

Patent Cooperation Treaty

The Contracting States,
 Desiring to make a contribution to the progress of science and technology,
 Desiring to perfect the legal protection of inventions,
 Desiring to simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries,
 Desiring to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions,
 Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology,
 Convinced that cooperation among nations will greatly facilitate the attainment of these aims,
 Have concluded the present Treaty.

INTRODUCTORY PROVISIONS

Article 1 Establishment of a Union

(1) The States party to this Treaty (hereinafter called “the Contracting States”) constitute a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services. The Union shall be known as the International Patent Cooperation Union.

(2) No provision of this Treaty shall be interpreted as diminishing the rights under the Paris Convention for the Protection of Industrial Property of any national or resident of any country party to that Convention.

PCT/PCD/4 December 10, 1970 (Original: English)
 WIPO/BIRPI

Notes on the Patent Cooperation Treaty

The present document

These Notes are intended to serve two main purposes. One is to facilitate the reading of the text of the Treaty by providing, where a provision refers to other provisions of the Treaty, brief information on those other provisions, so that the reader should generally be able to avoid, as far as possible, turning to the page on which the provisions referred to appear. The other is to enable the reader to find rapidly in the Regulations the Rules which pertain to any given provision of the Treaty. To this end, the pertinent Rules are referred to by their number and in most cases also by their title.

NOTES ON THE INTRODUCTORY PROVISIONS

The “Introductory Provisions” consist of two Articles, one dealing with the establishment of the International Patent Cooperation Union (Article 1), the other with definitions (Article 2).

NOTES ON ARTICLE 1

PARAGRAPH (1): “Contracting States” are the States which are bound by the Treaty: see Articles 62 (Becoming Party to the Treaty) and 63 (Entry into Force of the Treaty). Only States members of the Paris Union may become Contracting States (see Article 62(1)). A State may be a Contracting State without being bound by the provisions of Chapter II (International Preliminary Examination): see Article 64(1).

Rendering special technical services includes patent information services and technical assistance to developing countries: see Chapter IV.

“Application” and “Union” are defined in Article 2(i) and 2(xvi), respectively.

PARAGRAPH (2): It could be maintained that this provision is not necessary since the Treaty does not contain anything that diminishes rights guaranteed under the Paris Convention. That this cannot be otherwise follows also from Article 19 of the Paris Convention which prohibits the conclusion of agreements contravening the provisions of the Paris Convention. Thus the paragraph merely serves to emphasize something that goes without saying.

Article 2 Definitions

For the purposes of this Treaty and the Regulations and unless expressly stated otherwise:

(i) “application” means an application for the protection of an invention; references to an “application” shall be construed as references to applications for patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;

(ii) references to a “patent” shall be construed as references to patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;

(iii) “national patent” means a patent granted by a national authority;

(iv) “regional patent” means a patent granted by a national or an intergovernmental authority having the power to grant patents effective in more than one State;

(v) “regional application” means an application for a regional patent;

(vi) references to a “national application” shall be construed as references to applications for national patents and regional patents, other than applications filed under this Treaty;

NOTES ON ARTICLE 2

ITEM (i) (“application”):

See Articles 1(1); 2(v)(vi)(vii)(viii)(xi)(a)(b); 3(1); 8(1), (2)(b); 16(1); 27(5); 44; 50(1); 63(1)(a)(i)(ii)(iii)(b).

See Rules 4.1(b)(v), 4.10(a), (a)(i)(iv), (b)(i), (c), (d), (e), 4.11, 4.13, 4.14; 9.1(iii); 20.6(b); 24.2(a); 33.1(c); 43.2, 43.6(b); 61.2(b); 64.1(b)(ii), 64.3; 66.7(a), (b); 70.10.

ITEM (ii) (“patent”):

See Articles 2(iii)(iv)(ix)(xii); 28(1); 41(1); 46; 50(1); 64(3)(c)(ii), (4)(a).

See Rules 4.1(b)(v); 9.1(iii); 33.1(c); 64.3; 70.10.

ITEM (iii) (“national patent”):

See Articles 2(vi)(ix); 4(1)(ii).

ITEM (iv) (“regional patent”):

See Articles 2(v)(vi)(ix)(x)(xii); 4(1)(ii); 45(1), (2).

See Rules 4.1(b)(iv); 15.1(ii), 15.2(b)(i)(ii), 15.5(c); 34.1(ii).

ITEM (v) (“regional application”):

See Article 2(x).

See Rules 4.10(a)(i)(iv), (b)(i); 34.1(ii).

ITEM (vi) (“national application”):

See Articles 2(viii); 4(1)(v), (4); 8(2)(b); 11(3); 15(5)(a)(b)(c); 22(1); 24(1); 26; 27(3), (4); 29(1); 39(2); 64(3)(c)(ii).

See Rules 4.1(a)(v), (c); 17.1(a); 18.4(c); 52.1(b); 78.1(b).

(vii) “international application” means an application filed under this Treaty;

(viii) references to an “application” shall be construed as references to international applications and national applications;

(ix) references to a “patent” shall be construed as references to national patents and regional patents;

(x) references to “national law” shall be construed as references to the national law of a Contracting State or, where a regional application or a regional patent is involved, to the treaty providing for the filing of regional applications or the granting of regional patents;

(xi) “priority date,” for the purposes of computing time limits, means:

(a) where the international application contains a priority claim under Article 8, the filing date of the application whose priority is so claimed;

(b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;

(c) where the international application does not contain any priority claim under Article 8, the international filing date of such application;

ITEM (vii) (“international application”):

See Articles 2(viii)(xi)(a)(b)(c)(xv); 3(1), (2), (4); 4(1)(i)(ii); 7(2)(i); 8(1), (2)(b); 9(1)(2); 10; 11(1), (1)(i)(ii)(iii), (iii)(a), (2)(a), (3), (4); 12(1), (2), (3); 13(1), (2)(a)(b); 14(1)(a)(b), (2), (3)(a), (4); 15(1), (5)(c); 16(2); 17(2)(a)(i), (3)(a)(b); 19(1), (2); 20(1)(a); 21(1), (2)(a)(b), (5), (6); 22(1); 23(1), (2); 24(1), (1)(i)(ii); 25(1)(a), (2)(a); 26; 27(1), (2), (2)(ii), (3), (4), (5), (7), (8); 28(2), (4); 29(1), (2)(iii), (4); 30(1)(a), (2)(a), (a)(i)(ii)(iii)(b)(c), (4); 31(1), (2)(a)(b), (3); 34(2)(b)(c)(ii), (3)(a)(b)(c), (4)(a)(i); 37(4)(a)(b); 39(1)(a); 40(1), (2); 41(2), (4); 42; 43; 45(1), (2); 46; 49; 57(5)(b); 64(2)(a)(i)(ii), (3)(a)(b)(c), (c)(ii), (4)(a)(c), (6)(a)(b); 65(1), (2); 66(2).

See Rules 3.3(a)(i)(ii); 4.2, 4.8(a), (b), 4.10(a)(i)(iv), (b)(i), (c), (d), 4.12(a), 4.13, 4.14; 6.2, 6.2(b), 6.5; 8.1(a)(ii), (d), 8.3; 9.1, 9.2; 10.1(f), 10.2; 11.1(a), (b), 11.2(a), 11.3, 11.4(a), (b), 11.5, 11.6(e), 11.7(a), 11.13(m), 11.14, 11.15; 12.1, 12.2; 13.1, 13.2(i)(ii), 13.3, 13.4, 13.5; 14.1(a); 15.1, 15.1(ii), 15.2(a)(i)(ii), 15.4(a), (a)(i), (b); 16.3; 17.1(a), 17.2(b), (c); 18.3, 18.4(a), (c); 19.1(a), 19.2(b); 20.1(a), 20.2(a), 20.4(a), 20.5(a), (b), (c), 20.7(i)(ii)(iii), 20.9; 21.1(a), (b), (c); 22.1(a), 22.2(a), (b), (e), 22.5; 23.1(b); 24.1, 24.2(a); 26.1(a), 26.4(b), 26.5(a), 26.6(a); 28.1(a); 29.1(a), 29.2; 31.1(a); 32.1(a), (b), (d); 33.1(c), 33.2(c), (d); 34.1(b)(ii); 35.1, 35.2(a)(i)(ii); 37.1, 37.2; 38.1, 38.2(a); 39.1; 40.1, 40.2(c); 41.1; 43.1, 43.4, 43.7; 44.3(a); 46.3, 46.4(a), 46.5(b); 47.1(b), 47.3; 48.1(a), 48.2(b)(ii), (i), 48.3(a), (b), (c), 48.4(a), 48.5, 48.6(a), (c); 49.1(c), 49.2, 49.3; 50.1(c), (d); 51.2, 51.4; 53.2(a)(iii), 53.3, 53.6; 54.2(i)(ii), 54.3(a)(i)(ii); 55.1, 55.2(a); 56.1, 56.2, 56.4; 59.1, 59.2; 61.2(b); 62.1(b); 64.1(b)(i)(ii); 66.1, 66.2(a)(i)(iii)(iv), 66.7(a), 66.8(a), (b); 67.1; 68.1, 68.2, 68.3(c); 70.2(c), 70.3, 70.12(i)(ii), 70.13, 70.16, 70.17(a), (b); 71.2(a); 74.1; 75.4(b); 76.2, 76.3; 86.1(i)(iv), 86.5; 87.1, 87.2(a); 90.2(d); 91.1(a), (b), (c), (e)(ii)(iii)(iv), (f), (g)(i); 92.1(a), 92.2(a), (b); 93.1, 93.2(a), 93.3; 94.1; 95.1(a).

ITEM (viii) (“application”):

See Articles 2(i)(v)(xi)(a)(b); 3(1); 8(1), (2)(b); 16(1); 27(5); 44; 50(1); 63(1)(a)(i)(ii)(iii)(b).

See Rules 4.1(b)(v), 4.10(a), (a)(i)(iv), (b)(i), (c), (d), (e), 4.11, 4.13, 4.14; 9.1(iii); 20.6(b); 24.2(a); 33.1(c); 34.1(d), (f); 43.2, 43.6(b); 61.2(b); 64.1(b)(ii), 64.3; 66.7(a), (b); 70.10.

ITEM (ix) (“patent”):

See Articles 2(i)(ii)(xii); 4(3); 28(1); 41(1); 43; 44; 46; 50(1); 64(3)(c)(ii), (4)(a).

See Rules 4.1(b)(v), 4.12(a), 4.13; 9.1(iii); 33.1(c); 34.1(d), (e); 43.6(b); 64.3; 70.10.

ITEM (x) (“national law”):

See Articles 4(1)(ii)(v), (4); 8(2)(b); 15(5)(a)(b); 17(3)(b); 19(3); 22(1), (3); 26; 27(1), (2), (3), (4), (5), (6), (7); 28(2), (3); 29(1), (2), (2)(i)(ii), (3), (4); 34(3)(b)(c); 35(2); 37(4)(a)(b); 39(1)(b); 41(2), (3); 45(2); 48(2)(a); 64(4)(a).

See Rules 2.3; 4.1(a)(v), (c), 4.4(c), 4.6(c); 5.1(a)(v); 6.3(c), 6.5; 13.5; 18.1(a), 18.2(a), (b), 18.4(c); 49.2; 52.1(a), (b); 76.2; 78.1(a), (b).

ITEM (xi) (“priority date”):

See Articles 13(1); 21(2)(a); 22(1); 29(3); 30(4); 39(1)(a); 40(1); 64(3)(b)(c)(ii), (4)(a).

See Rules 4.10(c); 15.4(b); 17.1(a); 22.1(a), (b), 22.2(d), (e), 22.3(a)(i)(ii); 23.1(b); 32.1(a); 33.1(c); 42.1; 46.1; 61.2(c); 70.10; 75.1(a); 78.1(a), (b), 78.2, 78.3.

(xii) “national Office” means the government authority of a Contracting State entrusted with the granting of patents; references to a “national Office” shall be construed as referring also to any intergovernmental authority which several States have entrusted with the task of granting regional patents, provided that at least one of those States is a Contracting State, and provided that the said States have authorized that authority to assume the obligations and exercise the powers which this Treaty and the Regulations provide for in respect of national Offices;

(xiii) “designated Office” means the national Office of or acting for the State designated by the applicant under Chapter I of this Treaty;

(xiv) “elected Office” means the national Office of or acting for the State elected by the applicant under Chapter II of this Treaty;

(xv) “receiving Office” means the national Office or the intergovernmental organization with which the international application has been filed;

(xvi) “Union” means the International Patent Cooperation Union;

(xvii) “Assembly” means the Assembly of the Union;

(xviii) “Organization” means the World Intellectual Property Organization;

ITEM (xii) (“national Office”):

See Articles 2(xiii)(xiv)(xv); 13(2)(c); 15(5)(a)(b); 16(1), (3)(a)(b)(e); 17(3)(b); 22(1); 25(1)(b); 27(4); 29(4); 30(2)(a)(b), (4); 34(3)(b)(c); 37(4)(b); 40(1); 49; 50(5)(b); 55(5); 56(2)(b); 58(3)(a)(ii); 63(1)(a)(iii); 64(2)(a)(ii), (3)(c)(ii).

See Rules 4.10(a)(iv); 19.1(a), (b), (c), 19.3(a); 29.1(b); 31.1(a); 34.1(c)(vi); 36.1(i); 48.5; 55.1(a); 58.1(c); 59.1, 59.2; 62.1(a), (b); 63.1(i); 69.1(c); 72.1(a); 75.2(a); 79.1; 80.5, 80.6, 80.7(a); 82.1(b), 82.2(b); 83.2(a); 87.2(a); 92.2(e), 92.3.

ITEM (xiii) (“designated Office”):

See Articles 4(1)(v); 7(2)(ii); 13(1), (2)(a)(b); 20(1)(a), (3); 22(1); 23(1), (2); 24(2); 25(1)(a), (2)(a); 26; 27(2), (3), (7); 28(1), (4); 30(2)(c).

See Rules 4.10(c); 6.2(b); 11.15; 17.1(c), 17.2(a); 18.5; 24.2(a); 29.1(a)(ii), 29.2; 32.1(d); 40.2(c); 44.3(b), (c); 47.1(c), (d), (e), 47.3; 48.3(b); 49.2; 51, 51.4; 52; 86.1(iv); 95.1(a).

ITEM (xiv) (“elected Office”):

See Articles 31(7); 36(3)(a)(b); 37(3)(b); 38(1); 39(1)(a), (3); 40(2); 41(1), (4); 42.

See Rules 54.4; 61.2; 61.2(c); 68.3(c); 71.2(b), (c); 72.2, 72.3; 75.2, 75.2(b); 76.2, 76.4; 78, 78.3; 86.1(iv); 95.1(a).

ITEM (xv) (“receiving Office”):

See Articles 10; 11(1), (1)(i), (2)(a)(b); 12(1); 14(1)(a)(b), (2), (3)(a)(b), (4); 16(2); 25(1)(a)(b), (2)(a); 27(7); 30(2)(b), (3); 31(2)(a); 32(2); 56(5).

See Rules 2.3; 3.2, 3.3(b); 4.10(d), 4.17(b); 9.2; 11.1(b), 11.5, 11.6(d); 12.1; 14.1(a), (b); 15.3(a), (b), 15.4(a), 15.5(b); 16.1(b); 17.1(a); 18.1(a), 18.2(a), 18.5; 19.1(b), (c), 19.3(a); 20.1(a), 20.2(a), (b), 20.3, 20.4(a), 20.5(a), (c), 20.6(a), (b), 20.7, 20.8, 20.9; 21.1(a), (b), (c); 22.1(a), (b), (c), 22.2(a), (b), (c), (d), (e), 22.4, 22.5; 23.1(a), (b), (c); 24.2(a), (b); 25.1; 26.1(a), (b), 26.2, 26.4(a), (b), (c), (d), 26.5(a), (b), 26.6(a); 28.1(a), (b); 29.1(a), (a)(i)(ii)(iii), (b), 29.3, 29.4; 32.1(c), (d); 35.1, 35.2(a), (b); 37.1, 37.2; 38.1, 38.2(a); 43.1; 53.1(b), 53.6; 54.4; 61.2(b); 70.3; 79.1; 86.1(ii); 89.2(a); 90.2(d), 90.3(b); 91.1(e)(i), (g)(i); 93.1.

ITEM (xvi) (“Union”):

See Articles 1(1), (2)(xvii); 53(2)(a)(i)(iv)(vi)(vii)(viii)(x); 54(6)(a)(ii)(v); 55(1), (2), (3); 57(1)(a)(b)(c), (2), (3), (3)(i)(ii), (5)(d)(e), (7)(a).

ITEM (xvii) (“Assembly”):

See Articles 9(2); 16(3)(a)(b)(e); 31(2)(b); 32(2); 47(2)(b); 50(4), (6), (7); 51(1), (5); 53(1)(a), (2)(a)(b), (5)(b), (6)(a), (8), (9), (10), (11)(a)(b)(c), (12); 54(1), (2)(a), (3), (4), (5)(a)(c), (6)(a)(i)(ii)(iv)(v); 55(4), (6), (7)(a); 56(1), (2)(a), (3)(iii), (5), (6)(b), (7), (8); 57(5)(b)(c)(d)(e), (7)(a)(b)(c), (8)(a), (9); 58(2)(a), (4); 60(2); 61(1)(a)(b), (2)(a), (3)(a)(b)(c); 65(1), (2); 67(1)(b).

See Rules 19.1(c); 34.1(e); 54.2(ii), 54.3(a)(ii); 59.2; 81.2(a), (b); 85.1; 86.2(b); 88.1, 88.2, 88.3, 88.4; 89.2(c).

ITEM (xviii) (“Organization”):

See Articles 2(xix)(xx); 53(2)(b), (11)(a)(b); 54(6)(b), (7)(a); 57(1)(b)(c), (2), (7)(c), (8)(a)(b).

(xix) “International Bureau” means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(xx) “Director General” means the Director General of the Organization and, as long as BIRPI subsists, the Director of BIRPI.

CHAPTER I INTERNATIONAL APPLICATION AND INTERNATIONAL SEARCH

Article 3 The International Application

(1) Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.

(2) An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.

ITEM (xix) (“International Bureau”):

See Articles 12(1), (3); 13(1), (2)(b)(c); 16(3)(b); 17(1), (2)(a); 18(2), (3); 19(1); 21(1), (2)(b), (6); 25(1)(a)(b), (2)(a)(b); 30(1)(a); 31(6)(b); 32(2); 34(1); 36(1), (2)(b), (3)(a); 37(3)(a)(b); 38(1), (2); 49; 50(1), (2); 51(4); 53(2)(a)(iii); 55(1), (2), (4), (5), (7)(a)(b), (8); 57(3)(i)(ii), (4); 59; 63(1)(a)(i)(ii)(iii); 64(3)(c).

