Office transmits (Form PCT/RO/118) the search copy to the International Searching Authority (Rule 23.1(a) and (b)). The search copy is not to be transmitted if the international application is withdrawn by the applicant or is considered withdrawn by the receiving Office.

289. Where a translation of the international application is furnished under Rule 12.3, that translation, together with a copy of the request, is considered to be the search copy under Article 12(1) (Rule 23.1(b) and Section 305*bis*(a)(iii)). In such case, no copy of the international application in the original language is to be transmitted to the International Searching Authority.

290. ***Items to Accompany the Search Copy.*** Together with the search copy, the receiving Office transmits any sequence listing in electronic form (Rule 23.1(c)) or any sequence listing in printed form not forming part of the international application (Section 313(c)), any document concerning the deposit of biological material, any document concerning an earlier search, and a copy of any required power of attorney. Where the sequence listing is received by the receiving Office after the transmittal of the search copy, the receiving Office promptly transmits the sequence listing to the International Searching Authority (Rule 23.1(c) and Section 313(c)).

291. ***Time Limit for Transmittal.*** The transmittal must be effected at the latest on the same day as the record copy is transmitted to the International Bureau (Rule 23.1(a)) or, where a

translation of the international application is furnished under Rule 12.3, promptly after receipt of that translation, unless no search fee has been paid.

292. ***Failure to Pay the Search Fee; Delayed Transmittal of the Search Copy.*** Where the search fee has not been paid in whole or in part at the time when the record copy is transmitted, the receiving Office does not transmit the search copy until the search fee has been fully paid. In such case, the receiving Office transmits the search copy promptly after payment of the search fee (Rule 23.1(a) and (b)). Where transmittal of the search copy is delayed, the receiving Office may inform (Form PCT/RO/102) the applicant. The receiving Office notifies the International Bureau about that fact by marking the check-box provided for this purpose on the last page of the request (Section 306).

293. If the search copy has been transmitted to the International Searching Authority although the search fee has not been paid, the receiving Office promptly notifies the International Searching Authority of that fact. Form PCT/RO/132 may be used for that purpose.

Documents and Diskettes Not to Be Transmitted to the International Searching Authority

294. Annexes or appendices which are not intended to be part of the international application should not be transmitted to the International Searching Authority (paragraphs 149 to 152). Copies of assignments of the rights to the application should not be transmitted since they are not required for the international phase. Replacement sheets which are filed by the applicant but either are not required or are not accepted by the receiving Office, should similarly not be transmitted. The receiving Office should also not transmit PCT-EASY computer diskettes filed with requests in PCT-EASY format referred to in paragraph 165A.

National Security Clearance

295. Where prescriptions relating to national security do not allow the application to be treated as an international application, neither the record copy nor the search copy must be transmitted. If a national security check must be performed, the record copy must be transmitted to the International Bureau as soon as the required clearance has been obtained (Article 27(8), Rule 22.1(a)). If a required national security clearance is refused, the receiving Office notifies the applicant and the International Bureau accordingly before the expiration of 13 months from the priority date (Section 330 and paragraphs 32 to 34).

CHAPTER XIV

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CHAPTER XV

RECTIFICATION OF OBVIOUS MISTAKES UNDER RULE 91

Request for Rectification Submitted to the Receiving Office

302. ***Decision of Receiving Office.*** Where the receiving Office receives a request for rectification of an obvious mistake in the international application or other papers submitted by the applicant, such as a power of attorney, it checks whether it is competent to authorize the rectification of the mistake as requested. The receiving Office is competent to do so only if the mistake is in the request or any other paper submitted to the receiving Office, other than the international application itself (description, claims, abstract, any drawings, sequence listing part of the description). Where the receiving Office is so competent, it authorizes the rectification if the mistake whose rectification is requested is an obvious mistake as defined in Rule 91.1(c)

and the rectification is in the language in which the application is filed, provided that, where a translation of the request is required under Rule 26.3~~ter~~(c), the rectification need only be filed in the language of that translation (Rule 12.2(b)(ii)). Omissions of entire elements or sheets are not rectifiable (Rule 91.1(g)(i)). As regards the correction or addition of a declaration referred to in Rule 4.17, see paragraphs 192E and 192F.

303. If the receiving Office authorizes the rectification, it marks the words "RECTIFIED SHEET (RULE 91)" in the middle of the bottom margin of the rectified sheet and proceeds as outlined in Section 325(a).