See Rules 3.2; 4.10(c), (d); 8.2; 9.2; 11.5; 12.1; 14.1(a); 15.1, 15.3(b); 17.1(a), (c), 17.2(a), (b); 18.4(c), 18.5; 19.3(a), (b); 20.1(a), 20.7(ii)(iv); 22.1(a), (b), (c), 22.2(a), (d), (e), 22.4; 23.1(a), (b), (c); 24.1, 24.2(a), (b); 25.1; 26.4(c); 28.1(a); 29.1(a)(i)(ii)(iv), (b), 29.2, 29.3; 31.1(a), 31.2; 32.1(c), (d); 34.1(b)(iii); 35.1, 35.2(b); 44.1, 44.2(c), 44.3(b), (c); 46.1, 46.2, 46.3, 46.5(b), (c); 47.1(a), (b), (c), 47.2(a); 48.2(a)(vi), (f), (h), 48.3(b), (c), 48.4(a), (b), 48.5, 48.6(a), (b); 49.1(a), (b), (c); 50.1(a), (b), (c), (d); 51.2, 51.4; 54.4; 55.2(a), (d); 57.1, 57.2(a), (b), 57.3(b), (c), 57.5(a), (b); 59.1; 60.1(d), 60.2(a), (b), 60.3; 61.1(a), (c), 61.2(a), (b), 61.3; 62.1(b), 62.2(a), (b); 66.7(a); 69.1(b)(ii); 71.1, 71.2(b), (c); 72.1(b), 72.2, 72.3; 73.1; 75.1(b), 75.2(a), (b), 75.3, 75.4(a), (b); 76.1(a), (b), (c); 77.1(a), (b), (c), (d); 79.1; 80.7(c); 81.3(b); 83.1, 83.2(a), (b); 85.1; 86.1(ii)(iv); 87.1, 87.2(a); 89.1(b); 90.2(d), 90.3(b); 91.1(e)(iv), (g)(i), (h); 92.2(d), (e); 93.2(a), (b); 94.1; 95.1(a), (b).

ITEM (xx) (“Director General”):

See Articles 51(2)(b); 53(2)(a)(iv), (10), (11)(a)(b)(c); 54(6)(a)(ii)(iii)(iv)(v), (7)(a)(b); 55(3), (6), (7)(c); 56(2)(d), (5), (6)(a); 57(7)(c); 58(4); 61(1)(a)(b), (3)(a); 62(2); 64(4)(c), (6)(a)(b); 66(1), (2); 67(1)(b); 68(1), (2), (3), (4); 69.

See Rules 81.1(a), (b), 81.2(a), 81.3(a); 89.2(a), (b), (c).

GENERAL OBSERVATION: Whenever the terms defined in this Article occur in other Articles of the Treaty, reference is made in the notes to these term definitions except that the terms defined in Article 2(vii) and (xvi) to (xx), since they are generally self-explanatory, are referred to only once, namely when they first occur in the Treaty.

NOTES ON CHAPTER I

This Chapter, entitled “International Application and International Search,” contains 28 Articles (Articles 3 to 30).

The Articles are arranged in a sequence which generally follows the chronology of events in the procedure: Articles 3 to 21 deal with what could be called “the international phase,” whereas Articles 22 to 29 deal with what could be called “the national phase.” Article 30 relates to both phases.

The international phase consists of two main features, the international application (Articles 3 to 14) and the international search (Articles 15 to 18), and one necessarily subsequent event (amendment of the claims before the International Bureau, Article 19) and two usually subsequent events (the communication to the designated Offices, Article 20, and the international publication, Article 21).

The national phase concerns what happens in the designated State in connection with the international application, except that the main effect of the international application – namely, that it has the effect of a national application in each designated State – is already mentioned in Article 11 (more precisely in Article 11(3)) in connection with the filing date in order to underline the fact that the said effect occurs simultaneously with the according of the international filing date.

NOTES ON ARTICLE 3

PARAGRAPH (1): “Application” and “international application” are defined in Article 2(i) and (vii), respectively.

PARAGRAPH (2): As to “request,” “description,” “claims,” “drawings” and “abstract,” see Articles 4, 5, 6, 7 and 3(3), respectively. As to “abstract,” see also Rule 8 (The Abstract).

As to the consequences of an incomplete request and the absence of a description and claims, see Articles 11(2)(a) and 14(1)(b). As to drawings referred to but in fact not included, see Article 14(2). As to missing abstracts, see Article 14(1)(a)(iv) and Rules 38 (Missing [or Defective] Abstract) and 44.2 (Title or Abstract). In respect of all elements of the international application, see also Rules 9 (Expressions, Etc., Not To Be Used) and 10 (Terminology and Signs).

(3) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.

(4) The international application shall:

- (i) be in a prescribed language;
- (ii) comply with the prescribed physical requirements;
- (iii) comply with the prescribed requirement of unity of invention;
- (iv) be subject to the payment of the prescribed fees.

Article 4 The Request

(1) The request shall contain:

- (i) a petition to the effect that the international application be processed according to this Treaty;
- (ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application (“designated States”); if for any designated State a regional patent is available and the applicant wishes to obtain a regional patent rather than a national patent, the request shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty; if, under the national law of the designated State, the designation of that State has the effect of an application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent;

PARAGRAPH (3): –

PARAGRAPH (4) (in general): “Prescribed” means as provided in the Regulations (see Article 58(1)(i)).

PARAGRAPH (4)(i): See Rule 12 (Language of the International Application).

PARAGRAPH (4)(ii): See Rule 11 (Physical Requirements of the International Application).

PARAGRAPH (4)(iii): See Rule 13 (Unity of Invention).

PARAGRAPH (4)(iv): See Rules 14 (The Transmittal Fee), 15 (The International Fee), 16 (The Search Fee). The international fee consists of two parts: the “basic fee” and the “designation fee” (see Rule 15.1). For the consequences of non-payment, see Article 14(3).

NOTES ON ARTICLE 4

PARAGRAPH (1) (in general): As to the form of the request see Rule 3; as to its contents, see Rule 4.

The request must be signed (Rule 4.1(d)) by the applicant (Rule 4.15) but, since an agent may act in lieu of the applicant, the signature may be that of the agent (see Rules 2.1 and 90.2), provided the latter is properly appointed (Rule 90.3).

Once the processing in the designated Office starts, that Office may require that the international application be confirmed by the signature of the applicant if, as filed, it was signed by an agent (Article 27(2)(ii)).

As to the definition of “signature,” see Rule 2.3.

PARAGRAPH (1)(i): See Rule 4.2 (Petition). Cf. with Article 11(1)(iii)(a).

PARAGRAPH (1)(ii): The effect of this provision is that all designations must be made in the international application when filed. Contracting States must be designated by their names (Rule 4.9).

If a regional patent is desired, not only this wish but also the names of the designated States for which the regional patent is sought must be indicated (Rule 4.1(b)(iv)). For certain designated or elected States, only the regional patent (and not the national patent) may be available (Article 45(2)).

As to the absence of any designation, see Article 11(1)(iii)(b) and (2).

“National patent,” “regional patent,” and “national law,” are defined in Article 2(iii), (iv), and (x), respectively.

(iii) the name of and other prescribed data concerning the applicant and the agent (if any);

(iv) the title of the invention;

(v) the name of and other prescribed data concerning the inventor where the national law of at least one of the designated States requires that these indications be furnished at the time of filing a national application. Otherwise, the said indications may be furnished either in the request or in separate notices addressed to each designated Office whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application.

(2) Every designation shall be subject to the payment of the prescribed fee within the prescribed time limit.

(3) Unless the applicant asks for any of the other kinds of protection referred to in Article 43, designation shall mean that the desired protection consists of the grant of a patent by or for the designated State. For the purposes of this paragraph, Article 2(ii) shall not apply.

(4) Failure to indicate in the request the name and other prescribed data concerning the inventor shall have no consequence in any designated State whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application. Failure to furnish the said indications in a separate notice shall have no consequence in any designated State whose national law does not require the furnishing of the said indications.

PARAGRAPH (1)(iii): For the applicant, the “other prescribed data” are his address, nationality and residence (Rule 4.5); for the agent, his address (Rule 4.7). As to the manner of indicating names and addresses, see Rules 4.4 and 4.16.

As to the absence of the name of the applicant, see Article 11(1)(iii)(c) and (2).

As to who may be an applicant, see Articles 9 and 27(3), and Rule 18 (The Applicant). See also Rule 19.2 (Several Applicants).

As to who has the right to practice before International Authorities, see Article 49, and as to the meaning of the word “agent,” see Rule 2.2.

The name of the applicant is one of the elements which can be published by designated Offices (Article 30(2)(b)).

PARAGRAPH (1)(iv): As to the characteristics of the title, see Rule 4.3.

As to the lack of a title, see Article 14(1)(a)(iii) and (b) and Rule 37, the latter dealing also with defective titles.

The title must be repeated at the beginning of the description (Rule 5.1(a)).

As to the international search report and the title, see Rule 44.2(a).

The title is one of the elements which can be published by designated Offices (Article 30(2)(b)).

PARAGRAPH (1)(v): The “other prescribed data” concerning the inventor consist of his address (Rule 4.6). As to the manner of indicating names and addresses, see Rules 4.4 and 4.16.

As to the consequences of failure to indicate the name of the inventor, see paragraph (4). See also Article 22(1), second sentence.

“National application,” “national law,” and “designated Office,” are defined in Article 2(vi), (x), and (xiii), respectively.

PARAGRAPH (2): The fee is the designation fee part of the international fee (Rule 15.1(ii)). The time limit is one year from the priority date (Rule 15.4(b)).

As to the amount, mode of payment, allocation in the case of partial payment, and refund, see Rules 15.2(b), 15.3, 15.5, and 15.6, respectively.

As to the consequences of failure to pay or paying only part of the fee, see Article 14(3).

PARAGRAPH (3): The “other kinds of protection referred to in Article 43” are inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition.

“Patent” is defined in Article 2(ix).

PARAGRAPH (4): See the notes under paragraph (1)(v).

Article 5 The Description

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Article 6 The Claims

The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

Article 7 The Drawings

(1) Subject to the provisions of paragraph (2)(ii), drawings shall be required when they are necessary for the understanding of the invention.

(2) Where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings:

(i) the applicant may include such drawings in the international application when filed,

(ii) any designated Office may require that the applicant file such drawings with it within the prescribed time limit.

NOTES ON ARTICLE 5

SOLE PARAGRAPH: See Rules 5 (The Description), 9 (Expressions, Etc., Not To Be Used), 10 (Terminology and Signs), 11 (Physical Requirements of the International Application).

NOTES ON ARTICLE 6

FIRST AND SECOND SENTENCES: See Rules 6 (The Claims), 9 (Expressions, Etc., Not To Be Used), 10 (Terminology and Signs), 11 (Physical Requirements of the International Application).

The applicant is entitled to one opportunity to amend the claims before the International Bureau (Article 19). The description and the drawings as well as the claims may be amended before the designated Offices (Article 28) and, where the applicant demands international preliminary examination, before the International Preliminary Examining Authority (Article 34(2)(b)), and before the elected Offices (Article 41).

THIRD SENTENCE: Where the description refers to drawings and where the nature of the invention is such that the only practical way to express clearly certain features of the disclosure is through a combination of the description and the drawings, it will be necessary to consider the description in conjunction with the drawings in determining whether the claims are fully supported by the description. They are in such case still fully supported by the description since the drawings necessary to express certain features of the disclosure which cannot as a practical matter be described in words are, in fact, incorporated by reference in the description.

NOTES ON ARTICLE 7

PARAGRAPH (1): As to the physical requirements of drawings, see Rule 11, particularly Rule 11.13 (Special Requirements for Drawings). See also Rules 7 (The Drawings), 9 (Expressions, Etc., Not To Be Used), and 10 (Terminology and Signs).

Inventions in the chemical field are among inventions which may generally be understood without drawings.

PARAGRAPH (2): Inventions in the chemical field frequently do not admit of illustration by drawings. However, flow sheets and diagrams are considered drawings (Rule 7.1).

As to the time limit, see Rule 7.2.

“Designated Office” is defined in Article 2(xiii).

Article 8 Claiming Priority

(1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property.

(2)(a) Subject to the provisions of subparagraph (b), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property.

NOTES ON ARTICLE 8

PARAGRAPH (1): Consequently, the priority claim may be based on earlier national and international applications (as to the effect of the priority claim in the country in which – by filing of, or designation in, the earlier application – the priority has been established, see paragraph (2)(b)). “Earlier” should be construed according to Article 4 of the Paris Convention, particularly Sections C(2) and C(4). As to the declaration, see Rule 4.10 (Priority Claim). See also Rule 17 (The Priority Document).

“Application” is defined in Article 2(i) and (viii).

PARAGRAPH (2)(a): Article 4 of the Stockholm Act reads as follows:

“A. (1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

B. Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union.

C. (1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union, shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

D. (1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E. (1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

F. No country of the Union may refuse a priority or a patent application on the ground that the applicant claims

(b) The international application for which the priority of one or more earlier applications filed in or for a Contracting State is claimed may contain the designation of that State. Where, in the international application, the priority of one or more national applications filed in or for a designated State is claimed, or where the priority of an international application having designated only one State is claimed, the conditions for, and the effect of, the priority claim in that State shall be governed by the national law of that State.

Article 9 The Applicant

(1) Any resident or national of a Contracting State may file an international application.

(2) The Assembly may decide to allow the residents and the nationals of any country party to the Paris Convention for the Protection of Industrial Property which is not party to this Treaty to file international applications.

(3) The concepts of residence and nationality, and the application of those concepts in cases where there are several applicants or where the applicants are not the same for all the designated States, are defined in the Regulations.

multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

G. (1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

H. Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

I. (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's

certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate."

PARAGRAPH (2)(b): "Application" is defined in Article 2(i) and (viii) whereas "national application" and "national law" are defined in Article 2(vi) and (x), respectively.

NOTES ON ARTICLE 9

PARAGRAPH (1): As to "resident" and "national," see the notes concerning paragraph (3).

As to the question of which receiving Office is competent according to the residence or nationality of the applicant or applicants, see Rule 19.

PARAGRAPH (2): A majority of two-thirds is required for the decision of the Assembly (Article 53(6)).

As to the question which Office is competent to act as a receiving Office, see Rule 19.1(c) and 19.2.

"Assembly" is defined in Article 2(xvii).

PARAGRAPH (3): See Rules 18.1 (Residence), 18.2 (Nationality), 18.3 (Several Applicants: Same for All Designated States), 18.4 (Several Applicants: Different for Different Designated States), and 18.5 (Change in the Person or Name of the Applicant). See also Rule 4.8 (Representation of Several Applicants Not Having a Common Agent).

Article 10 The Receiving Office

The international application shall be filed with the prescribed receiving Office, which will check and process it as provided in this Treaty and the Regulations.

Article 11 Filing Date and Effects of the International Application

(1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:

(i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office,

(ii) the international application is in the prescribed language,

(iii) the international application contains at least the following elements:

(a) an indication that it is intended as an international application,

(b) the designation of at least one Contracting State,

NOTES ON ARTICLE 10

SOLE PARAGRAPH: As to the question which is the “prescribed” receiving Office, see Rules 19.1 and 19.2. The duties of the receiving Office may be delegated (see Rules 19.1(b) and 19.3).

Checking is for possible failure to meet requirements under Articles 11(1) or for possible defects under Article 14(1)(a), (2) and (3). See Rules 26.1, 26.3 and 27. The receiving Office may note lack of compliance with Rule 9.1 (see Rule 9.2).

Processing includes:

giving a date and a number to the papers received (Rules 20.1 to 20.3);

communication with the applicant if requirements are not met or are unfulfilled or if defects have been discovered (Articles 11(2)(a) and 14(1)(b), (2), and Rule 26), including the fixing of the time limit for corrections (Rule 26.2);

determination whether corrections have been offered and whether they are acceptable and drawing the conclusions (see Rules 20.4 to 20.8, 26.5, 26.6 and 91.1), that is:

- according or denying an international filing date (Article 11(1) or (2)(b); Rules 20.4, 20.5, 20.7);
- declaring, where appropriate, the international application to be considered withdrawn (Article 14(1)(b), (3) and (4));
- changing the accorded international filing date in the case of Article 14(2)(see Rule 20.2(a)(iii));
- ignoring references to drawings in the case of Article 14(2) (see Rule 26.6);
- preparing copies of the international application (Rule 21);
- keeping the home copy (Article 12(1) and Rule 93.1);

- forwarding the record copy (Article 12(1) and Rule 22) and the search copy (Article 12(1) and Rule 23);
 - giving certified copies of the international application to the applicant on request (Rule 20.9).
- “Receiving Office” is defined in Article 2(xv).

NOTES ON ARTICLE 11

PARAGRAPH (1) (in general): See Rule 20 (Receipt of the International Application), which provides, *inter alia*, that the applicant will be promptly notified whether or not an international filing date was accorded to his application (Rule 20.5(c)). Even where no such filing date is accorded the possibility for review by the designated Offices under Article 25 exists. The international fee and the search fee shall be refunded to the applicant if the determination under this paragraph is negative (see Rules 15.6 and 16.2).

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (1)(i): As to nationality and residence, see Article 9 and Rule 18. As to the receiving Office, see Article 10 and Rule 19.

PARAGRAPH (1)(ii): See Article 3(4)(i) and Rule 12 (Language of the International Application).

PARAGRAPH (1)(iii): The designation of at least one Contracting State is indispensable (see (b)) but otherwise the international filing date will be accorded even if the other elements enumerated in this provision do not comply with the requirements of form and contents provided for in the Treaty and the Regulations. Thus:

as to (a), it will not matter, in particular, if the petition is not worded as in Rule 4.2, as long as the intent to ask for processing according to the Patent Cooperation Treaty is clear;

- (c) the name of the applicant, as prescribed,
- (d) a part which on the face of it appears to be a description,
- (e) a part which on the face of it appears to be a claim or claims.

(2)(a) If the receiving Office finds that the international application did not, at the time of receipt, fulfill the requirements listed in paragraph (1), it shall, as provided in the Regulations, invite the applicant to file the required correction.

(b) If the applicant complies with the invitation, as provided in the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction.

(3) Subject to Article 64(4), any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) and accorded an international filing date shall have the effect of a regular national application in each designated State as of the international filing date, which date shall be considered to be the actual filing date in each designated State.

as to (c), it will not matter, in particular, if the name of the applicant is not indicated as prescribed in Rule 4.4, as long as his identity may be established (Rule 20.4(b));

as to (d) and (e) it will not matter, in particular, if the description does not comply with Article 5 (clarity, and completeness of the description) and Rule 5 (manner of description), or if the claims do not comply with Article 6 (clarity, conciseness, etc., of claims) and Rule 6 (manner of claiming), or if neither the description nor the claims comply with the prescribed physical requirements (Rule 11) or with the requirements of unity of invention (Rule 13). All the receiving Office is allowed to do is to check whether the application contains passages which, on their face, appear to be a description and a claim or claims.

PARAGRAPH (2)(a) and (b): See Rule 20.6 (Invitation to Correct). As to the time available for correction, see Rule 20.6(b). In this connection, see also Rules 20.2 (Receipt on Different Days) and 20.3 (Corrected International Application).

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (3): The said effect is acquired if the international filing date has been accorded under paragraph (1). Whereas the international filing date cannot be taken back, the effect described in paragraph (3) – that is, that the international application has the effect of a national application in each designated State – depends on whether the provisions of the Treaty and the Regulations have been complied with. If it is later discovered by the national Office or the courts of the designated State that the said provisions have not been complied with, there will be no such effect in that State (see, however, the safeguards contained in Article 26).

The effect described in paragraph (3) will or may cease – that is, be lost *ex nunc* – in the following situations:

it will cease in all designated States if the international application is withdrawn by the applicant, and it will cease in any particular designated State whose designation is withdrawn by the applicant (see Article 24(1)(i));

it will cease in any designated State if the international application or the designation must be “considered withdrawn” (see three paragraphs further on) unless a review

to which the applicant has a right – in that State maintains such effect (see Article 25);

it will cease in any designated State if the applicant fails to furnish the required copy of the international application and its translation or to pay the required national fee to the designated Office or, in certain cases, the name and other prescribed data of the inventor, within the prescribed time limit (generally 20 months from the priority date) (see Article 24(1)(iii)).

Any designated State may, even in the above cases, maintain the effect under Article 11(3) (see Article 24(2)).

An international application will be “considered withdrawn” if the *International Bureau* finds that the record copy was received after the expiration of 13 or 14 months from the priority date (see Article 12(3) and Rule 22) or if the *receiving Office* – after having accorded an international filing date – finds certain defects, that is to say: finds, within 6 months, defects which should have prevented the according of the international filing date (see Article 14(4) and Rule 30.1); finds that the prescribed fees were not paid in time (see Article 14(3)(a)); or finds that, notwithstanding an invitation to correct them, the following defects were not corrected (Article 14(1)(b)): lack of signature, defects in the indications concerning the applicant, lack of title of the invention, lack of abstract, lack of compliance with the requirements of physical presentation preventing reasonably uniform international publication (Article 14(1)(a) and Rule 26.3). A designation will be “considered withdrawn” in the case of Article 14(3)(b).

The absence of an international search report will not cause the loss of the effect provided for in paragraph (3). However, the national law of any designated State may provide that, if part of the international application was not searched because of the applicant’s attitude (he failed to pay additional search fees), that part may be considered withdrawn unless a special fee is paid by the applicant to the designated Office (Article 17(3)).

Article 64(4) provides for the possibility, under certain conditions, of considering a date other than the international filing date for prior art purposes.

“National application” is defined in Article 2(vi).

(4) Any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) shall be equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of Industrial Property.

Article 12
Transmittal of the International Application to the
International Bureau and the International Searching
Authority

(1) One copy of the international application shall be kept by the receiving Office (“home copy”), one copy (“record copy”) shall be transmitted to the International Bureau, and another copy (“search copy”) shall be transmitted to the competent International Searching Authority referred to in Article 16, as provided in the Regulations.

(2) The record copy shall be considered the true copy of the international application.

(3) The international application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit.

Article 13
Availability of Copy of the International Application to
Designated Offices

(1) Any designated Office may ask the International Bureau to transmit to it a copy of the international application prior to the communication provided for in Article 20, and the International Bureau shall transmit such copy to the designated Office as soon as possible after the expiration of one year from the priority date.

PARAGRAPH (4): The applicable provision of the Stockholm Act of the Paris Convention is Article 4A(2), which provides that “Any filing that is equivalent to a regular national filing under... multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.” The Patent Cooperation Treaty is a multilateral treaty covered by the quoted provision.

Thus, the significance of paragraph (4) is that an international application may be the basis of a priority claim in: (i) any Paris Union country not party to the Patent Cooperation Treaty, and (ii) any country party to that Treaty which the applicant did not designate.

NOTES ON ARTICLE 12

PARAGRAPH (1): Depending on the prescriptions of the receiving Office, the international application must be filed in one, two or three copies (Rule 11.1). If filing of one or two copies is required, the other two copies or one copy will be prepared by the receiving Office (Rule 21).

As to the transmittal of the record copy, see Rule 22: transmittal may be direct (from the receiving Office to the International Bureau) or, where the receiving Office so provides, indirect (from the receiving Office to the applicant and from the applicant to the International Bureau). See also Rule 24 (Receipt of the Record Copy by the International Bureau).

As to the transmittal of the search copy, see Rule 23. See also Rule 25 (Receipt of the Search Copy by the International Searching Authority).

As to the question of which International Searching Authority is competent, see Article 16(2) and Rule 35.

“Receiving Office” and “International Bureau” are defined in Article 2(xv) and (xix), respectively.

PARAGRAPH (2): –

PARAGRAPH (3): The time limit is prescribed in Rule 22.3. See also Rule 24 (Receipt of the Record Copy by the International Bureau).

NOTES ON ARTICLE 13

PARAGRAPH (1): Since the international application has the effect of a national application in the designated State (see Article 11(3)), it seems to be justified that a copy thereof be made available to the designated Office as soon as possible. Although the designated Office will be obliged to delay the processing of the application in question (see Article 23), it may need a copy for processing *other* applications.

It is to be noted that this Article gives the right to receive a copy, and *not* to receive a translation, of the international application.

It is to be noted further that the designation fee part of the international fee is higher for designated States which ask for copies under Article 13 than for designated States which do not ask for such copies (see Rule 15.2(b)(i) and (ii)).

As to procedure, see Rules 31.1(a) and 31.2.

“Priority date” and “designated Office” are defined in Article 2(xi) and (xiii).

(2)(a) The applicant may, at any time, transmit a copy of his international application to any designated Office.

(b) The applicant may, at any time, ask the International Bureau to transmit a copy of his international application to any designated Office, and the International Bureau shall transmit such copy to the designated Office as soon as possible.

(c) Any national Office may notify the International Bureau that it does not wish to receive copies as provided for in subparagraph (b), in which case that subparagraph shall not be applicable in respect of that Office.

Article 14

Certain Defects in the International Application

(1)(a) The receiving Office shall check whether the international application contains any of the following defects, that is to say:

- (i) it is not signed as provided in the Regulations;
- (ii) it does not contain the prescribed indications concerning the applicant;
- (iii) it does not contain a title;
- (iv) it does not contain an abstract;
- (v) it does not comply to the extent provided in the Regulations with the prescribed physical requirements.

(b) If the receiving Office finds any of the said defects, it shall invite the applicant to correct the international application within the prescribed time limit, failing which that application shall be considered withdrawn and the receiving Office shall so declare.

PARAGRAPH (2)(a): "Designated Office" is defined in Article 2(xiii).

PARAGRAPH (2)(b): See Rules 31.1(b) and 31.2.

"Designated Office" is defined in Article 2(xiii).

PARAGRAPH (2)(c): Any national Office has also the right to receive copies of all publications of the International Bureau relating to the Treaty, see Rule 87.2.

"National Office" is defined in Article 2(xii).

NOTES ON ARTICLE 14

ARTICLE 14 (in general): The receiving Office does not check whether the international application complies with the requirements of the Treaty and the Regulations except with regard to the requirements under Article 11(1) and to the possible defects referred to in paragraphs (1) to (3) of the Article under consideration.

Only the defects enumerated in paragraph (1) call for an invitation to correct. Even if they are not corrected, the international filing date is not lost.

The lack of a stated drawing does not give rise to an invitation to file it (although the applicant's attention is called to the absence of the drawing; see paragraph (2)), and the lack of payment of the international fee payable on filing and the search fee does not require that the receiving Office invite the applicant to pay (see paragraph (3)), although it may allow him to pay the basic fee part of the international fee and the search fee later but not later than one month (see Rules 15.4(a) and 16.1(b)), and the designation fee part of the international fee later but not later than one year from the priority date (Rule 15.4(b)).

"Receiving Office" is defined in Article 2(xv).

PARAGRAPH (1)(a)(i): See the notes concerning Article 4(1) (in general).

PARAGRAPH (1)(a)(ii): See the notes concerning Article 4(1)(iii).

PARAGRAPH (1)(a)(iii): See the notes concerning Article 4(1)(iv).

PARAGRAPH (1)(a)(iv): See the notes concerning Article 3(2).

PARAGRAPH (1)(a)(v): See Rule 11 (Physical Requirements of the International Application).

PARAGRAPH (1)(b): See Rule 26 (Checking and Correcting Certain Elements of the International Application). Certain defects may be noted by the International Searching Authority or the International Bureau, but all they can do is to call them to the attention of the receiving Office, which is sovereign in deciding whether to ask for correction and whether to accept the correction offered (see Rule 28). As to the procedure where the correction is not made or not accepted, see Rule 29.1.

Even where the receiving Office declares that the international application is considered withdrawn, review by the designated Offices may be asked for by the applicant (Article 25).

(2) If the international application refers to drawings which, in fact, are not included in that application, the receiving Office shall notify the applicant accordingly and he may furnish them within the prescribed time limit and, if he does., the international filing date shall be the date on which the drawings are received by the receiving Office. Otherwise, any reference to the said drawings shall be considered non-existent.

(3)(a) If the receiving Office finds that, within the prescribed time limits, the fees prescribed under Article 3 (4)(iv) have not been paid, or no fee prescribed under Article 4(2) has been paid in respect of any of the designated States, the international application shall be considered withdrawn and the receiving Office shall so declare.

(b) If the receiving Office finds that the fee prescribed under Article 4(2) has been paid in respect of one or more (but less than all) designated States within the prescribed time limit, the designation of those States in respect of which it has not been paid within the prescribed time limit shall be considered withdrawn and the receiving Office shall so declare.

(4) If, after having accorded an international filing date to the international application, the receiving Office finds, within the prescribed time limit, that any of the requirements listed in items (i) to (iii) of Article 11(1) was not complied with at that date, the said application shall be considered withdrawn and the receiving Office shall so declare.

PARAGRAPH (2): The prescribed time limit is 30 days from the date on which the incomplete papers were filed (Rules 20.2(a)(iii) and 26.6(b)). As to an indication in the application of drawings referred to but not included, see Rule 26.6(a).

PARAGRAPH (3)(a): As to the meaning of “fees prescribed under Article 3(4)(iv),” see Rule 27.1(a), and of “the fee prescribed under Article 4(2)(iv),” see Rule 27.1(b). The former means the transmittal fee (Rule 14), the basic fee part of the international fee (Rule 15.1(i)), and the search fee (Rule 16), whereas the latter means the designation fee part of the international fee (Rule 15.1(ii)). As to the procedure where the international application is considered withdrawn, see Rule 29.1(a).

Even where the receiving Office declares that the international application is considered withdrawn, review by the designated Offices may be asked for by the applicant (Article 25).

PARAGRAPH (3)(b): The “fee prescribed under Article 4(2)” means the designation fee part of the international fee (Rule 15.1(ii)). As to the procedure where the designation of any given State is considered withdrawn, see Rule 29.1(b).

Even where the receiving Office declares that the international application is considered withdrawn, review by the designated Offices may be asked for by the applicant (Article 25).

PARAGRAPH (3)(a) and (b): As to the meaning of “fees” see Rule 27. As to the due date of the transmittal fee, see Rule 14.1(b), of the basic fee part of the international fee, see Rule 15.4(a), of the designation fee part of the international fee, see Rule 15.4(b), of the search fee, see Rule 16.1(b).

PARAGRAPH (4): As to the procedure where the international application is considered withdrawn, see Rule 29.1(a). The International Bureau or the International Searching Authority may call relevant facts to the attention of the receiving Office (see Rule 29.3). The receiving Office must notify the applicant of its intent to issue declaration (Rule 29.4). The prescribed time limit is 6 months from the international filing date (Rule 30).

Even where the receiving Office declares that the international application is considered withdrawn, review by the designated Office may be asked for by the applicant (Article 25).

GENERAL OBSERVATIONS: As to errors in transcription, see Rule 91.1 (Obvious Errors of Transcription; Rectification).

As to written communications, see Rules 92.1 (Correspondence: Need for Letter and for Signature), 92.2 (Correspondence: Languages), 92.3 (Correspondence: Mailings by National Offices and Intergovernmental Organizations).

Article 15
The International Search

(1) Each international application shall be the subject of international search.

(2) The objective of the international search is to discover relevant prior art.

(3) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any).

(4) The International Searching Authority referred to in Article 16 shall endeavor to discover as much of the relevant prior art as its facilities permit, and shall, in any case, consult the documentation specified in the Regulations.

(5)(a) If the national law of the Contracting State so permits, the applicant who files a national application with the national Office of or acting for such State may, subject to the conditions provided for in such law, request that a search similar to an international search ("international-type search") be carried out on such application.

(b) If the national law of the Contracting State so permits, the national Office of or acting for such State may subject any national application filed with it to an international-type search.

(c) The international-type search shall be carried out by the International Searching Authority referred to in Article 16 which would be competent for an international search if the national application were an international application and were filed with the Office referred to in subparagraphs (a) and (b). If the national application is in a language which the International Searching Authority considers it is not equipped to handle, the international-type search shall be carried out on a translation prepared by the applicant in a language prescribed for international applications and which the International Searching Authority has undertaken to accept for international applications. The national application and the translation, when required, shall be presented in the form prescribed for international applications.

NOTES ON ARTICLE 15

PARAGRAPHS (1) and (2): See Rules 33.1 (Relevant Prior Art for the International Search) and 33.2 (Fields to be Covered by the International Search).

PARAGRAPH (3): See Rule 33.3 (Orientation of the International Search).

PARAGRAPH (4): See Rule 34 (Minimum Documentation).

PARAGRAPH (5)(a): See Rules 4.11 (The Request (Contents): Reference to Earlier International or International-Type Search) and 41.1 (The International-Type Search: Obligation to Use Results; Refund of Fee).

"National application," "national law," and "national Office" are defined in Article 2(vi), (x) and (xii), respectively.

PARAGRAPH (5)(b): "National application," "national law," and "national Office," are defined in Article 2(vi), (x) and (xii), respectively.

PARAGRAPH (5)(c): As to the question which International Searching Authority is competent, see Article 16(2).

The language prescribed for international applications results from Rule 12.

As to the form prescribed for international applications, see Articles 3 to 8 and the Rules cited in the notes referring to those Articles, particularly Rules 3 to 13.

As to which International Searching Authority is competent, see Rule 35.

"National application" is defined in Article 2(vi).

Article 16

The International Searching Authority

(1) International search shall be carried out by an International Searching Authority, which may be either a national Office or an intergovernmental organization, such as the International Patent Institute, whose tasks include the establishing of documentary search reports on prior art with respect to inventions which are the subject of applications.

(2) If, pending the establishment of a single International Searching Authority, there are several International Searching Authorities, each receiving Office shall, in accordance with the provisions of the applicable agreement referred to in paragraph (3)(b), specify the International Searching Authority or Authorities competent for the searching of international applications filed with such Office.

(3)(a) International Searching Authorities shall be appointed by the Assembly. Any national Office and any intergovernmental organization satisfying the requirements referred to in subparagraph (c) may be appointed as International Searching Authority.

(b) Appointment shall be conditional on the consent of the national Office or intergovernmental organization to be appointed and the conclusion of an agreement, subject to approval by the Assembly, between such Office or organization and the International Bureau. The agreement shall specify the rights and obligations of the parties, in particular, the formal undertaking by the said Office or organization to apply and observe all the common rules of international search.

(c) The Regulations prescribe the minimum requirements, particularly as to manpower and documentation, which any Office or organization must satisfy before it can be appointed and must continue to satisfy while it remains appointed.

(d) Appointment shall be for a fixed period of time and may be extended for further periods.

NOTES ON ARTICLE 16

PARAGRAPH (1): The International Patent Institute is an intergovernmental organization, established in 1947, with its seat in The Hague (Netherlands), and having (in 1970) eight member States (Belgium, France, Luxembourg, Monaco, Netherlands, Switzerland, Turkey, United Kingdom).

“Application” is defined in Article 2(i) and (viii), whereas “national Office” is defined in Article 2(xii).

PARAGRAPH (2): As to the question which Authority is, or which Authorities are, competent, see Rules 35.1 and 5.2.

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (3)(a): See Article 53(2)(a)(ii) and (6).

“National Office” is defined in Article 2(xii).

All International Searching Authorities have the right to receive copies of all publications of the International Bureau relating to the Treaty, see Rule 87.1.

PARAGRAPH (3)(b): See Article 53(2)(a)(ii) and (6).

“National Office” is defined in Article 2(xii).

As to some conditions to be provided for in the agreement, see Rules 16.3, 41.1 and 44.3(b).

PARAGRAPH (3)(c): See Rule 36.1 (Minimum Requirements for International Searching Authorities: Definition of Minimum Requirements).

PARAGRAPH (3)(d): Extension is decided by the Assembly (see also paragraph (3)(e) of this Article).

(e) Before the Assembly makes a decision on the appointment of any national Office or intergovernmental organization, or on the extension of its appointment, or before it allows any such appointment to lapse, the Assembly shall hear the interested Office or organization and seek the advice of the Committee for Technical Cooperation referred to in Article 56 once that Committee has been established.

Article 17

Procedure Before the International Searching Authority

(1) Procedure before the International Searching Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) If the International Searching Authority considers

- (i) that the international application relates to a subject matter which the International Searching Authority is not required, under the Regulations, to search, and in the particular case decides not to search, or
- (ii) that the description, the claims, or the drawings, fail to comply with the prescribed requirements to such an extent that a meaningful search could not be carried out,

the said Authority shall so declare and shall notify the applicant and the International Bureau that no international search report will be established.

(b) If any of the situations referred to in subparagraph (a) is found to exist in connection with certain claims only, the international search report shall so indicate in respect of such claims, whereas, for the other claims, the said report shall be established as provided in Article 18.

PARAGRAPH (3)(e): "National Office" is defined in Article 2(xii).

NOTES ON ARTICLE 17

PARAGRAPH (1): See, in particular, paragraphs (2) and (3), and Article 18 (The International Search Report) and Rules 25 (Receipt of the Search Copy by the International Searching Authority), 37 (Missing or Defective Title); 38 (Missing [or Defective] Abstract), 42 (Time Limit for International Search), 43 (The International Search Report), 44 (Transmittal of the International Search Report, Etc.), 45 (Translation of the International Search Report), and 91 (Obvious Errors of Transcription).

PARAGRAPH (2)(a)(i): As to the subject matter in question, see Rule 39.

PARAGRAPH (2)(a)(ii): As to the requirements for the description, claims, and drawings, see Articles 5, 6, 7, and the Rules cited thereunder.

PARAGRAPH (2)(a), final phrase: The declaration does not affect either the international filing date or the effect under

Article 11(3). The international application will be communicated to the designated Offices (Article 20(1)(a)) and will be published (Article 21) albeit with the declaration rather than an international search report (Rules 48.2(a)(v), 48.2(c), and 48.3(c)). The acts referred to in Article 22(1) will have to be performed within 2 months from the notification of the declaration to the applicant (Article 22(2)), unless a later time limit is fixed in the national law (Article 22(3)). Some other procedural matters relating to the declaration are found in Rules 62.1(b) and 69.1(b)(iv).

PARAGRAPH (2)(b): In other words, in the case of partial search, there will be an international search report and no "declaration" under paragraph (2)(a), and none of the consequences of such a declaration will apply.

(3)(a) If the International Searching Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it shall invite the applicant to pay additional fees. The International Searching Authority shall establish the international search report on those parts of the international application which relate to the invention first mentioned in the claims (“main invention”) and, provided the required additional fees have been paid within the prescribed time limit, on those parts of the international application which relate to inventions in respect of which the said fees were paid.

(b) The national law of any designated State may provide that, where the national Office of that State finds the invitation, referred to in subparagraph (a), of the International Searching Authority justified and where the applicant has not paid all additional fees, those parts of the international application which consequently have not been searched shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

Article 18 **The International Search Report**

(1) The international search report shall be established within the prescribed time limit and in the prescribed form.

(2) The international search report shall, as soon as it has been established, be transmitted by the International Searching Authority to the applicant and the International Bureau.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be translated as provided in the Regulations. The translations shall be prepared by or under the responsibility of the International Bureau.

PARAGRAPH (3)(a): The concept of unity of invention is defined in Rule 13, and the procedure before the International Searching Authority in case of lack of unity of invention is governed by Rule 40. See Rule 40.3, for the prescribed time limit for payment of the additional fees. The additional fees may be paid under protest (see Rule 40.2(c)). There is no possibility of dividing the international application in the international phase.

It goes without saying that any designated Office or the courts of any designated State may disagree with the interpretation that the International Searching Authority gives to Rule 13 in any given case. Consequently, for example:

(i) The International Searching Authority has asked for additional fees: the designated Office or the courts of the designated State may still consider that there is unity of invention, even if the applicant has complied with the invitation of the Authority.