304. **Notification of Applicant and International Bureau.** The receiving Office notifies (Form PCT/RO/109) the applicant of its decision and, where rectification has been refused, of the reasons for refusal (Rule 91.3(d) and Section 325(b)). A copy of that notification is sent to the International Bureau.

305. Where the rectification has been authorized, the notification should promptly be sent by the receiving Office to the International Bureau for the rectification to be taken into account for international publication, or, where applicable, republication of the international application.

306. **Refusal of Authorization of Rectification.** If the receiving Office refuses to authorize the rectification, it proceeds in accordance with Section 325(b). In addition, the receiving Office notifies (Form PCT/RO/109) the applicant of the possibility to request the International Bureau to publish, if possible together with the international application, the refusal and the reasons therefor, together with any further brief comments the applicant may want to submit, within the time limit under Rule 91.3(d).

Transmittal to Another Authority of a Request for Rectification

307. If the receiving Office receives a request for rectification of an obvious mistake in any part of the international application other than the request or in other papers or items (such as a nucleotide and/or amino acid sequence listing and/or table(s) relating thereto in electronic form), it transmits that request together with any proposed replacement sheet to the Authority competent to authorize the rectification (that is, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau, as the case may be) and informs the applicant accordingly (Rule 91.1(b)(ii) to (iv)). It may, instead of transmitting the request, inform the applicant that the request should be sent to the Authority competent to rectify the mistake. For the language(s) in which such request for rectification must be submitted, see Rule 12.2(b).

Invitation to the Applicant to Request Authorization of Rectification

308. If the receiving Office discovers what appears to be an obvious mistake in the international application or any other paper submitted by the applicant, it may invite (Form PCT/RO/108) the applicant to submit a request for rectification to the Authority competent to authorize the rectification (Rules 91.1(b) and 91.2).

CHAPTER XVI CHANGES CONCERNING THE APPLICANT, INVENTOR, AGENT OR COMMON REPRESENTATIVE

Receipt of Request to Record a Change

309. The receiving Office may receive from the applicant a request for the recording of a change in the person, name, residence, nationality or address of the applicant

(Rule 92*bis*.1(a)(i)) or a change in the person, name or address of the inventor, the agent or the common representative (Rule 92*bis*.1(a)(ii)). The International Bureau records those changes upon request of the applicant or the receiving Office. The filing of a power of attorney appointing an agent or common representative who is not yet recorded, or a revocation by the applicant of record or renunciation of an appointment under Rule 90.6, is considered as a request to record a change in the person of the agent or common representative.

309A. Where a request for recording a change in the person of the applicant has been submitted, the receiving Office should not request any substitute sheets for Boxes Nos. II and III of the request if the change can be transferred to the relevant Boxes of the request form without adversely affecting the legibility of the sheet of the request form onto which the change is transferred. Where, following a request for the recording of a change under Rule 92*bis*.1(a)(i) or (ii), information is provided in respect of the indications required under Rule 4.5(a)(ii) and (iii) that had not been furnished in the request form at the moment of filing the international application and said request complies with Article 14(1)(a)(ii) (see Rule 26.2*bis*(b)), the receiving Office records the indications so provided and notifies the International Bureau accordingly (Form PCT/RO/113).

309B. Where the request for the recording of a change concerns the indication of an e-mail address of the applicant or the agent, the receiving Office, when preparing Form PCT/RO/113, checks the appropriate box next to the e-mail address, if the applicant or agent has given his express authorization that the receiving Office, the International Searching Authority, the International Bureau and the International Preliminary Examining Authority may use the e-mail address provided to send advance copies of notifications, or to send notifications exclusively by e-mail in respect of this international application.

310. The receiving Office checks whether the request for recording a change is signed by the applicant of record or on behalf of that applicant. Where a request is submitted to record a change in the person of the applicant by the applicant of record or the duly appointed agent of that applicant, documentary evidence proving the right of a new person to be indicated as applicant (for example, assignment, succession to the rights of a deceased inventor) is not required during the international phase. Furthermore, in order for a change in the person of the applicant to be recorded, the new applicant need not be a resident or national of a Contracting State. The receiving Office may nevertheless draw the attention of the applicant to the fact that, if there is no applicant from any Contracting State at the time when a demand for international preliminary examination may be filed, the applicant(s) will not be entitled to file such a demand.