(ii) The said Authority has asked for X number of additional fees: the designated Office may still ask for a division of the application into Y number of parts, even if the applicant has complied with the invitation of the Authority.

(iii) The said Authority has not asked for additional fees: the designated Office or the courts of the designated

State may still find that there is no unity of invention, with the consequences which its national law provides for such cases.

PARAGRAPH (3)(b): The consequences provided for in this paragraph are the only consequences of not complying with the invitation issued under paragraph (3)(a).

“National law” and “national Office” are defined in Article 2(x) and (xii), respectively.

NOTES ON ARTICLE 18

PARAGRAPH (1): See Rules 42 (Time Limit for International Search) and 43 (The International Search Report).

PARAGRAPH (2): See Rule 44 (Transmittal of the International Search Report, Etc.). See Article 20(3), as to the transmittal of copies of cited documents to the designated Offices and to the applicant.

PARAGRAPH (3): As to the language of the translation, see Rule 45.1.

Article 19
Amendment of the Claims Before the International Bureau

(1) The applicant shall, after having received the international search report, be entitled to one opportunity to amend the claims of the international application by filing amendments with the International Bureau within the prescribed time limit. He may, at the same time, file a brief statement, as provided in the Regulations, explaining the amendments and indicating any impact that such amendments might have on the description and the drawings.

(2) The amendments shall not go beyond the disclosure in the international application as filed.

(3) If the national law of any designated State permits amendments to go beyond the said disclosure, failure to comply with paragraph (2) shall have no consequence in that State.

Article 20
Communication to Designated Offices

(1)(a) The international application, together with the international search report (including any indication referred to in Article 17(2)(b)) or the declaration referred to in Article 17(2)(a), shall be communicated to each designated Office, as provided in the Regulations, unless the designated Office waives such requirement in its entirety or in part.

(b) The communication shall include the translation (as prescribed) of the said report or declaration.

(2) If the claims have been amended by virtue of Article 19(1), the communication shall either contain the full text of the claims both as filed and as amended or shall contain the full text of the claims as filed and specify the amendments, and shall include the statement, if any, referred to in Article 19(1).

NOTES ON ARTICLE 19

PARAGRAPH (1): See Rule 46 (Amendment of Claims Before the International Bureau). The time limit is prescribed in Rule 46.1. The statement is governed by Rule 46.4.

Publication of the amendments of the claims or a statement are governed by Rules 48.2(f) and 48.2(h). The statement is considered to be a part of the international application, see Rules 49.3 and 76.3. Some other procedural matters relating to amendment of the claims are to be found in Rules 62.2(a), 62.2(b), 69.1(b)(i), 69.1(b)(ii) and 69.1(c).

PARAGRAPHS (2) and (3): The International Bureau is not empowered to check whether the amendments stay within the limits prescribed in paragraph (2). Only the designated Office or the competent courts may pass judgment on whether the amendments go beyond the disclosure as filed and whether this is permissible under its national law.

“National law” is defined in Article 2(x).

NOTES ON ARTICLE 20

PARAGRAPH (1)(a): See Rule 47 (Communication to Designated Offices).

“Designated Office” is defined in Article 2(xiii).

PARAGRAPH (1)(b): See Rule 45 (Translation of the International Search Report).

PARAGRAPH (2): Article 19(1) deals with the amendment of the claims before the International Bureau.

(3) At the request of the designated Office or the applicant, the International Searching Authority shall send to the said Office or the applicant, respectively, copies of the documents cited in the international search report, as provided in the Regulations.

Article 21

International Publication

(1) The International Bureau shall publish international applications.

(2)(a) Subject to the exceptions provided for in subparagraph (b) and in Article 64(3), the international publication of the international application shall be effected promptly after the expiration of 18 months from the priority date of that application.

(b) The applicant may ask the International Bureau to publish his international application any time before the expiration of the time limit referred to in subparagraph (a). The International Bureau shall proceed accordingly, as provided in the Regulations.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be published as prescribed in the Regulations.

(4) The language and form of the international publication and other details are governed by the Regulations.

(5) There shall be no international publication if the international application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.

(6) If the international application contains expressions or drawings which, in the opinion of the International Bureau, are contrary to morality or public order, or if, in its opinion, the international application contains disparaging statements as defined in the Regulations, it may omit such expressions, drawings, and statements, from its publications, indicating the place and number of words or drawings omitted, and furnishing, upon request, individual copies of the passages omitted.

PARAGRAPH (3): See Rule 44.3 (Copies of Cited Documents).

“Designated Office” is defined in Article 2(xiii).

NOTES ON ARTICLE 21

PARAGRAPH (1): The details are governed by paragraphs (1) to (4). Exceptions may follow from paragraph (5) or Article 64(3). Certain expressions or drawings may be omitted from the publication (see paragraph (6)).

PARAGRAPH (2)(a): Paragraph (2)(b) provides for earlier international publication on the applicant’s request. Article 64(3) deals with the situation in which only such States have been designated as have declared that international publication is not required.

“Priority date” is defined in Article 2(xi).

PARAGRAPH (2)(b): As to earlier publication on the applicant’s request, see Rule 48.2(g) and 48.4.

PARAGRAPH (3): See Rules 48.2(a)(v) and (g).

PARAGRAPH (4): See Rule 48 (International Publication), particularly Rule 48.1 (Form), 48.2 (Contents), and 48.3 (Language).

PARAGRAPH (5): As to the withdrawal of the international application, see Rule 32. As to the cases in which an international application is considered withdrawn, see Articles 12(3), 14(1)(b), 14(3)(a) and 14(4).

As to the procedure in cases where the withdrawal arrives too late to prevent publication, see Rule 48.6(a) and (c).

PARAGRAPH (6): See Rule 9 (Expressions, Etc. Not To Be Used).

Article 22
Copy, Translation, and Fee, to Designated Offices

(1) The applicant shall furnish a copy of the international application (unless the communication provided for in Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each designated Office not later than at the expiration of 20 months from the priority date. Where the national law of the designated State requires the indication of the name of and other prescribed data concerning the inventor but allows that these indications be furnished at a time later than that of the filing of a national application, the applicant shall, unless they were contained in the request, furnish the said indications to the national Office of or acting for that State not later than at the expiration of 20 months from the priority date.

(2) Notwithstanding the provisions of paragraph (1), where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be two months from the date of the notification sent to the applicant of the said declaration.

(3) Any national law may, for performing the acts referred to in paragraphs (1) or (2), fix time limits which expire later than the time limit provided for in those paragraphs.

Article 23
Delaying of National Procedure

(1) No designated Office shall process or examine the international application prior to the expiration of the applicable time limit under Article 22.

NOTES ON ARTICLE 22

PARAGRAPH (1): See Rule 49 (Languages of Translations and Amounts of Fees under Article 22(1) and (2)).

As to the request, see Article 4.

The time limits for performing these acts also apply to the furnishing of the translations of the protest and the decision (Rule 40.2(c)).

As to the publication of any information on the question whether the requirements provided for under this Article have been complied with, see Rule 86.1 (The Gazette: Contents).

“National application,” “national law,” “priority date,” “national Office,” and “designated Office” are defined in Article 2(vi), (x), (xi), (xii) and (xiii), respectively.

PARAGRAPH (2): The declaration under Article 17(2)(a) is made if the subject matter is not required to be searched and is not searched, or if the international application is “unclear” to the extent that no meaningful search can be carried out.

PARAGRAPH (3): See Rule 50.1 (Faculty Under Article 22(3): Exercise of Faculty). As to notification of applicant of applicable time limits in different designated Offices, see Rule 24.2(a).

“National law” is defined in Article 2(x).

NOTES ON ARTICLE 23

PARAGRAPH (1): The “applicable time limit” is generally 20 months from the priority date Article 22(1). But it may be less (when the International Searching Authority refuses to establish an international search report; see Article 22(2)), or more (when the designated State so allows; see Article 22(3)). See also Rules 6.5 (The Claims: Utility Models) and 13.5 (Unity of Invention: Utility Models).

“Designated Office” is defined in Article 2(xiii).

(2) Notwithstanding the provisions of paragraph (1), any designated Office may, on the express request of the applicant, process or examine the international application at any time.

Article 24

Possible Loss of Effect in Designated States

(1) Subject, in case (ii) below, to the provisions of Article 25, the effect of the international application provided for in Article 11(3) shall cease in any designated State with the same consequences as the withdrawal of any national application in that State:

(i) if the applicant withdraws his international application or the designation of that State;

(ii) if the international application is considered withdrawn by virtue of Articles 12(3), 14(1)(b), 14(3)(a), or 14(4), or if the designation of that State is considered withdrawn by virtue of Article 14(3)(b);

(iii) if the applicant fails to perform the acts referred to in Article 22 within the applicable time limit.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may maintain the effect provided for in Article 11(3) even where such effect is not required to be maintained by virtue of Article 25(2).

PARAGRAPH (2): The applicant would address such a request direct to the designated Office. As to submission of “the priority document” to the International Bureau by applicant making express request, see Rule 17.1(a).

“Designated Office” is defined in Article 2(xiii).

NOTES ON ARTICLE 24

PARAGRAPH (1), introductory sentence: The effect provided for in Article 11(3) is, in essence, that the international application has the effect of a national application in the designated State. Article 25 provides, in essence, that the applicant may ask the designated Office to review any finding of the receiving Office or the International Bureau that the international application is considered withdrawn. “Cease” means ceasing *ex nunc*, that is, from the date on which the events described in cases (i) to (iii) occur. This follows also from the word “maintain” in paragraph (2).

“National application” is defined in Article 2(vi).

PARAGRAPH (1)(i): See Rule 32 (Withdrawal of the International Application or of Designations).

PARAGRAPH (1)(ii): Article 12(3) deals with the case where the record copy reaches the International Bureau after the expiration of the prescribed time limit (13 or 14 months from the priority date; see Rule 22.3). Article 14(1)(b) deals with the case where the applicant fails to correct certain defects. Article 14(3)(a) deals with the case where the fees are not paid in time. Article 14(4) deals with the case where the receiving Office finds defects which should have prevented it from according an international filing date. Article 14(3)(b) deals with the case where the designation fee part of the international fee is not paid in time in respect of any given designated State.

PARAGRAPH (1)(iii): The acts that may have to be performed under Article 22 are: the furnishing of a copy of the international application, the furnishing of a translation of such application, the payment of the national fee, and the furnishing of the name and other prescribed data concerning the inventor. As to the “applicable time limit,” see the note relating to Article 23(1).

Where the effect of the international application ceases by virtue of this paragraph, the designated Office notifies the International Bureau (Rule 29.2) and the International Bureau publishes the essence of such a notification in the Gazette and in certain cases also in the pamphlet (Rule 48.6(b)).

PARAGRAPH (2): The effect provided for in Article 11(3) is, in essence, that the international application has the effect of a national application in the designated State. Article 25(2) obligates the designated Offices to review, on the applicant’s request, refusals to accord an international filing date, findings to the effect that the record copy has arrived too late, and declarations that – because of certain defects left uncorrected – the international application is considered withdrawn.

Where the effect of the international application is maintained, the designated Office notifies the International Bureau (Rule 29.2) and the International Bureau publishes the essence of such a notification in the Gazette and in certain cases also in the pamphlet (Rule 48.6(b)).

“Designated Office” is defined in Article 2(xiii).

Article 25
Review By Designated Offices

(1)(a) Where the receiving Office has refused to accord an international filing date or has declared that the international application is considered withdrawn, or where the International Bureau has made a finding under Article 12 (3), the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to any of the designated Offices named by the applicant.

(b) Where the receiving Office has declared that the designation of any given State is considered withdrawn, the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to the national Office of such State.

(c) The request under subparagraphs (a) or (b) shall be presented within the prescribed time limit.

(2)(a) Subject to the provisions of subparagraph (b), each designated Office shall, provided that the national fee (if any) has been paid and the appropriate translation (as prescribed) has been furnished within the prescribed time limit, decide whether the refusal, declaration, or finding, referred to in paragraph (1) was justified under the provisions of this Treaty and the Regulations, and, if it finds that the refusal or declaration was the result of an error or omission on the part of the receiving Office or that the finding was the result of an error or omission on the part of the International Bureau, it shall, as far as effects in the State of the designated Office are concerned, treat the international application as if such error or omission had not occurred.

NOTES ON ARTICLE 25

PARAGRAPH (1)(a): The receiving Office refuses to accord an international filing date to an application failing to meet the requirements referred to in Article 11(1), or declares that the international application is considered withdrawn in the case of defects referred to in Article 14(1)(a) remaining uncorrected, or where the prescribed fees are not paid (Article 14(3)(a)), or where it discovers defects which should have prevented the according of an international filing date (Article 14(4)).

The finding under Article 12(3) is that the record copy of the international application has not been received by the International Bureau within the prescribed time limit (which time limit, under Rule 22.3, is either 13 or 14 months from the "priority date" (defined in Article 2(xi)).

Where the request is based upon the refusal to accord an international filing date, a copy of the notice referred to in Rule 20.7(i) is required (Rule 51.2). As to the obligation of the receiving Office to send a copy of papers purporting to be an international application to the International Bureau, see Rule 20.7(iv).

"Designated Office" and "receiving Office" are defined in Article 2(xiii) and (xv), respectively.

PARAGRAPH (1)(b): The only case in which the receiving Office declares that the designation of any given State is

considered withdrawn is the case in which the designation fee part of the international fee has not been paid in time in respect of that State (see Article 14(3)(b)).

"National Office" and "receiving Office" are defined in Article 2(xii) and (xv), respectively.

PARAGRAPH (1)(c): As to the time limit, see Rule 51.1.

PARAGRAPH (2)(a): The time limit is fixed in Rule 51.3. Where the designated Office finds that the refusal, declaration, or finding was not justified, it notifies the International Bureau accordingly (see Rule 51.4).

"Designated Office" and "receiving Office" are defined in Article 2(xiii) and (xv), respectively.

(b) Where the record copy has reached the International Bureau after the expiration of the time limit prescribed under Article 12(3) on account of any error or omission on the part of the applicant, the provisions of subparagraph (a) shall apply only under the circumstances referred to in Article 48(2).

Article 26 **Opportunity to Correct Before Designated Offices**

No designated Office shall reject an international application on the grounds of non-compliance with the requirements of this Treaty and the Regulations without first giving the applicant the opportunity to correct the said application to the extent and according to the procedure provided by the national law for the same or comparable situations in respect of national applications.

Article 27 **National Requirements**

(1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

PARAGRAPH (2)(b): The time limit prescribed under Article 12(3) is 13 or 14 months from the priority date (see Rule 22.3). Article 48(2) obligates any Contracting State to excuse, for reasons admitted under its national law, any delay in meeting any time limit and allows any Contracting State to excuse, for other reasons, any delay in meeting any time limit.

NOTES ON ARTICLE 26

SOLE PARAGRAPH: Since it may sometimes be difficult to maintain that a situation (in particular, a defect), within the terms of the Treaty, is the “same” as a situation within the terms of the national law of the designated State, the Article also speaks of “comparable” situations. This means that the opportunity to correct must be given also when the *kind* of defect (according to the Treaty) is correctable according to the national law. For example, if the national law of the designated State allows that in certain cases defects in the description may be corrected and the international application does in fact suffer from a defect in the description which is a defect under the Treaty but is not contemplated in the national law, the designated Office will have to allow the correction of the defect during the national processing of the application.

“National application,” “national law” and “designated Office” are defined in Article 2(vi), (x) and (xiii), respectively.

NOTES ON ARTICLE 27

PARAGRAPHS (1) to (8): Although inserted, for reasons of convenience, in Chapter I, Article 27 applies not only to designated States but also to elected States, since every elected State is *also* a designated State (see Article 31(4)(a), third sentence: “Election may relate only to Contracting States already designated under Article 4.”).

“National application,” “national law,” and “designated Office” are defined in Article 2(vi), (x) and (xiii), respectively.

PARAGRAPH (1): The requirements relating to form and contents are principally provided for in Articles 3 (The International Application), 4 (The Request), 5 (The Description), 6 (The Claims), 7 (The Drawings), and 8 (Claiming Priority), and the Rules pertaining to these Articles (mainly Rules 3 to 13). The words “form or contents” are used merely to emphasize something that could go without saying, namely, that requirements of substantive patent law (criteria of patentability, etc.) are not meant.

(2) The provisions of paragraph (1) neither affect the application of the provisions of Article 7(2) nor preclude any national law from requiring, once the processing of the international application has started in the designated Office, the furnishing:

(i) when the applicant is a legal entity, of the name of an officer entitled to represent such legal entity,

(ii) of documents not part of the international application but which constitute proof of allegations or statements made in that application, including the confirmation of the international application by the signature of the applicant when that application, as filed, was signed by his representative or agent.

(3) 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 he is not the inventor, the international application may be rejected by the designated Office.

(4) Where the national law provides, in respect of the form or contents of national applications, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for by this Treaty and the Regulations in respect of international applications, the national Office, the courts and any other competent organs of or acting for the designated State may apply the former requirements, instead of the latter requirements, to international applications, except where the applicant insists that the requirements provided for by this Treaty and the Regulations be applied to his international application.

PARAGRAPH (2), introductory phrase: Article 7(2) allows any designated Office to require that the applicant file drawings which are not necessary for the understanding of the invention but which, because the nature of the invention admits of illustration by drawings, may be useful (so – called “useful but – not – necessary drawings”).

PARAGRAPH (2)(i): For example, the director of the corporation, where the applicant is a corporation.

PARAGRAPH (2)(ii): The allegations or statements to be proved may relate to the date on which the invention was made, first used or published; to the fact that the invention is usable or operational for certain purposes; to the identity of the inventor; to the right of the applicant to file; etc. The documents supporting such allegations may be affidavits (oaths expressed in writing, with the signature legalized or certified), contracts, laboratory notes, etc. The signature required for “confirmation” (or, according to the United States of America terminology, “ratification”) may be required to be placed on the copy of the international application communicated under Article 20(1)(a) or furnished under Article 22(1) or on a separate document referring to the application.

PARAGRAPH (3): Under the national laws of most States, any owner of an invention may file an application but under the national laws of some States (for example, the United States) only the inventor may file an application. Thus, for example, the United States of America Patent Office could,

for its own purposes, reject the international application if it was filed by a person other than the inventor. It is to be noted that different applicants for different designated States may be indicated in the international application (see Article 9(3) and Rule 18.4) and that this is so mainly to make it possible for the international application to satisfy differences in national laws on the question who is qualified to file. Information on the national laws will be published in the Gazette (Rule 18.4(c)).

PARAGRAPH (4): The last portion (“except where...”) of this paragraph is there to deal with the case where there is a difference of opinion between the applicant and the organs of the designated State on the question which requirement is more favorable.

“National Office” is defined in Article 2(xii).

(5) Nothing in this Treaty and the Regulations is intended to be construed as prescribing anything that would limit the freedom of each Contracting State to prescribe such substantive conditions of patentability as it desires. In particular, any provision in this Treaty and the Regulations concerning the definition of prior art is exclusively for the purposes of the international procedure and, consequently, any Contracting State is free to apply, when determining the patentability of an invention claimed in an international application, the criteria of its national law in respect of prior art and other conditions of patentability not constituting requirements as to the form and contents of applications.

(6) The national law may require that the applicant furnish evidence in respect of any substantive condition of patentability prescribed by such law.

(7) Any receiving Office or, once the processing of the international application has started in the designated Office, that Office may apply the national law as far as it relates to any requirement that the applicant be represented by an agent having the right to represent applicants before the said Office and/or that the applicant have an address in the designated State for the purpose of receiving notifications.

(8) Nothing in this Treaty and the Regulations is intended to be construed as limiting the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security or to limit, for the protection of the general economic interests of that State, the right of its own residents or nationals to file international applications.

PARAGRAPH (5): Prior art is referred to in Articles 15(2) and 33(2) and (3), and is defined in Rules 33 and 64. “Conditions of patentability” (other than requirements as to the form and contents of international applications) include novelty, inventive step (non-obviousness), industrial applicability, certain subject matter (for example, foods and beverages, chemical products, pharmaceutical products, and plant or animal varieties, are not patentable in some countries).

“Application” is defined in Article 2(i) and (viii).

PARAGRAPH (6): “Any substantive condition of patentability” includes, for example, the fact that the invention was not known, used, patented, described or abandoned by certain persons within certain time limits and in certain countries. It also includes, for example, the question whether the patent should go to the person who was the first to apply for protection or the first to invent, or whether a certain combination of these circumstances should obtain.

PARAGRAPH (7): An agent having the right to practice before the receiving Office shall be entitled to practice before the International Bureau, and the competent International Searching and Preliminary Examining Authority (Article 49). However, these Authorities may require proof of the right to practice (see Rule 83.1). In respect of any particular international application, an agent having the right to practice before the receiving Office does not consequently have the right to practice before the designated Office. Once processing starts in a designated Office, its national law determines who has this right.

“Receiving Office” is defined in Article 2(xv).
PARAGRAPH (8): –

Article 28
**Amendment of the Claims, the Description, and the Drawings,
Before Designated Offices**

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit. No designated Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed unless the national law of the designated State permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the designated State in all respects not provided for in this Treaty and the Regulations.

(4) Where the designated Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 29
Effects of the International Publication

(1) As far as the protection of any rights of the applicant in a designated State is concerned, the effects, in that State, of the international publication of an international application shall, subject to the provisions of paragraphs (2) to (4), be the same as those which the national law of the designated State provides for the compulsory national publication of unexamined national applications as such.

NOTES ON ARTICLE 28

PARAGRAPH (1): The time limit is fixed in Rule 52.1. In the situation under Rule 52.1(a), the right to amend may be exercised after the communication under Rule 47.1 and within one month from the fulfillment of the requirements under Article 22. Where such communication is effected after the time limit under Article 22, the right to amend may be exercised within 4 months after the expiration of that time limit. Amendments may of course be made at any later date, if the national legislation so permits.

“Patent” is defined in Article 2(ii) and (ix), whereas “designated Office” is defined in Article 2(xiii).

PARAGRAPH (2): “National law” is defined in Article 2(x).

PARAGRAPH (3): “National law” is defined in Article 2(x).

PARAGRAPH (4): The right to require a translation is provided for in Article 22(1).

“Designated Office” is defined in Article 2(xiii).

NOTES ON ARTICLE 29

PARAGRAPH (1): The word “compulsory” is primarily intended to exclude the kind of publication which is effected, for example in the United States, on the request of the

applicant, as a “defensive publication,” under the Rules of Practice of the United States of America Patent Office. The word “unexamined” is primarily intended to limit the effects of international publication to the kind of publication which is effected in Germany (Federal Republic) and other countries that provide for the publication of the application either before or after search but before examination.

“National application” and “national law” are defined in Article 2(vi) and (x), respectively.

(2) If the language in which the international publication has been effected is different from the language in which publications under the national law are effected in the designated State, the said national law may provide that the effects provided for in paragraph (1) shall be applicable only from such time as:

(i) a translation into the latter language has been published as provided by the national law, or

(ii) a translation into the latter language has been made available to the public, by laying open for public inspection as provided by the national law, or

(iii) a translation into the latter language has been transmitted by the applicant to the actual or prospective unauthorized user of the invention claimed in the international application, or

(iv) both the acts described in (i) and (iii), or both the acts described in (ii) and (iii), have taken place.

(3) The national law of any designated State may provide that, where the international publication has been effected, on the request of the applicant, before the expiration of 18 months from the priority date, the effects provided for in paragraph (1) shall be applicable only from the expiration of 18 months from the priority date.

(4) The national law of any designated State may provide that the effects provided for in paragraph (1) shall be applicable only from the date on which a copy of the international application as published under Article 21 has been received in the national Office of or acting for such State. The said Office shall publish the date of receipt in its gazette as soon as possible.

Article 30

Confidential Nature of the International Application

(1)(a) Subject to the provisions of subparagraph (b), the International Bureau and the International Searching Authorities shall not allow access by any person or authority to the international application before the international publication of that application, unless requested or authorized by the applicant.

PARAGRAPH (2): The provision covers the typical conditions found in the national law of such countries as provide for so-called “provisional protection.”

“National law” is defined in Article 2(x).

PARAGRAPH (3): This provision is intended to establish the same treatment for purely domestic applications and international applications where, according to national law, “provisional protection” starts upon publication and national law does not allow publication earlier than 18 months from the priority date (e.g., Japan). As to the applicant requesting international publication before the expiration of 18 months from the priority date, see Article 21(2)(b).

“National law” and “priority date” are defined in Article 2(x) and (xi), respectively.

PARAGRAPH (4): “National law” and “national Office” are defined in Article 2(x) and (xii), respectively.

NOTES ON ARTICLE 30

PARAGRAPHS (1) to (3): Paragraph (1) deals with the restrictions imposed on the International Bureau and the International Searching Authorities, whereas paragraphs (2) and (3) deal with the restrictions imposed on national Offices.

“Access” is defined in paragraph (4).

“National Office” and “receiving Office” are defined in Article 2(xii) and (xv), respectively.

PARAGRAPH (1)(a): International publication is the publication provided for under Article 21.

(b) The provisions of subparagraph (a) shall not apply to any transmittal to the competent International Searching Authority, to transmittals provided for under Article 13, and to communications provided for under Article 20.

(2)(a) No national Office shall allow access to the international application by third parties, unless requested or authorized by the applicant, before the earliest of the following dates:

(i) date of the international publication of the international application,

(ii) date of the receipt of the communication of the international application under Article 20,

(iii) date of the receipt of a copy of the international application under Article 22.

(b) The provisions of subparagraph (a) shall not prevent any national Office from informing third parties that it has been designated, or from publishing that fact. Such information or publication may, however, contain only the following data: identification of the receiving Office, name of the applicant, international filing date, international application number, and title of the invention.

(c) The provisions of subparagraph (a) shall not prevent any designated Office from allowing access to the international application for the purposes of the judicial authorities.

(3) The provisions of paragraph (2)(a) shall apply to any receiving Office except as far as transmittals provided for under Article 12(1) are concerned.

(4) For the purposes of this Article, the term "access" covers any means by which third parties may acquire cognizance, including individual communication and general publication, provided, however, that no national Office shall generally publish an international application or its translation before the international publication or, if international publication has not taken place by the expiration of 20 months from the priority date, before the expiration of 20 months from the said priority date.

PARAGRAPH (1)(b): Transmittals under Article 13 and communications under Article 20 are to the designated Offices.

PARAGRAPH (2)(a): The date of the international publication is determined under Article 21(2)(a) (18 months from the priority date) or Article 21(2)(b) (earlier, on the applicant's request) or Article 64(3) (later or never when all the designated States have "reserved" under Article 64(3)).

PARAGRAPH (2)(b): The information shall not contain the classification of the invention or the name of the inventor.

PARAGRAPH (2)(c): "Designated Office" is defined in Article 2(xiii).

PARAGRAPH (3): Article 12(1) deals with the transmittal of the record copy to the International Bureau and of the search copy to the competent International Searching Authority.

PARAGRAPH (4): "Priority date" and "national Office" are defined in Article 2(xi) and (xii), respectively.

GENERAL OBSERVATIONS: As to the keeping of records and files, see Rule 93.

As to the furnishing of copies of documents contained in the files, see Rule 94.

As to the availability of translations, see Rule 95.

CHAPTER II INTERNATIONAL PRELIMINARY EXAMINATION

Article 31 Demand for International Preliminary Examination

(1) On the demand of the applicant, his international application shall be the subject of an international preliminary examination as provided in the following provisions and the Regulations.

(2)(a) Any applicant who is a resident or national, as defined in the Regulations, of a Contracting State bound by Chapter II, and whose international application has been filed with the receiving Office of or acting for such State, may make a demand for international preliminary examination.

(b) The Assembly may decide to allow persons entitled to file international applications to make a demand for international preliminary examination even if they are residents or nationals of a State not party to this Treaty or not bound by Chapter II.

NOTES ON CHAPTER II

This Chapter, entitled “International Preliminary Examination,” contains 12 Articles (Articles 31 to 42).

The Articles are arranged in a sequence which follows, more or less accurately, the chronology of events in the procedure: Articles 31 to 38 deal with what could be called “the international phase,” whereas Articles 39 to 42 deal with what could be called “the national phase.”

The provisions concerning the international phase consist of provisions on the presentation of the demand for international preliminary examination (Article 31), on the International Preliminary Examining Authority (Article 32), and on the procedure before that Authority (Articles 33, 34, 35). Articles 36 to 38 deal with miscellaneous matters in the international phase.

The national phase (Articles 39 to 42) concerns what happens in the elected State in connection with the international application accompanied by an international preliminary examination report.

International preliminary examination is optional for the applicant: it will be carried out only if he so requests (see Article 31(1)). If he chooses to request international preliminary examination, the provisions of the international phase then, of course, come chronologically *after* the provisions on the international phase in Chapter I and *before* the provisions on the national phase in Chapter I.

The reason for which the Treaty does not follow this chronological order is that Chapter II is optional also for Contracting States. Any such State may avoid being bound by that Chapter if it makes the corresponding reservation (Article 64(1)). The separation of the provisions on international preliminary examination serves the sole purpose of permitting easy identification of the provisions which would not bind any State making the reservation in question.

NOTES ON ARTICLE 31

PARAGRAPH (1): The term “demand” has been chosen to distinguish the petition for international preliminary

examination from the petition which is made under Chapter I and included in the “request” part of the “application.”

The main applicable provisions of the Treaty are Articles 31 to 42, and the Rules issued thereunder (mainly Rules 53 to 78).

See Rule 53 as to the demand, and Rules 60.1 and 60.3 as to certain possible defects in the demand.

PARAGRAPH (2) (in general): See Rule 54 (The Applicant Entitled to Make a Demand). Contracting States having made the reservation under Article 64(1) are not bound by Chapter II.

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (2)(a): This provision means that, if Contracting State A is bound by Chapter II, whereas Contracting State B is not, and if the applicant is a national of A and a resident of B, and the international application was filed in B, no demand may be made (since it would have to be presented in B but cannot be presented there as B is not bound by Chapter II). Had the international application been filed in A, a demand could have been made. (Under paragraph (2)(b), however, the applicant might make a demand).

As to the competent International Preliminary Examining Authority, see Rule 59.1.

PARAGRAPH (2)(b): As to who are persons entitled to file international applications, see Article 9.

The decision requires a two-thirds majority in the Assembly (see Article 53(6)(a)).

See paragraph (4)(b) as to which Contracting States may be elected where the demand is made under paragraph (2)(b).

As to the competent International Preliminary Examining Authority, see Rule 59.2.

(3) The demand for international preliminary examination shall be made separately from the international application. The demand shall contain the prescribed particulars and shall be in the prescribed language and form.

(4)(a) The demand shall indicate the Contracting State or States in which the applicant intends to use the results of the international preliminary examination (“elected States”). Additional Contracting States may be elected later. Election may relate only to Contracting States already designated under Article 4.

(b) Applicants referred to in paragraph (2)(a) may elect any Contracting State bound by Chapter II. Applicants referred to in paragraph (2)(b) may elect only such Contracting States bound by Chapter II as have declared that they are prepared to be elected by such applicants.

(5) The demand shall be subject to the payment of the prescribed fees within the prescribed time limit.

(6)(a) The demand shall be submitted to the competent International Preliminary Examining Authority referred to in Article 32.

(b) Any later election shall be submitted to the International Bureau.

(7) Each elected Office shall be notified of its election.

Article 32 **The International Preliminary Examining Authority**

(1) International preliminary examination shall be carried out by the International Preliminary Examining Authority.

PARAGRAPH (3): See Rules 53 (The Demand), 55 (Languages), and 60.1 (Defects in the Demand). There is no time limit provided for making a demand or an election since the matter appears to be self-regulatory. Unless the demand or election is made in time for the national processing not to start (see Article 40(1)) before the international preliminary examination is completed, the applicant would usually waste his money if he made a demand or election.

PARAGRAPH (4)(a): See Rule 53.7 (Election of States).

As to the designation of States under Chapter I, see Article 4(1)(ii) and (2), and Rule 4.9.

For later elections, see Rule 56 (Later Elections) and Rule 60.2 (Defects in Later Elections).

As to the election of non-designated States, see Rule 60.3 (Attempted Elections).

Contracting States which have made the reservation under Article 64(1) are not bound by Chapter II.

PARAGRAPH (4)(b): Only Contracting States bound by Chapter II of this Treaty may be elected. As to the election of a State not bound by Chapter II, see Rule 60.3 (Attempted Elections). This Rule may be considered as applying by analogy also to the case where the demand was made under paragraph (2)(b) and the applicant attempts to elect a State which, although bound by Chapter II, has not made a declaration under paragraph (4)(b).

PARAGRAPH (5): See Rules 57 (The Handling Fee) and 58 (The Preliminary Examination Fee). See also Rules 60.1(b) and 60.2(b).

PARAGRAPH (6)(a): See Rule 59 (The Competent International Preliminary Examining Authority).

PARAGRAPH (6)(b): See Rule 56 (Later Elections). See also Rules 57.2(b), 57.3(b), 57.5, 60.2, and 60.3.

PARAGRAPH (7): See Rule 61.2 (Notification of the Demand and Elections: Notifications to the Elected Offices).

“Elected Office” is defined in Article 2(xiv).

NOTES ON ARTICLE 32

PARAGRAPH (1): As to the procedure, see in particular Articles 34 to 36.

(2) In the case of demands referred to in Article 31(2)(a), the receiving Office, and, in the case of demands referred to in Article 31(2)(b), the Assembly, shall, in accordance with the applicable agreement between the interested International Preliminary Examining Authority or Authorities and the International Bureau, specify the International Preliminary Examining Authority or Authorities competent for the preliminary examination.

(3) The provisions of Article 16(3) shall apply, *mutatis mutandis*, in respect of International Preliminary Examining Authorities.

Article 33 **The International Preliminary Examination**

(1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.

(2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.

(3) For the purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it is not, at the prescribed relevant date, obvious to a person skilled in the art.

PARAGRAPH (2): Demands under Article 31(2)(a) are demands made by residents or nationals of Contracting States bound by Chapter II. Rule 59.1 specifies the competent Authority.

Demands under Article 31(2)(b) are demands made by residents or nationals of a State not party to the Treaty or not bound by Chapter II whom the Assembly has decided to allow to make demands. Rule 59.2 specifies the competent Authority.

The agreement shall provide for the level of cost of preparing copies (Rule 71.2(b)).

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (3): Article 16(3) deals with the appointment of International Searching Authorities.

The minimum requirements for International Preliminary Examining Authorities are specified in Rule 63.

All International Preliminary Examining Authorities have the right to receive copies of all publications of the International Bureau relating to the Treaty (Rule 87.1).

NOTES ON ARTICLE 33

PARAGRAPH (1): The three criteria are defined in the following paragraphs: novelty, in paragraph (2); inventive step (non-obviousness), in paragraph (3); industrial applicability, in paragraph (4).

PARAGRAPH (2): See Rule 64 (Prior Art for International Preliminary Examination).

PARAGRAPH (3): See Rules 64 (Prior Art for International Preliminary Examination) and 65 (Inventive Step or Non-Obviousness). The relevant date is prescribed in Rule 65.2.

(4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.

(5) The criteria described above merely serve the purposes of international preliminary examination. Any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed invention is patentable or not.

(6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

Article 34 **Procedure Before the International Preliminary Examining Authority**

(1) Procedure before the International Preliminary Examining Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) The applicant shall have a right to communicate orally and in writing with the International Preliminary Examining Authority.

(b) The applicant shall have a right to amend the claims, the description, and the drawings, in the prescribed manner and within the prescribed time limit, before the international preliminary examination report is established. The amendment shall not go beyond the disclosure in the international application as filed.

PARAGRAPH (4): Article 1(3) of the Paris Convention (Stockholm Act) provides that "Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour."

PARAGRAPH (5): "Patentable" means not only that a patent may be granted but, alternatively, that an inventor's certificate, a utility certificate, or a utility model may be granted (see Article 2(ii)).

PARAGRAPH (6): As to the documents cited in the international search report, Rule 43.5(a) provides: "The international search report shall contain the citations of the documents considered to be relevant."

NOTES ON ARTICLE 34

PARAGRAPH (1): The main relevant provisions of the Treaty and the Regulations are contained in Articles 34 to 36, and Rules 66 to 74 and 91.

PARAGRAPH (2)(a): See Rule 66 (Procedure Before the International Preliminary Examining Authority), particularly Rules 66.2 (First Written Opinion of the International Preliminary Examining Authority), 66.3 (Formal Response to the International Preliminary Examining Authority), 66.4 (Additional Opportunity for Amendment or Correction), 66.5 (Amendment), and 66.6 (Informal Communications with the Applicant).

PARAGRAPH (2)(b): See Rule 66 (Procedure Before the International Preliminary Examining Authority). Amendment may be made before the international preliminary examination starts (Rule 66.1), after the first written opinion has issued (Rules 66.2(d) and 66.3), if additional written opinions issue, after such opinion has issued (Rule 66.4(a)), or on special request of the applicant (Rule 66.4(b)). For form of amendment, see Rule 66.8.

(c) The applicant shall receive at least one written opinion from the International Preliminary Examining Authority unless such Authority considers that all of the following conditions are fulfilled:

(i) the invention satisfies the criteria set forth in Article 33(1),

(ii) the international application complies with the requirements of this Treaty and the Regulations in so far as checked by that Authority,

(iii) no observations are intended to be made under Article 35(2), last sentence.

(d) The applicant may respond to the written opinion.

(3)(a) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it may invite the applicant, at his option, to restrict the claims so as to comply with the requirement or to pay additional fees.

(b) The national law of any elected State may provide that, where the applicant chooses to restrict the claims under subparagraph (a), those parts of the international application which, as a consequence of the restriction, are not to be the subject of international preliminary examination shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

PARAGRAPH (2)(c): See Rule 66.2 (First Written Opinion of the International Preliminary Examining Authority).

The criteria set forth in Article 33(1) are novelty, inventive step or non-obviousness, and industrial applicability.

The International Preliminary Examining Authority is not obliged to check whether the international application complies with any of the requirements of the Treaty or the Regulations. But if it notices any defect in the form or contents of the international application or if it considers that any amendment goes beyond the disclosure in the international application as filed, it must notify the applicant accordingly (Rule 66.2(a)(iii) and (iv)). If the International Preliminary Examining Authority is of the opinion that the claims, the description, or the drawings are not quite clear, or that the claims are not fully supported by the description it may notify the applicant accordingly (Rule 66.2(a)(v)); if, however, the lack of clarity or support is of such degree that no meaningful opinion can be formed on the question of novelty, inventive step or non-obviousness, and industrial applicability, notification of the applicant becomes obligatory (see Article 34 (4)(a)(ii)).

As to the observations under Article 35(2), last sentence, see Rule 70.8.

PARAGRAPH (2)(d): See Rules 66.3 (Formal Response to the International Preliminary Examining Authority), 66.4 (Additional Opportunity for Amendment or Correction), and 66.5 (Amendment). As to the time limit for response, see Rule 66.2(d).