311. Where a person ("new applicant"), who is not the applicant of record, requests that a change be recorded in the person of the applicant, of the agent or common representative, documentary evidence must be submitted regarding the right of that new applicant to the application or the right to request such a change on behalf of the applicant of record. Where such evidence has not been furnished, the receiving Office invites that person to furnish the required evidence before it proceeds with the request to record the change. If the new applicant is to be represented by the same agent who represented the former applicant, a new power of attorney must be submitted signed by the new applicant. If the new applicant is to be represented by a new agent, a power of attorney must also be submitted. In both cases, if correspondence signed by the former or new agent is received but no power of attorney has been received, the receiving Office invites the new applicant to submit a power of attorney. However, where the receiving Office has waived the requirement under Rule 90.4(b) that a separate power of attorney be submitted to it, the receiving Office does not invite the new applicant in either of the above-mentioned cases to submit a power of attorney.

Notification of International Bureau

312. The receiving Office notifies (Form PCT/RO/113) the International Bureau of the request for recording a change. For transmittal of a power of attorney, a revocation of a power of attorney or a renunciation of appointment, the receiving Office uses Form PCT/RO/123.

313. *[Deleted]*

CHAPTER XVII WITHDRAWAL OF THE INTERNATIONAL APPLICATION, ANY DESIGNATION OR ANY PRIORITY CLAIM

Receipt of Notice Effecting Withdrawal of the International Application, Any Designation or Any Priority Claim under Rule 90*bis*.1, 90*bis*.2 or 90*bis*.3

314. The applicant may file with the receiving Office a notice of withdrawal of the international application (Rule 90*bis*.1(b)), of any designation, including the withdrawal of a designation for the purpose of a given kind of protection (Rule 90*bis*.2(d)), or of any priority claim (Rule 90*bis*.3(c)). The applicant may also file such notice of withdrawal directly with the International Bureau. Any notice of withdrawal has to be signed by, or on behalf of, all applicants indicated as such in the international application at the time the notice of withdrawal is submitted. Upon receipt of such a notice, the receiving Office marks the date of receipt on the notice of withdrawal and checks whether the withdrawal is effective, that is, whether:

(i) the notice of withdrawal is received within the time limit referred to in Rule 90*bis*.1(a), 90*bis*.2(a) or 90*bis*.3(a), as the case may be;

(ii) the notice of withdrawal is signed by or on behalf of all the applicants.

315. A notice of withdrawal of the international application must be signed by the applicant or, if there are two or more applicants, by all of them or, on their behalf, by their duly appointed common agent or common representative. Where a power of attorney or an authorization to sign on behalf of a legal entity is not yet submitted when the notice of withdrawal is received, the receiving Office requests the applicant to submit it.

316. An applicant who is considered to be the common representative under Rule 90.2(b), that is, the “deemed” common representative (paragraph 24), may not sign a notice of withdrawal on behalf of the other applicants (Rule 90*bis*.5).

317. If the above-mentioned requirements (paragraphs 314 and 315) are fulfilled, the withdrawal is effective upon receipt of the notice of withdrawal by the receiving Office (Rules 90*bis*.1(b), 90*bis*.2(d) and 90*bis*.3(c)).

318. A notice of withdrawal of the international application may state that the withdrawal is to be effective only on the condition that international publication can still be prevented (“conditional withdrawal”). In such case, the withdrawal is not effective if the condition on which it was made cannot be met, that is, if the technical preparations for international publication have already been completed. For completion of technical preparations for international publication, see paragraph 337.

319. Where different applicants or inventors are indicated for the purposes of different designated States and in the event of withdrawal of the designation of a State, the receiving Office may make an indication to that effect in the margin of the relevant sheet of the home copy.

320. If the withdrawal of a designation results in a person being indicated as applicant for the purposes of a State which is no longer designated, the receiving Office makes the necessary *ex officio* marking in the request.

321. Where the priority date of the international application has changed following withdrawal under Rule 90*bis*.3 of a priority claim, any date which is computed from the original priority date, and which has not already expired, is recomputed from the priority date resulting from that change. Time limits computed from the original priority date which have already expired are not reinstated (Rule 90*bis*.3(d)).

Transmittal of Notice Effecting Withdrawal

322. The receiving Office promptly transmits to the International Bureau any notice effecting a withdrawal under Rule 90*bis*.1, 90*bis*.2 or 90*bis*.3 (Form PCT/RO/136), of any notice effecting a withdrawal of kinds of protection (Form PCT/RO/132), with an indication of the date of receipt of the notice. If the record copy has not yet been transmitted to the International Bureau, the receiving Office transmits the notice of withdrawal to that Bureau together with the record copy (Section 326(a)). In the case of a withdrawal of the international application or of the (earliest) priority claim, it is often the applicant's intention to prevent or postpone international publication of the application. In such cases, the receiving Office must take into account the fact that the International Bureau will only be in a position to prevent or postpone that publication if the notice of withdrawal reaches it before technical preparations for international publication have been completed; therefore, the receiving Office should preferably also send the notice of withdrawal to the International Bureau by facsimile transmission.