PARAGRAPH (3)(a): The concept of unity of invention is defined in Rule 13, and the procedure before the International Preliminary Examining Authority in case of

lack of unity of invention is governed by Rule 68. See also Rules 69.1(a)(ii) and 70.13. The additional fee may be paid under protest (see Rule 68.3(c)). There is no possibility of dividing the international application in the international phase.

It goes without saying that any elected Office or the courts of any elected State may disagree with the interpretation of the International Preliminary Examining Authority on Rule 13. Consequently, for example:

(i) The International Preliminary Examining Authority has asked for restriction or additional fees: the elected Office or the courts of the elected State may still consider that there is unity of invention, even if the applicant has complied with the invitation of the Authority.

(ii) The said Authority has asked for X number of additional fees: the elected Offices may still ask for Y number of divisions (and national fees), even if the applicant has complied with the invitation of the Authority.

(iii) The said Authority has not asked either for restriction or for additional fees: the elected Office or the courts of the elected State may still find that there is no unity of invention, with the consequences (division or other) which its national law provides for such cases.

PARAGRAPH (3)(b): The consequence provided for in this paragraph is the only consequence of the lack of international preliminary examination of those parts which were left out on account of the restriction of the claims.

See also Rule 68.4 (Procedure in the Case of Insufficient Restriction of the Claims).

“National law” and “national Office” are defined in Article 2(x) and (xii), respectively.

(c) If the applicant does not comply with the invitation referred to in subparagraph (a) within the prescribed time limit, the International Preliminary Examining Authority shall establish an international preliminary examination report on those parts of the international application which relate to what appears to be the main invention and shall indicate the relevant facts in the said report. The national law of any elected State may provide that, where its national Office finds the invitation of the International Preliminary Examining Authority justified, those parts of the international application which do not relate to the main invention shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to that Office.

(4)(a) If the International Preliminary Examining Authority considers

- (i) that the international application relates to a subject matter on which the International Preliminary Examining Authority is not required, under the Regulations, to carry out an international preliminary examination, and in the particular case decides not to carry out such examination, or
- (ii) that the description, the claims, or the drawings, are so unclear, or the claims are so inadequately supported by the description, that no meaningful opinion can be formed on the novelty, inventive step (non-obviousness), or industrial applicability, of the claimed invention,

the said Authority shall not go into the questions referred to in Article 33(1) and shall inform the applicant of this opinion and the reasons therefor.

(b) If any of the situations referred to in subparagraph (a) is found to exist in, or in connection with, certain claims only, the provisions of that subparagraph shall apply only to the said claims.

PARAGRAPH (3)(c): The time-limit is specified in Rule 68.2, last sentence.

See also Rule 68.4 (Procedure in the Case of Insufficient Restriction of the Claims).

As to "main invention," see Rule 68.5.

The consequences provided for in this paragraph are the only consequences of not complying with the invitation issued under paragraph (3)(a).

"National law" and "national Office" are defined in Article 2(x) and (xii), respectively.

PARAGRAPH (4)(a)(i): As to the subject matter in question, see Rule 67.

PARAGRAPH (4)(a)(ii): As to the requirements for the description, claims, and drawings, see Articles 5, 6, 7, and the Rules cited thereunder.

PARAGRAPH (4)(a), final phrase: The questions referred to in Article 33(1) are the questions of novelty, inventive step or non-obviousness, and industrial applicability.

In the situations described in items (i) and (ii), the international preliminary examination report will merely state the opinion that the report cannot go into the said three questions (see Article 35(3)(a)). There is no other consequence: the report containing the said opinion will be communicated to the elected States and the national examination and other processing will start.

PARAGRAPH (4)(b): In other words, the report will go into the three questions in respect of some of the claims, whereas, in respect of others, it will merely express the opinion that it is not possible to go into the three questions.

Article 35
The International Preliminary Examination Report

(1) The international preliminary examination report shall be established within the prescribed time limit and in the prescribed form.

(2) The international preliminary examination report shall not contain any statement on the question whether the claimed invention is or seems to be patentable or unpatentable according to any national law. It shall state, subject to the provisions of paragraph (3), in relation to each claim, whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purposes of the international preliminary examination in Article 33(1) to (4). The statement shall be accompanied by the citation of the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require. The statement shall also be accompanied by such other observations as the Regulations provide for.

(3)(a) If, at the time of establishing the international preliminary examination report, the International Preliminary Examining Authority considers that any of the situations referred to in Article 34(4)(a) exists, that report shall state this opinion and the reasons therefor. It shall not contain any statement as provided in paragraph (2).

(b) If a situation under Article 34(4)(b) is found to exist, the international preliminary examination report shall, in relation to the claims in question, contain the statement as provided in subparagraph (a), whereas, in relation to the other claims, it shall contain the statement as provided in paragraph (2).

NOTES ON ARTICLE 35

PARAGRAPH (1): See Rules 69.1 (Time Limit for International Preliminary Examination) and 70 (The International Preliminary Examination Report).

PARAGRAPH (2): See Rule 70 (The International Preliminary Examination Report), particularly Rules 70.6 (Statement under Article 35(2)), 70.7 (Citations under Article 35(2)), 70.8 (Explanations under Article 35(2)), and 70.12 (Mention of Certain Defects).

“National law” is defined in Article 2(x).

PARAGRAPH (3)(a): The situations referred to in Article 34(4)(b) are that the international application relates to subject matter on which the International Preliminary Examining Authority is not required to carry out examination, and in fact has not done so (see Rule 67), or that the international application is “unexaminable” on account of lack of clarity or failure of the description to adequately support the claims. The statement provided for in paragraph (2) is the statement on the questions whether the invention is novel, involves an inventive step (is non-obvious), and is industrially applicable.

PARAGRAPH (3)(b): That is, if the situations described in the foregoing paragraph exist only in relation to some (not all) of the claims.

Article 36
Transmittal, Translation, and Communication, of the
International Preliminary Examination Report

(1) The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.

(2)(a) The international preliminary examination report and its annexes shall be translated into the prescribed languages.

(b) Any translation of the said report shall be prepared by or under the responsibility of the International Bureau, whereas any translation of the said annexes shall be prepared by the applicant.

(3)(a) The international preliminary examination report, together with its translation (as prescribed) and its annexes (in the original language), shall be communicated by the International Bureau to each elected Office.

(b) The prescribed translation of the annexes shall be transmitted within the prescribed time limit by the applicant to the elected Offices.

(4) The provisions of Article 20 (3) shall apply, *mutatis mutandis*, to copies of any document which is cited in the international preliminary examination report and which was not cited in the international search report.

Article 37
Withdrawal of Demand or Election

(1) The applicant may withdraw any or all elections.

(2) If the election of all elected States is withdrawn, the demand shall be considered withdrawn.

NOTES ON ARTICLE 36

PARAGRAPH (1): See Rule 71.1 (Transmittal of the International Preliminary Examination Report: Recipients). The annexes are the replacement sheets or letters containing amendments or corrections (Rule 70.16) and – on the applicant's request – the protest and the decision concerning unity of invention (Rule 68.3(c), last sentence).

PARAGRAPH (2)(a) and (b): See Rules 72 (Translation of the International Preliminary Examination Report) and 74 (Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof).

The number of translations of the international preliminary examination report required determines the amount of the handling fee (Rule 57.2).

PARAGRAPH (3)(a): See Rule 73 (Communication of the International Preliminary Examination Report). As to translations, see Rules 72 and 74.

“Elected Office” is defined in Article 2(xiv).

PARAGRAPH (3)(b): See Rule 74 (Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof).

“Elected Office” is defined in Article 2(xiv).

PARAGRAPH (4): See Rule 71.2 (Copies of Cited Documents).

NOTES ON ARTICLE 37

PARAGRAPH (1): See Rule 75 (Withdrawal of the Demand, or of Elections).

PARAGRAPH (2): –

(3)(a) Any withdrawal shall be notified to the International Bureau.

(b) The elected Offices concerned and the International Preliminary Examining Authority concerned shall be notified accordingly by the International Bureau.

(4)(a) Subject to the provisions of subparagraph (b), withdrawal of the demand or of the election of a Contracting State shall, unless the national law of that State provides otherwise, be considered to be withdrawal of the international application as far as that State is concerned.

(b) Withdrawal of the demand or of the election shall not be considered to be withdrawal of the international application if such withdrawal is effected prior to the expiration of the applicable time limit under Article 22; however, any Contracting State may provide in its national law that the aforesaid shall apply only if its national Office has received, within the said time limit, a copy of the international application, together with a translation (as prescribed), and the national fee.

Article 38 **Confidential Nature of the International Preliminary Examination**

(1) Neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, allow access within the meaning, and with the proviso, of Article 30(4) to the file of the international preliminary examination by any person or authority at any time, except by the elected Offices once the international preliminary examination report has been established.

PARAGRAPH (3)(a): See Rule 75.1(b).

PARAGRAPH (3)(b): See Rules 75.2 (Notification of Elected Offices) and 75.3 (Notification of the International Preliminary Examining Authority).

“Elected Office” is defined in Article 2(xiv).

PARAGRAPH (4)(a): “National law” is defined in Article 2(x).

PARAGRAPH (4)(b): The time limit under Article 22 is generally 20 months from the priority date.

Article 37(4) means that if the demand or election is withdrawn inside the time limit applicable under Article 22, then the international application itself, and the designation of the State whose election is withdrawn, is not considered withdrawn since the withdrawal of the demand or of the election occurred inside the period during which the national Office cannot process the international application. Thus, such Office is in no different a position than if the demand or election had never been made. See also Rule 75.4 (Withdrawal of the Demand, or of Elections: Faculty Under Article 37(4)(b)).

“National law” and “national Office” are defined in Article 2(x) and (xii), respectively.

NOTES ON ARTICLE 38

PARAGRAPH (1): See the observations concerning paragraph (2).

“Elected Office” is defined in Article 2(xiv).

(2) Subject to the provisions of paragraph (1) and Articles 36(1) and (3) and 37(3)(b), neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, give information on the issuance or non-issuance of an international preliminary examination report and on the withdrawal or nonwithdrawal of the demand or of any election.

Article 39 **Copy, Translation, and Fee, to Elected Offices**

(1)(a) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 22 shall not apply to such State and the applicant shall furnish a copy of the international application (unless the communication under Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each elected Office not later than at the expiration of 25 months from the priority date.

(b) Any national law may, for performing the acts referred to in subparagraph (a), fix time limits which expire later than the time limit provided for in that subparagraph.

PARAGRAPH (2): The combined effect of paragraphs (1) and (2) is that information concerning the international preliminary examination will be given *only to an elected Office* and that such information will consist of the following and will normally occur in the following sequence:

- *the fact of election* will be notified (Article 31(7) and Rule 61.2),
- *the fact of withdrawal* will be notified (Article 37(3)(b) and Rule 75.2) and if there is withdrawal of the election of a given State such State will not be given any further information even if the international preliminary examination report later issues since such report is communicated only to elected Offices and the Office of the said State will have ceased to be an elected Office (see Article 38(1)),
- *the international preliminary examination report* will be communicated (Article 36(3)(a) and Rule 73),
- *the file of the international preliminary examination* will be accessible to the elected Office but only *after* the international preliminary examination report is established, that is, after the dialogue between the applicant and the International Preliminary Examining Authority has been concluded (Article 38(1)).

It is to be noted that neither the International Preliminary Examining Authority nor the International Bureau will give any information concerning the file to anyone other than the elected Offices at any time and that no information will be published either.

GENERAL OBSERVATIONS

As to the keeping of records and files, see Rules 93.3 and 93.4.

As to the furnishing of copies at the applicant's request, see Rule 94.1.

As to the availability of translations, see Rule 95.

NOTES ON ARTICLE 39

PARAGRAPH (1)(a): Article 22 provides for a 20-month time limit which is incompatible with the 25-month time limit fixed in this subparagraph.

See Rule 76 (Languages of Translations and Amounts of Fees Under Article 39(1); Translation of Priority Document).

As to the publication of any information on the question whether the requirements provided for under this Article have been complied with, see Rule 86.1 (The Gazette: Contents).

"Priority date" and "elected Office" are defined in Article 2(xi) and (xiv), respectively.

PARAGRAPH (1)(b): See Rule 77 (Faculty under Article 39(1)(b)).

As to notification of applicant of applicable time limits in different elected Offices, see Rule 61.3.

"National law" is defined in Article 2(x).

(2) The effect provided for in Article 11(3) shall cease in the elected State with the same consequences as the withdrawal of any national application in that State if the applicant fails to perform the acts referred to in paragraph (1)(a) within the time limit applicable under paragraph (1)(a) or (b).

(3) Any elected Office may maintain the effect provided for in Article 11(3) even where the applicant does not comply with the requirements provided for in paragraph (1)(a) or (b).

Article 40

Delaying of National Examination and Other Processing

(1) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 23 shall not apply to such State and the national Office of or acting for that State shall not proceed, subject to the provisions of paragraph (2), to the examination and other processing of the international application prior to the expiration of the applicable time limit under Article 39.

(2) Notwithstanding the provisions of paragraph (1), any elected Office may, on the express request of the applicant, proceed to the examination and other processing of the international application at any time.

Article 41

Amendment of the Claims, the Description, and the Drawings, Before Elected Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each elected Office within the prescribed time limit. No elected Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired, except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed, unless the national law of the elected State permits them to go beyond the said disclosure.

PARAGRAPH (2): The effect provided for in Article 11(3) is, in essence, that an international application has the effect of a national application in each designated State and – since only designated States may be elected (Article 31(4)) – in each elected State.

“National application” is defined in Article 2(vi).

PARAGRAPH (3): As to the effect provided for in Article 11(3), see the observations contained in the foregoing paragraph.

“Elected Office” is defined in Article 2(xiv).

NOTES ON ARTICLE 40

PARAGRAPH (1): Article 23 refers to a 20-month time limit which is incompatible with the 25-month time limit referred to in Article 39. See also Rule 78.3 (Amendment of the Claims, the Description, and the Drawings, Before Elected Offices: Utility Models).

The “applicable time limit under Article 39” will be 25 months from the priority date (Article 39(1)(a)) or more when the elected State so allows (Article 39(1)(b)).

“Priority date” and “national Office” are defined in Article 2(xi) and (xii), respectively.

PARAGRAPH (2): The applicant must address such a request direct to the elected Office.

“Elected Office” is defined in Article 2(xiv).

NOTES ON ARTICLE 41

PARAGRAPH (1): The time limit is fixed in Rules 78.1 and 78.2.

“Patent” is defined in Article 2(ii) and (ix), whereas “elected Office” is defined in Article 2(xiv).

PARAGRAPH (2): “National law” is defined in Article 2(x).

(3) The amendments shall be in accordance with the national law of the elected State in all respects not provided for in this Treaty and the Regulations.

(4) Where an elected Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 42

Results of National Examination in Elected Offices

No elected Office receiving the international preliminary examination report may require that the applicant furnish copies, or information on the contents, of any papers connected with the examination relating to the same international application in any other elected Office.

CHAPTER III COMMON PROVISIONS

Article 43

Seeking Certain Kinds of Protection

In respect of any designated or elected State whose law provides for the grant of inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, or utility certificates of addition, the applicant may indicate, as prescribed in the Regulations, that his international application is for the grant, as far as that State is concerned, of an inventor's certificate, a utility certificate, or a utility model, rather than a patent, or that it is for the grant of a patent or certificate of addition, an inventor's certificate of addition, or a utility certificate of addition, and the ensuing effect shall be governed by the applicant's choice. For the purposes of this Article and any Rule thereunder, Article 2(ii) shall not apply.

PARAGRAPH (3): "National law" is defined in Article 2(x).

PARAGRAPH (4): The right to require a translation is provided for in Article 39(1)(a).

"Elected Office" is defined in Article 2(xiv).

NOTES ON ARTICLE 42

SOLE PARAGRAPH: There is a growing tendency in examining Offices to obligate the applicant to produce copies, or information on the contents, of any papers connected with the examination of the same invention in *other* examining Offices. Sometimes it is even required that the applicant furnish translations of such papers. Such requirements may become extremely costly and vexatious for the applicant. Article 42 would exclude such requirements, provided the other Offices were also elected under Chapter II. Such other Offices would hardly lose anything because, instead of the said papers, they would receive the international preliminary examination report, which generally will be more valuable to them as it is prepared according to agreed international criteria.

On the other hand, nothing in this Article prevents any elected Office from asking any other elected Office to exchange with it – direct, that is, without the intervention of the applicant and without placing any burden on him – information on the examination results in the national phase, provided such exchange is permitted by the applicable laws.

"Elected Office" is defined in Article 2(xiv).

NOTES ON CHAPTER III

This Chapter, entitled "Common Provisions," contains seven Articles (Articles 43 to 49).

They consist of provisions which concern both Chapter I and Chapter II.

NOTES ON ARTICLE 43

SOLE PARAGRAPH: See Rule 4.12(a) (The Request (Contents): Choice of Certain Kinds of Protection).

"Patent" is defined in Article 2(ix).

Article 44

Seeking Two Kinds of Protection

In respect of any designated or elected State whose law permits an application, while being for the grant of a patent or one of the other kinds of protection referred to in Article 43, to be also for the grant of another of the said kinds of protection, the applicant may indicate, as prescribed in the Regulations, the two kinds of protection he is seeking, and the ensuing effect shall be governed by the applicant's indications. For the purposes of this Article, Article 2(ii) shall not apply.

Article 45

Regional Patent Treaties

(1) Any treaty providing for the grant of regional patents ("regional patent treaty"), and giving to all persons who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents.

(2) The national law of the said designated or elected State may provide that any designation or election of such State in the international application shall have the effect of an indication of the wish to obtain a regional patent under the regional patent treaty.

Article 46

Incorrect Translation of the International Application

If, because of an incorrect translation of the international application, the scope of any patent granted on that application exceeds the scope of the international application in its original language, the competent authorities of the Contracting State concerned may accordingly and retroactively limit the scope of the patent, and declare it null and void to the extent that its scope has exceeded the scope of the international application in its original language.

NOTES ON ARTICLE 44

SOLE PARAGRAPH: See Rule 4.12(b) (The Request (Contents): Choice of Certain Kinds of Protection).

For example, the law of Germany (Federal Republic) allows the same application to be for the grant of a patent and for the grant of a utility model.

"Application" is defined in Article 2(i) and (viii), whereas "patent" is defined in Article 2(ix).

NOTES ON ARTICLE 45

PARAGRAPH (1): "Regional patent" is defined in Article 2(iv).

PARAGRAPH (2): "Regional patent" and "national law" are defined in Article 2(iv) and (x), respectively.

NOTES ON ARTICLE 46

SOLE PARAGRAPH: The provision deals only with an

incorrect translation that results in a patent whose scope is *broader* than that of the international application. It goes without saying that, if the translation filed by the applicant under Articles 22 or 39 is incorrect and, because of such defect, *narrows* the disclosure as it appears in the international application as filed (i.e., in its original language), the translation may – although it does not have to – be considered by the designated (elected) Office as constituting an irrevocable renunciation of any part of the disclosure not contained in the translation. The cumulative effect of this understanding and Article 46 is that the valid scope of any national patent is limited by what is clearly comprised both in the international application in the original language and its translation.

In any case, no national Office will be obligated, during the national examination procedure, to refer to the international application in its original language. It may base its examination on the translation only.

"Patent" is defined in Article 2(ii) and (ix).

Article 47 **Time Limits**

(1) The details for computing time limits referred to in this Treaty are governed by the Regulations.