323. If the search copy has already been transmitted to the International Searching Authority and the notice effects withdrawal of the international application or of the priority claim, the receiving Office promptly transmits a copy of the notice to the International Searching Authority (Section 326(b)). For refund of the search fee where the international application has been withdrawn, see Sections 322 and 326(c).

324. Where the international application is withdrawn before the search copy is transmitted to the International Searching Authority, the receiving Office does not transmit the search copy (Section 326(c)). If a priority claim is withdrawn, see Section 326(d).

CHAPTER XVIII ITEMS TO BE TRANSMITTED TO ANOTHER AUTHORITY

Items to Be Transmitted to the International Bureau

325. Where the receiving Office receives from the applicant items which should have been filed with the International Bureau, it marks the date of receipt on the items concerned and transmits them promptly to the International Bureau. The receiving Office may inform the applicant about the transmittal. This applies, in particular, to the following items:

(i) references to deposited microorganisms or other biological material filed later than the international application (Rule 13*bis*.3 and paragraphs 228 to 234);

(ii) a request to publish indications relating to a priority claim considered void (Rule 26*bis*.2(d) and paragraphs 171, 172 and 175);

(iii) a request to publish a request for rectification of an obvious mistake where the rectification was refused under Rule 91.3(d) together with substitute sheets that might have been proposed by the applicant (paragraph 306);

(iv) the correction or addition of declarations relating to national requirements under Rule 4.17 (Rule 26*ter* and paragraph 192F);

(v) amendments to the claims filed under Article 19 (Rule 46.1);

(vi) a notice of correction or addition of a declaration under Rule 26*ter*.1 (Section 317);

(vii) a supplementary search request under Rule 45*bis*.1.

326. The above listed items, as well as other items filed later than the international application, such as corrections of formal defects, rectifications of obvious mistakes under Rule 91 or requests for recording of changes under Rule 92*bis*, must reach the International Bureau before technical preparations for international publication are completed so that the publication will reflect all the changes made, see paragraph 312. For the contents of the publication of the international application, see Rule 48.2. For completion of technical preparations for international publication, see paragraph 337.

327. For priority documents, see paragraphs 179 to 191. For the transmittal of later filed powers of attorney, see Section 328 and paragraphs 309 to 312.

Transmittal of Demand under Rule 59.3

328. Where a demand under Chapter II of the Treaty is submitted to the receiving Office and only one International Preliminary Examining Authority is competent, the receiving Office proceeds as outlined in Rule 59.3(a) and (f), that is, it marks the date of receipt on the demand and,

(i) it either forwards the demand to the International Bureau, which will in turn transmit it to the competent International Preliminary Examining Authority, or

(ii) it transmits it directly to the competent International Preliminary Examining Authority.

The receiving Office notifies (Form PCT/RO/153) the applicant accordingly and sends a copy of that notification to the International Bureau or to the competent International Preliminary Examining Authority, as the case may be.

329. Where a demand under Chapter II of the Treaty is submitted to the receiving Office and more than one International Preliminary Examining Authority is competent, the receiving Office proceeds as outlined in Rule 59.3(a) and (f), that is, it marks the date of receipt on the demand and,

(i) it either forwards the demand to the International Bureau, which will in turn invite the applicant to indicate the competent International Preliminary Examining Authority, or

(ii) it invites (Form PCT/RO/154) the applicant to indicate, within 15 days from the date of the invitation or before the expiration of the applicable time limit under Rule 54*bis*.1(a), whichever is later, the competent International Preliminary Examining Authority to which the demand should be transmitted. Where such indication is timely furnished, the receiving Office transmits the demand to that Authority (Form PCT/RO/153). The receiving Office notifies (Form PCT/RO/153) the applicant accordingly and sends a copy of that notification to the International Bureau or to the competent International Preliminary Examining Authority, as the case may be.

330. Any demand so transmitted to the competent Authority will be considered to have been received by the receiving Office on behalf of that Authority on the date marked on it (Rule 59.3(e)).