(2)(a) All time limits fixed in Chapters I and II of this Treaty may, outside any revision under Article 60, be modified by a decision of the Contracting States.

(b) Such decisions shall be made in the Assembly or through voting by correspondence and must be unanimous.

(c) The details of the procedure are governed by the Regulations.

Article 48 **Delay in Meeting Certain Time Limits**

(1) Where any time limit fixed in this Treaty or the Regulations is not met because of interruption in the mail service or unavoidable loss or delay in the mail, the time limit shall be deemed to be met in the cases and subject to the proof and other conditions prescribed in the Regulations.

(2)(a) Any Contracting State shall, as far as that State is concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit.

NOTES ON ARTICLE 47

PARAGRAPH (1): See Rules 79 (Calendar) and 80 (Computation of Time Limits).

Time limits are contained in the Articles enumerated in connection with paragraph (2)(a) below, and in Articles 57(5)(e); 61(1)(b), (3)(a)(c); 63(1)(a), (2); 64(3)(b), (3)(c)(ii), (4)(a), (6)(a)(b); 65(2); 66(2).

PARAGRAPH (2)(a): The following provisions of Chapters I and II fix time limits counted from the priority date:

Article 13(1) (copy of the international application available to the designated Office as soon as possible after one year);

Article 21(2)(a) (international publication promptly after 18 months);

Article 22(1) (copy of the international application, translation, national fee, and in certain cases, identification of the inventor, to the designated Office by the 20th month);

Article 23(1) (delaying of national procedure in the designated Office for not less than 20 months);

Article 29(3) (effects of international publication starting, in certain cases, at the expiration of 18 months);

Article 30(4) (general publication of an international application or its translation not allowed, in certain cases, before 20 months);

Article 37(4)(b) (withdrawal of the demand or of the election prior to the expiration of 20 months);

Article 39(1)(a) (copy of the international application, translation, and national fee, to the elected Office by the 25th month if the election is effected not later than the end of 19 months);

Article 40(1) (delaying of national procedure in the elected Office for not less than 25 months if the election is effected not later than at the end of 19 months).

The time limit (2 months) for furnishing the copy of the international application, translation, national fee, and, in certain cases, the identification of the inventor, to the designated Office where no international search report issues is counted from the date of the notification under Article 17(2)(a) (Article 22(2)).

The time limit before which a national Office generally cannot allow access to the international application is dependent upon the earliest of three dates (Article 30(2)(a)).

PARAGRAPH (2)(b): See Article 53(2)(a)(ii) and Rule 81 (Modification of Time Limits Fixed in [Chapters I and II of] the Treaty).

PARAGRAPH (2)(c): See Rule 81 (Modification of Time Limits Fixed in [Chapters I and II of] the Treaty).

NOTES ON ARTICLE 48

PARAGRAPH (1): See Rule 82 (Irregularities in the Mail Service).

With one exception, the "cases" include all situations in which mail may be used under the Treaty. The exception is constituted by the case where the record copy does not arrive, or arrives after the prescribed time limit, at the International Bureau (see Rule 22.3(b)). The "proof and other conditions" are spelled out in Rules 82.1 (Delay or Loss in Mail) and 82.2 (Interruption in the Mail Service).

PARAGRAPH (2)(a): See Rule 22.3(b).

"National law" is defined in Article 2(x).

(b) Any Contracting State may, as far as that State is concerned, excuse, for reasons other than those referred to in subparagraph (a), any delay in meeting any time limit.

Article 49

Right to Practice Before International Authorities

Any attorney, patent agent, or other person, having the right to practice before the national Office with which the international application was filed, shall be entitled to practice before the International Bureau and the competent International Searching Authority and competent International Preliminary Examining Authority in respect of that application.

CHAPTER IV TECHNICAL SERVICES

Article 50

Patent Information Services

(1) The International Bureau may furnish services by providing technical and any other pertinent information available to it on the basis of published documents, primarily patents and published applications (referred to in this Article as “the information services”).

(2) The International Bureau may provide these information services either directly or through one or more International Searching Authorities or other national or international specialized institutions, with which the International Bureau may reach agreement.

(3) The information services shall be operated in a way particularly facilitating the acquisition by Contracting States which are developing countries of technical knowledge and technology, including available published know-how.

(4) The information services shall be available to Governments of Contracting States and their nationals and residents. The Assembly may decide to make these services available also to others.

PARAGRAPH (2)(b): See Rule 22.3(b).

NOTES ON ARTICLE 49

SOLE PARAGRAPH: See Rule 83 (Right to Practice Before International Authorities).

As to “agent,” see Rule 2.2 (Interpretation of Certain Words: “Agent”).

“National Office” is defined in Article 2(xii).

NOTES ON CHAPTER IV

This Chapter entitled “Technical Services” contains 3 Articles (Articles 50 to 52).

Article 50 deals with patent information services. Article 51 deals with technical assistance. Article 52 establishes the separation between the financial provisions in this Chapter with those in other Chapters of the Treaty.

NOTES ON ARTICLE 50

PARAGRAPH (1): “Application” is defined in Article 2(i) and (viii), whereas “patent” is defined in Article 2(ii) and (ix).

PARAGRAPH (2): –

PARAGRAPH (3): –

PARAGRAPH (4): –

(5)(a) Any service to Governments of Contracting States shall be furnished at cost, provided that, when the Government is that of a Contracting State which is a developing country, the service shall be furnished below cost if the difference can be covered from profit made on services furnished to others than Governments of Contracting States or from the sources referred to in Article 51(4).

(b) The cost referred to in subparagraph (a) is to be understood as cost over and above costs normally incident to the performance of the services of a national Office or the obligations of an International Searching Authority.

(6) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

(7) The Assembly shall, when it considers it necessary, recommend methods of providing financing supplementary to those referred to in paragraph (5).

Article 51 Technical Assistance

(1) The Assembly shall establish a Committee for Technical Assistance (referred to in this Article as “the Committee”).

(2)(a) The members of the Committee shall be elected among the Contracting States, with due regard to the representation of developing countries.

(b) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.

(3)(a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries in developing their patent systems individually or on a regional basis.

(b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

PARAGRAPH (5)(a): The sources referred to in Article 51(4) are international financing organizations and intergovernmental organizations.

PARAGRAPH (5)(b): “National Office” is defined in Article 2(xii).

PARAGRAPH (6): Decisions require a two-thirds majority (see Article 53(6)(a)).

PARAGRAPH (7): Recommendations require a two-thirds majority (see Article 53(6)(a)).

NOTES ON ARTICLE 51

PARAGRAPH (1): –

PARAGRAPH (2)(a): The decision requires a two-thirds majority (see Article 53(6)(a)).

PARAGRAPH (2)(b): “Director General” is defined in Article 2(xx).

PARAGRAPH (3)(a) and (b): –

(4) The International Bureau shall seek to enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly the United Nations, the agencies of the United Nations, and the Specialized Agencies connected with the United Nations concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.

(5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

Article 52
Relations with Other Provisions of the Treaty

Nothing in this Chapter shall affect the financial provisions contained in any other Chapter of this Treaty. Such provisions are not applicable to the present Chapter or to its implementation.

CHAPTER V
ADMINISTRATIVE PROVISIONS

Article 53
Assembly

(1)(a) The Assembly shall, subject to Article 57(8), consist of the Contracting States.

(b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

PARAGRAPH (4): The United Nations Development Programme and the International Bank for Reconstruction and Development are among such organizations.

PARAGRAPH (5): The decisions require a two-thirds majority (see Article 53(6)(a)).

NOTES ON ARTICLE 52

SOLE PARAGRAPH: Article 57 contains the principal financial provisions and it appears in another Chapter.

NOTES ON CHAPTER V

This Chapter, entitled "Administrative Provisions," contains six Articles (Articles 53 to 58).

The first four deal with four organs: the Assembly (Article 53), the Executive Committee (Article 54), the International Bureau (Article 55), and the Committee for Technical Cooperation (Article 56).

Article 57 deals with finances, and Article 58 with the Regulations.

Most of the provisions of this Chapter follow closely the administrative provisions of the Paris Convention as revised at Stockholm in 1967.

NOTES ON ARTICLE 53

PARAGRAPH (1)(a): "Contracting States" means "States party to this Treaty" (Article 1). According to Article 57(8) the State on the territory of which the Organization has its headquarters (i.e., Switzerland) has, under certain conditions, an *ex officio* seat in the Assembly.

PARAGRAPH (1)(b): See Rule 84 (Expenses of Delegations).

- (2)(a) The Assembly shall:
- (i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;
 - (ii) perform such tasks as are specifically assigned to it under other provisions of this Treaty;
 - (iii) give directions to the International Bureau concerning the preparation for revision conferences;
 - (iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
 - (v) review and approve the reports and activities of the Executive Committee established under paragraph (9), and give instructions to such Committee;
 - (vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts;
 - (vii) adopt the financial regulations of the Union;
 - (viii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;
 - (ix) determine which States other than Contracting States and, subject to the provisions of paragraph (8), which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
 - (x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

PARAGRAPH (2)(a)(i): –

PARAGRAPH (2)(a)(ii): These tasks, apart from the tasks enumerated in subparagraph (2)(a), are the following: allow residents or nationals of non-Contracting States which are party to the Paris Convention to file international applications (Article 9(2)); appoint International Searching Authorities (Article 16(3)(a)); approve agreements between the International Bureau and the International Searching Authorities (Article 16(3)(b)); hear the (prospective) International Searching Authorities and seek the advice of the Committee for Technical Cooperation (Article 16(3)(e)); perform similar tasks with respect to (prospective) International Preliminary Examining Authorities (Article 32(2) and (3)); allow certain persons to make a demand for international preliminary examination if they are not residents or nationals of a Contracting State or a State bound by Chapter II (Article 31(2)(b)); modify the time limits fixed in the Treaty (Article 47(2)(b)); implement the information services (see Article 50(4), (6) and (7)); establish the Committee for Technical Assistance (Article 51(1)) and fix the details concerning technical assistance (Article 51(5)); set up the Executive Committee (Article 53(9)); approve the annual programs and budget until the Executive Committee is set up (Article 53(10)); adopt its own rules of procedure (Article 53(12)); regulate the election of the members of the Executive Committee

(Article 54(5)(c)); create new publications by the International Bureau (Article 55(4)); direct the preparation of revision conferences (Article 55(7)(a)); establish and direct the Committee for Technical Cooperation (Article 56(1), (2)(a), (3)(iii), (5), (6)(b), (7), (8)); make certain financial decisions (Article 57(5)(b), (c), (d), (e), (7)(a), (b), (c), (9)); amend the Regulations (Article 58(2)(a)); exercise control over the Administrative Instructions (Article 58(4)); convene revision conferences (Article 60(2)); amend certain administrative provisions of the Treaty (Article 61(1), (2), (3)); adopt measures for the gradual application of the Treaty (Article 65(1), (2)); designate additional languages for official texts of the Treaty (Article 67(1)(b)).

PARAGRAPH (2)(a)(iii): See Article 60 (Revision of the Treaty).

PARAGRAPH (2)(a)(iv) to (x): –

PARAGRAPH (2)(b): “Organization” is defined in Article 2(xviii).

(3) A delegate may represent, and vote in the name of, one State only.

(4) Each Contracting State shall have one vote.

(5)(a) One-half of the Contracting States shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.

(6)(a) Subject to the provisions of Articles 47(2)(b), 58(2)(b), 58(3) and 61(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) In connection with matters of exclusive interest to States bound by Chapter II, any reference to Contracting States in paragraphs (4), (5), and (6), shall be considered as applying only to States bound by Chapter II.

(8) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to the Assembly.

(9) When the number of Contracting States exceeds forty, the Assembly shall establish an Executive Committee. Any reference to the Executive Committee in this Treaty and the Regulations shall be construed as references to such Committee once it has been established.

(10) Until the Executive Committee has been established, the Assembly shall approve, within the limits of the program and triennial budget, the annual programs and budgets prepared by the Director General.

PARAGRAPH (3): –

PARAGRAPH (4): –

PARAGRAPH (5)(a): –

PARAGRAPH (5)(b): See Rule 85.1 (Absence of Quorum in the Assembly: Voting by Correspondence).

PARAGRAPH (6)(a): The following acts call for unanimity: changing the time limits fixed in Chapters I and II of the Treaty (Article 47(2)(a)), amendment of certain Rules (Article 58(3)(a)(i)), exclusion of certain Rules from the requirement of unanimity (Article 58(3)(b)), and inclusion of Rules among the Rules which can be changed only unanimously or without the dissenting vote of certain Contracting States (Article 58(3)(c)).

Two acts call for no dissenting vote by certain Contracting States: amendment of certain Rules (Article 58(3)(a)(ii)), and exclusion of such Rules from the said requirement (Article 58(3)(b)).

Two acts call for a three-fourths majority: amendment of certain Rules (Article 58(2)(b)), and amendment of certain provisions of the Treaty (Article 61(1)(a)).

PARAGRAPH (6)(b): –

PARAGRAPH (7): Chapter II deals with international preliminary examination.

PARAGRAPH (8): –

PARAGRAPH (9): The election of the members of the Executive Committee requires a two-thirds majority (Article 53(6)(a)).

PARAGRAPH (10): –

(11)(a) Until the Executive Committee has been established, the Assembly shall meet once in every calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the Coordination Committee of the Organization.

(b) Once the Executive Committee has been established, the Assembly shall meet once only in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(c) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee, or at the request of one-fourth of the Contracting States.

(12) The Assembly shall adopt its own rules of procedure.

Article 54 Executive Committee

(1) When the Assembly has established an Executive Committee, that Committee shall be subject to the provisions set forth hereinafter.

(2)(a) The Executive Committee shall, subject to Article 57(8), consist of States elected by the Assembly from among States members of the Assembly.

(b) The Government of each State member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(3) The number of States members of the Executive Committee shall correspond to one-fourth of the number of States members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution.

PARAGRAPH (11)(a) to (c): –

PARAGRAPH (12): –

PARAGRAPH (3): –

PARAGRAPH (4): –

NOTES ON ARTICLE 54

PARAGRAPH (1): See Article 53(9) concerning the establishment of an Executive Committee.

PARAGRAPH (2)(a): According to Article 57(8), the State on the territory of which the Organization has its headquarters (i.e., Switzerland) has, under certain conditions, an *ex officio* seat on the Executive Committee.

PARAGRAPH (2)(b): –

(5)(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be reelected but only up to a maximum of two-thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6)(a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly in respect of the draft program and triennial budget of the Union prepared by the Director General;

(iii) approve, within the limits of the program and triennial budget, the specific yearly budgets and programs prepared by the Director General;

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;

(vi) perform such other functions as are allocated to it under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7)(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative or at the request of its Chairman or one-fourth of its members.

PARAGRAPH (5)(a): As to the time of meeting of the Assembly in ordinary session, see Article 53(11)(b).

PARAGRAPH (5)(b) and (c): –

PARAGRAPH (6)(a)(i) to (v): –

PARAGRAPH (6)(a)(vi): These functions, apart from the functions enumerated in Article 54(6)(a), are the following express its view on the advice of the Committee for Technical Cooperation (Article 56(6)(b)); initiate proposals for the amendment of certain Articles (Article 61(1)).

PARAGRAPH (6)(b): –

PARAGRAPH (7)(a): As to the time of the meeting of the Coordination Committee of the Organization, see Article 8(4) of the Convention Establishing the World Intellectual Property Organization.

PARAGRAPH (7)(b): –

- (8)(a) Each State member of the Executive Committee shall have one vote.
- (b) One-half of the members of the Executive Committee shall constitute a quorum.
- (c) Decisions shall be made by a simple majority of the votes cast.
- (d) Abstentions shall not be considered as votes.
- (e) A delegate may represent, and vote in the name of, one State only.
- (9) Contracting States not members of the Executive Committee shall be admitted to its meetings as observers, as well as any intergovernmental organization appointed as International Searching or Preliminary Examining Authority.
- (10) The Executive Committee shall adopt its own rules of procedure.

Article 55 International Bureau

- (1) Administrative tasks concerning the Union shall be performed by the International Bureau.
- (2) The International Bureau shall provide the secretariat of the various organs of the Union.
- (3) The Director General shall be the chief executive of the Union and shall represent the Union.
- (4) The International Bureau shall publish a Gazette and other publications provided for by the Regulations or required by the Assembly.
- (5) The Regulations shall specify the services that national Offices shall perform in order to assist the International Bureau and the International Searching and Preliminary Examining Authorities in carrying out their tasks under this Treaty.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee or working group established under this Treaty or the Regulations. The Director General, or a staff member designated by him, shall be *ex officio* secretary of these bodies.
- (7)(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the revision conferences.

PARAGRAPH (8)(a) to (e): –
 PARAGRAPH (9): –
 PARAGRAPH (10): –

NOTES ON ARTICLE 55

PARAGRAPH (1): –
 PARAGRAPH (2): –
 PARAGRAPH (3): –

PARAGRAPH (4): See Rule 86 (The Gazette). See also Rules 3.3(a)(iii); 19.3(b); 22.4; 23.1(c); 48.6(a)(b)(c); 49.1(b)(c); 50.1(b)(d); 72.1(b); 75.4(b); 76.1(b)(c); 77.1(b)(d); 87.1, 87.2(a); 89.3(a)(b).

PARAGRAPH (5): “National Office” is defined in Article 2(xii).

PARAGRAPH (6): –

PARAGRAPH (7)(a): As to revision conferences, see Article 60.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for revision conferences.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 56 **Committee for Technical Cooperation**

(1) The Assembly shall establish a Committee for Technical Cooperation (referred to in this Article as “ the Committee “).

(2)(a) The Assembly shall determine the composition of the Committee and appoint its members, with due regard to an equitable representation of developing countries.

(b) The International Searching and Preliminary Examining Authorities shall be *ex officio* members of the Committee. In the case where such an Authority is the national Office of a Contracting State, that State shall not be additionally represented on the Committee.

(c) If the number of Contracting States so allows, the total number of members of the Committee shall be more than double the number of *ex officio* members.

(d) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of interested organizations to participate in discussions of interest to them.

(3) The aim of the Committee shall be to contribute, by advice and recommendations:

(i) to the constant improvement of the services provided for under this Treaty,

(ii) to the securing, so long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports, and

(iii) on the initiative of the Assembly or the Executive Committee, to the solution of the technical problems specifically involved in the establishment of a single International Searching Authority.

PARAGRAPH (7)(b) and (c): –

PARAGRAPH (8): –

NOTES ON ARTICLE 56

PARAGRAPH (1): –

PARAGRAPH (2)(a): These decisions require a two-thirds majority (see Article 53(6)(a)).

PARAGRAPH (2)(b): “National Office” is defined in Article 2(xii).

PARAGRAPH (2)(c): –

PARAGRAPH (2)(d): It is to be noted that both international and national non-governmental organizations are meant. It goes without saying that they will receive the documents necessary for intelligent participation.

PARAGRAPH (3): –

(4) Any Contracting State and any interested international organization may approach the Committee in writing on questions which fall within the competence of the Committee.

(5) The Committee may address its advice and recommendations to the Director General or, through him, to the Assembly, the Executive Committee, all or some of the International Searching and Preliminary Examining Authorities, and all or some of the receiving Offices.

(6)(a) In any case, the Director General shall transmit to the Executive Committee the texts of all the advice and recommendations of the Committee. He may comment on such texts.

(b) The Executive Committee may express its views on any advice, recommendation, or other activity of the Committee, and may invite the Committee to study and report on questions falling within its competence. The Executive Committee may submit to the Assembly, with appropriate comments, the advice, recommendations and report of the Committee.