331. Where the demand is submitted after the expiration of 19 months from the priority date to a receiving Office, and the time limit under Article 22(1), as in force from April 1, 2002 does not

apply in respect of all designated Offices, the receiving Office shall promptly notify the applicant accordingly (Section 334). Forms PCT/RO/153 and PCT/RO/154 contain a check-box for that purpose. The applicant should, in such case, also be informed by telephone or facsimile transmission. Since the receiving Office is generally not in a position to determine whether the date of receipt of the demand is after the expiration of the applicable time limit under Rule 54*bis*.1(a), the applicant's attention should be drawn to the fact that, should the applicable time limit have already expired, the competent International Preliminary Examining Authority will notify the applicant accordingly at a later date. Forms PCT/RO/153 and PCT/RO/154 also contain a check-box for that purpose.

332. Where the applicant has not, within the time limit referred to in the invitation (Form PCT/RO/154), indicated the competent International Preliminary Examining Authority to which the demand should be transmitted, the demand is considered not to have been submitted and the receiving Office so declares (Form PCT/RO/155).

CHAPTER XIX MISCELLANEOUS

Expressions Not to Be Used (Rule 9)

333. If the receiving Office notes that the international application contains expressions, drawings or statements not to be used as defined in Rule 9.1, such as statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person, it may proceed in accordance with Rule 9.2. Form PCT/RO/112 is used for that purpose, copies being sent to the International Bureau and to the International Searching Authority.

Certifying Copies of the International Application

334. The applicant may request the receiving Office to prepare a certified copy of the international application as filed with it as receiving Office (Rule 21.2). If any prescribed fee has not yet been paid, the receiving Office invites (Form PCT/RO/128) the applicant to pay the required amount, upon receipt of which the certified copy is prepared and furnished to the applicant (Form PCT/RO/122) or, where the applicant has made a request for priority document under Rule 17.1(b) (paragraph 183), to the International Bureau. The certified copy must contain a copy of the international application as originally filed as well as corrections (including rectifications) thereto. Where a sheet was replaced, it is recommended to insert the replacement sheet into the certified copy immediately after the sheet originally filed. For a request to certify a copy of an international application and transmit it to the International Bureau, see paragraphs 183 to 191.

Notification about Right to Practice of Agent before Receiving Office

335. Where the receiving Office receives from the International Bureau, the International Searching Authority, the Authority specified for supplementary search or the International Preliminary Examining Authority a request for information as to whether a person has the right to practice before the receiving Office, that Office informs that Bureau or Authority in compliance with Rule 83.2. Such information, which is binding for the respective Authority, should be provided on Form PCT/RO/148.

Keeping of Records and Files

336. The receiving Office keeps the records relating to the international application or purported international application for at least 10 years from the international filing date or, where no international filing date is accorded, from the date of receipt of the purported application (Rule 93.1). Records, copies and files may be kept as photographic, electronic or other reproductions, provided that the reproductions are such that the obligations to keep records, copies and files under Rule 93.1 to 93.3 are met (Rule 93.4).

Completion of Technical Preparations for International Publication by the International Bureau

337. The international application is published promptly after 18 months from the priority date except where early publication has been requested (Article 21(1) and (2)). International applications are usually published on Thursdays, and technical preparations for international publication are generally completed 15 calendar days before the actual publication date. When there is no international publication on a given Thursday because it is a day when the International Bureau is not open for business, publication may, but does not always, take place on the preceding day (Wednesday). In such cases, the receiving Office should contact the International Bureau for confirmation of the exact day of publication. A document, notification or communication which is to be published by the International Bureau (Rule 48.2), and might not reach the International Bureau before the date of completion of technical preparations if sent by ordinary mail, should be transmitted by facsimile, in addition to the original being sent by mail.

Certain Kinds of Documents to Be Returned to the Applicant

338. The receiving Office may receive documents from the applicant which are not required for processing the international application. Examples of such documents are assignment documents, powers of attorney for the national phase only, information disclosure statements for the national phase, duplicate copies where the receiving Office only requires a single copy to be submitted, etc. Such documents should be returned to the applicant because the applicant may need them before the national or regional Offices during the national or regional phase.

Correction of Errors Made by the Receiving Office

339. A receiving Office may correct any errors made by it relating to the processing of an international application, unless the correction of such errors by the receiving Office is covered by specific procedures provided for in the Treaty, the Regulations, the Administrative Instructions or these Guidelines, in which case those procedures should be followed. Upon doing so, it should promptly notify the applicant, the International Bureau and, where applicable, the International Searching Authority and International Preliminary Examining Authority (Form PCT/RO/1