(7) Until the Executive Committee has been established, references in paragraph (6) to the Executive Committee shall be construed as references to the Assembly.

(8) The details of the procedure of the Committee shall be governed by the decisions of the Assembly.

Article 57 **Finances**

(1)(a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

PARAGRAPH (4): –

PARAGRAPH (5): In other words, the Committee's advice and recommendations need not be cleared by the Executive Committee or the Assembly before communication to the International Searching or Preliminary Examining Authorities or the receiving Offices.

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (6)(a) and (b): –

PARAGRAPH (7): –

PARAGRAPH (8): The decisions require a two-thirds majority (Article 53(6)(a)).

NOTES ON ARTICLE 57

PARAGRAPH (1)(a) to (c): –

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) Subject to the provisions of paragraph (5), the budget of the Union shall be financed from the following sources:

(i) fees and charges due for services rendered by the International Bureau in relation to the Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income.

(4) The amounts of fees and charges due to the International Bureau and the prices of its publications shall be so fixed that they should, under normal circumstances, be sufficient to cover all the expenses of the International Bureau connected with the administration of this Treaty.

(5)(a) Should any financial year close with a deficit, the Contracting States shall, subject to the provisions of subparagraphs (b) and (c), pay contributions to cover such deficit.

(b) The amount of the contribution of each Contracting State shall be decided by the Assembly with due regard to the number of international applications which has emanated from each of them in the relevant year.

(c) If other means of provisionally covering any deficit or any part thereof are secured, the Assembly may decide that such deficit be carried forward and that the Contracting States should not be asked to pay contributions.

(d) If the financial situation of the Union so permits, the Assembly may decide that any contributions paid under subparagraph (a) be reimbursed to the Contracting States which have paid them.

(e) A Contracting State which has not paid, within two years of the due date as established by the Assembly, its contribution under subparagraph (b) may not exercise its right to vote in any of the organs of the Union. However, any organ of the Union may allow such a State to continue to exercise its right to vote in that organ so long as it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

PARAGRAPH (2): –

PARAGRAPH (3): –

PARAGRAPH (4): It is to be noted that the amounts of all the important fees to be collected by or for the benefit of the International Bureau are fixed in the Regulations and thus are fixed by the Assembly. Minor fees will be fixed in the Administrative Instructions, over which the Assembly has control (cf. Article 58(4)).

PARAGRAPH (5)(a) to (e): –

(6) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(7)(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each Contracting State. If the fund becomes insufficient, the Assembly shall arrange to increase it. If part of the fund is no longer needed, it shall be reimbursed.

(b) The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be decided by the Assembly on the basis of principles similar to those provided for under paragraph (5)(b).

(c) The terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(d) Any reimbursement shall be proportionate to the amounts paid by each Contracting State, taking into account the dates at which they were paid.

(8)(a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an *ex officio* seat in the Assembly and on the Executive Committee.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(9) The auditing of the accounts shall be effected by one or more of the Contracting States or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

PARAGRAPH (6): –

PARAGRAPH (7)(a) to (d): –

PARAGRAPH (8)(a) and (b): –

PARAGRAPH (9): –

Article 58 Regulations

- (1) The Regulations annexed to this Treaty provide Rules:
- (i) concerning matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed,
 - (ii) concerning any administrative requirements, matters, or procedures,
 - (iii) concerning any details useful in the implementation of the provisions of this Treaty.
- (2)(a) The Assembly may amend the Regulations.
- (b) Subject to the provisions of paragraph (3), amendments shall require three-fourths of the votes cast.
- (3)(a) The Regulations specify the Rules which may be amended
- (i) only by unanimous consent, or
 - (ii) only if none of the Contracting States whose national Office acts as an International Searching or Preliminary Examining Authority dissents, and, where such Authority is an intergovernmental organization, if the Contracting State member of that organization authorized for that purpose by the other member States within the competent body of such organization does not dissent.
- (b) Exclusion, for the future, of any such Rules from the applicable requirement shall require the fulfillment of the conditions referred to in subparagraph (a)(i) or (a)(ii), respectively.
- (c) Inclusion, for the future, of any Rule in one or the other of the requirements referred to in subparagraph (a) shall require unanimous consent.
- (4) The Regulations provide for the establishment, under the control of the Assembly, of Administrative Instructions by the Director General.

NOTES ON ARTICLE 58

PARAGRAPH (1)(i): See the following Articles: 2, 2(xii); 3(2), (4)(i)(ii)(iii)(iv); 4(1)(iii)(v), (2), (4); 7(2)(ii); 8(1); 9(3); 10; 11(1)(ii)(iii)(c), (2)(a)(b); 12(1), (3); 14(1)(a)(i)(ii)(v)(b), (2), (3)(a)(b), (4); 15(4), (5)(c); 16(3)(c); 17(1), (2)(a)(i)(ii), (3)(a); 18(1), (3); 19(1); 20(1)(a)(b), (3); 21(2)(b), (3), (4), (6); 22(1); 25(1)(c), (2)(a); 26; 27(1), (4), (5), (8); 28(1), (3); 31(1), (2)(a), (3), (5); 33(2), (3); 34(1), (2)(b)(c)(ii), (3)(a)(c), (4)(a)(i); 35(1), (2); 36(1), (2)(a), (3)(a)(b); 37(4)(b); 39(1)(a); 41(1), (3); 43; 44; 47(1), (2)(c); 48(1); 53(5)(b), (9); 55(4), (5), (6); 58(2)(a), (3)(a)(b)(c), (4), (5); 59; 63(3); 64(1)(b), (2)(a)(i), (3)(c)(i); 65(1); 68(2), (4).

PARAGRAPH (1)(ii) and (iii): –

PARAGRAPH (2)(a): See Rule 88 (Amendment of the Regulations).

PARAGRAPH (2)(b): –

PARAGRAPH (3)(a)(i): See Rules 88.1 (Amendment of the Regulations: Requirement of Unanimity) and 88.2 (Amendment of the Regulations: Requirement of Unanimity During a Transitional Period).

PARAGRAPH (3)(a)(ii): See Rule 88.3 (Amendment of the Regulations: Requirement of Absence of Opposition by Certain States).

“National Office” is defined in Article (2)(xii).

PARAGRAPH (3)(b) and (c): –

PARAGRAPH (4): See Rule 89 (Administrative Instructions). See also Rules 3.4; 5.1(c); 6.1(c); 20.1(b); 43.5(b), 43.10; 48.1(b), 48.2(b)(i), 48.2(i), 48.4(a); 53.1(c); 70.6(a), 70.8, 70.15; 86.1(i)(v), 86.4, 86.6.

(5) In the case of conflict between the provisions of the Treaty and those of the Regulations, the provisions of the Treaty shall prevail.

CHAPTER VI DISPUTES

Article 59 Disputes

Subject to Article 64(5), any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

CHAPTER VII REVISION AND AMENDMENT

Article 60 Revision of the Treaty

(1) This Treaty may be revised from time to time by a special conference of the Contracting States.

(2) The convocation of any revision conference shall be decided by the Assembly.

(3) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to any revision conference.

PARAGRAPH (5): –

NOTES ON CHAPTER VI

This Chapter, entitled “Disputes,” contains one Article (Article 59).

NOTES ON ARTICLE 59

SOLE PARAGRAPH: Under Article 64(5), any Contracting State may declare that it will not be bound by the provisions of this Article.

NOTES ON CHAPTER VII

This Chapter, entitled “Revision and Amendment,” contains two Articles (Articles 60 and 61).

Article 60 deals with the possibility of “revising” any provision of the Treaty in special “revision” conferences.

Article 61 deals with the possibility of “amending” certain provisions of the Treaty by the Assembly.

Whereas “revisions” bind only those Contracting States which ratify or accede to them, “amendments” bind also the other Contracting States party to the Treaty at the time the amendment enters into force, except if the amendment increases their financial obligations, and all States becoming party to the Treaty after the amendment enters into force.

Otherwise, the terms of “revising” and “amendment” mean the same, that is, changing the provisions of the Treaty.

NOTES ON ARTICLE 60

PARAGRAPH (1): –

PARAGRAPH (2): The decision requires a two-thirds majority (see Article 53(6)(a)).

PARAGRAPH (3): See the Note concerning Article 61(1)(a), below.

(4) Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be amended either by a revision conference or according to the provisions of Article 61.

Article 61

Amendment of Certain Provisions of the Treaty

(1)(a) Proposals for the amendment of Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be initiated by any State member of the Assembly, by the Executive Committee, or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2)(a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption shall require three-fourths of the votes cast.

(3)(a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States members of the Assembly at the time it adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the States which are members of the Assembly at the time the amendment enters into force, provided that any amendment increasing the financial obligations of the Contracting States shall bind only those States which have notified their acceptance of such amendment.

(c) Any amendment accepted in accordance with the provisions of subparagraph (a) shall bind all States which become members of the Assembly after the date on which the amendment entered into force in accordance with the provisions of subparagraph (a).

PARAGRAPH (4): Article 53(5) deals with the quorum in the Assembly; Article 53(9) provides when the Executive Committee must be established; Article 53(11) regulates the convocation of sessions of the Assembly; Article 54 deals with the Executive Committee; Article 55(4) provides what publications the International Bureau must issue; Article 55(5) provides what services the national Offices must perform in order to assist the International Bureau and the International Searching and Preliminary Examining Authorities; Article 55(6) provides for the role of the International Bureau in meetings and as Secretariat; Article 55(7) provides for the role of the International Bureau in connection with revision conferences; Article 55(8) provides that "the International Bureau shall carry out any other tasks assigned to it;" Article 56 deals with the Committee for Technical Cooperation; Article 57 deals with finances.

NOTES ON ARTICLE 61

PARAGRAPH (1)(a): The Articles referred to deal with administrative matters of relatively minor importance. Article 53(5), (9) and (11) deals with the quorum of the

Assembly, the establishment of the Executive Committee, and the convocation of meetings, respectively. Article 54 deals with the Executive Committee. Article 55(4) to (8) deals with certain details of the tasks of the International Bureau. Article 56 deals with the Committee for Technical Cooperation. Article 57 deals with finances (see, however, Article 61(3)(b) and (c) which provides that any amendment increasing the financial obligations of the Contracting States shall bind only those States party to the Treaty at the time the amendment enters into force which have – expressly and individually – notified their acceptance of such amendment but that such amendment shall be binding on all States becoming party to the Treaty thereafter).

PARAGRAPH (1)(b): –

PARAGRAPH (2)(a) and (b): –

PARAGRAPH (3)(a) to (c): –

CHAPTER VIII
FINAL PROVISIONS

Article 62
Becoming Party to the Treaty

(1) Any State member of the International Union for the Protection of Industrial Property may become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, or

(ii) deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

(3) The provisions of Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply to this Treaty.

(4) Paragraph (3) shall in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Treaty is made applicable by another Contracting State by virtue of the said paragraph.

NOTES ON CHAPTER VIII

This Chapter, entitled "Final Provisions," contains eight Articles (Articles 62 to 69).

The first two (Articles 62 and 63) deal with the question of becoming party to the Treaty and the entry into force of the Treaty.

Article 64 deals with reservations to certain provisions of the Treaty.

Article 65 deals with the gradual application after entry into force of the Treaty.

Article 66 deals with denunciation of the Treaty.

Articles 67 to 69 deal with formal matters (signature and languages; depositary functions; notifications).

NOTES ON ARTICLE 62

PARAGRAPH (1)(i): The Treaty could be signed only before January 1, 1971 (see Article 67(2)).

PARAGRAPH (1)(ii): –

PARAGRAPH (2): –

PARAGRAPH (3): Article 24 of the Stockholm Act of the Paris Convention reads as follows:

"(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General."

PARAGRAPH (4): –

Article 63
Entry into Force of the Treaty

(1)(a) Subject to the provisions of paragraph (3), this Treaty shall enter into force three months after eight States have deposited their instruments of ratification or accession, provided that at least four of those States each fulfill any of the following conditions:

(i) the number of applications filed in the State has exceeded 40,000 according to the most recent annual statistics published by the International Bureau,

(ii) the nationals or residents of the State have filed at least 1,000 applications in one foreign country according to the most recent annual statistics published by the International Bureau,

(iii) the national Office of the State has received at least 10,000 applications from nationals or residents of foreign countries according to the most recent annual statistics published by the International Bureau.

(b) For the purposes of this paragraph, the term “applications” does not include applications for utility models.

(2) Subject to the provisions of paragraph (3), any State which does not become party to this Treaty upon entry into force under paragraph (1) shall become bound by this Treaty three months after the date on which such State has deposited its instrument of ratification or accession.

(3) The provisions of Chapter II and the corresponding provisions of the Regulations annexed to this Treaty shall become applicable, however, only on the date on which three States each of which fulfill at least one of the three requirements specified in paragraph (1) have become party to this Treaty without declaring, as provided in Article 64(1), that they do not intend to be bound by the provisions of Chapter II. That date shall not, however, be prior to that of the initial entry into force under paragraph (1).

NOTES ON ARTICLE 63

PARAGRAPH (1)(a): Publication of the statistics occurs each year in the December issue of “Industrial Property.”

“Application” is defined in Article 2(i) and (viii), whereas “national Office” is defined in Article 2(xii).

PARAGRAPH (1)(b): The definitions contained in Article 2(i) and (viii) apply subject to this exception.

PARAGRAPH (2): This paragraph deals with the States other than those which, as a group, cause the initial entry into force of the Treaty.

PARAGRAPH (3): –

Article 64 Reservations

(1)(a) Any State may declare that it shall not be bound by the provisions of Chapter II.

(b) States making a declaration under subparagraph (a) shall not be bound by the provisions of Chapter II and the corresponding provisions of the Regulations.

(2)(a) Any State not having made a declaration under paragraph (1)(a) may declare that:

(i) it shall not be bound by the provisions of Article 39(1) with respect to the furnishing of a copy of the international application and a translation thereof (as prescribed),

(ii) the obligation to delay national processing, as provided for under Article 40, shall not prevent publication, by or through its national Office, of the international application or a translation thereof, it being understood, however, that it is not exempted from the limitations provided for in Articles 30 and 38.

(b) States making such a declaration shall be bound accordingly.

(3)(a) Any State may declare that, as far as it is concerned, international publication of international applications is not required.

(b) Where, at the expiration of 18 months from the priority date, the international application contains the designation only of such States as have made declarations under subparagraph (a), the international application shall not be published by virtue of Article 21(2).

NOTES ON ARTICLE 64

PARAGRAPHS (1) and (2): It results from these paragraphs that the attitude of each Contracting State with respect to Chapter II may be any of the following three:

(i) The State may decide to accept Chapter II with all its consequences; to achieve this, it merely has to accede to the Treaty and not make any reservations under paragraphs (1) or (2).

(ii) The State may decide not to accept any part of Chapter II; to achieve this, it has to make use of the possibility of reservation under paragraph (1). The consequences will be that such a State cannot be elected, that it will not receive international preliminary examination reports, and that its nationals and residents filing international applications cannot (unless they happen to be entitled to file, and do file, in a State bound by Chapter II or unless they fall under Article 31(2)(b)) ask for international preliminary examination.

(iii) The State may decide on a course which is between (i) and (ii), and which consists of accepting Chapter II but with a reservation; to achieve this, it has to make use of the possibility of reservation under paragraph (2). The consequences, roughly stated, will be the same as they would be if the State accepted Chapter II, except that the translation will have to be furnished to its national Office by the expiration of 20 (rather than 25) months from the priority date and that the international application may be *nationally* published any time

after 20 (rather than 25) months from the priority date.

PARAGRAPH (1)(a): Chapter II deals with international preliminary examination.

PARAGRAPH (1)(b): –

PARAGRAPH (2)(a)(i): Article 39(1) allows the applicant to delay the furnishing of the copy of the international application and its translation until the expiration of 25 months from the priority date.

PARAGRAPH (2)(a)(ii): Under Article 40, the delay is generally until the expiration of 25 months from the priority date. Article 30 limits the right of designated and elected Offices to allow access to the files of the international application. Article 38 limits the right of elected Offices to obtain access to the file of the international preliminary examination.

PARAGRAPH (2)(b): –

PARAGRAPH (3)(a): International publication is governed by Article 21 and the Rules thereunder.

PARAGRAPH (3)(b): Under Article 21(2), international publication would take place promptly after the expiration of 18 months from the priority date.

“Priority date” is defined in Article 2(xi).

(c) Where the provisions of subparagraph (b) apply, the international application shall nevertheless be published by the International Bureau:

(i) at the request of the applicant, as provided in the Regulations,

(ii) when a national application or a patent based on the international application is published by or on behalf of the national Office of any designated State having made a declaration under subparagraph (a), promptly after such publication but not before the expiration of 18 months from the priority date.

(4)(a) Any State whose national law provides for prior art effect of its patents as from a date before publication, but does not equate for prior art purposes the priority date claimed under the Paris Convention for the Protection of Industrial Property to the actual filing date in that State, may declare that the filing outside that State of an international application designating that State is not equated to an actual filing in that State for prior art purposes.

(b) Any State making a declaration under subparagraph (a) shall to that extent not be bound by the provisions of Article 11(3).

(c) Any State making a declaration under subparagraph (a) shall, at the same time, state in writing the date from which, and the conditions under which, the prior art effect of any international application designating that State becomes effective in that State. This statement may be modified at any time by notification addressed to the Director General.

(5) Each State may declare that it does not consider itself bound by Article 59. With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of Article 59 shall not apply.

PARAGRAPH (3)(c)(i): As to earlier publication on the applicant's request, see Rules 48.2(g) and 48.4

PARAGRAPH (3)(c)(ii): See Rule 48.5 (Publication of the international application: Notification of national publication).

"Patent" is defined in Article 2(ii) and (ix) whereas "national application," "priority date" and "national Office" are defined in Article 2(vi), (xi) and (xii), respectively.

PARAGRAPH (4)(a): The declaration must be notified to the Director General (paragraph (6)(a)).

"Patent" is defined in Article 2(ii) and (ix) whereas "national law" and "priority date" are defined in Article 2(x) and (xi), respectively.

PARAGRAPH (4)(b): Article 11(3) provides that an international application has the effect of a regular national application in each designated State as of the international filing date, which date is to be considered to be the actual filing date in each designated State.

PARAGRAPH (4)(c): This statement must be notified to the Director General (paragraph (6)(a)).

PARAGRAPH (5): Article 59 stipulates the jurisdiction of the International Court of Justice in case of disputes.

(6)(a) Any declaration made under this Article shall be made in writing. It may be made at the time of signing this Treaty, at the time of depositing the instrument of ratification or accession, or, except in the case referred to in paragraph (5), at any later time by notification addressed to the Director General. In the case of the said notification, the declaration shall take effect six months after the day on which the Director General has received the notification, and shall not affect international applications filed prior to the expiration of the said six-month period.

(b) Any declaration made under this Article may be withdrawn at any time by notification addressed to the Director General. Such withdrawal shall take effect three months after the day on which the Director General has received the notification and, in the case of the withdrawal of a declaration made under paragraph (3), shall not affect international applications filed prior to the expiration of the said three-month period.

(7) No reservations to this Treaty other than the reservations under paragraphs (1) to (5) are permitted.

Article 65 **Gradual Application**

(1) If the agreement with any International Searching or Preliminary Examining Authority provides, transitionally, for limits on the number or kind of international applications that such Authority undertakes to process, the Assembly shall adopt the measures necessary for the gradual application of this Treaty and the Regulations in respect of given categories of international applications. This provision shall also apply to requests for an international-type search under Article 15(5).

(2) The Assembly shall fix the dates from which, subject to the provision of paragraph (1), international applications may be filed and demands for international preliminary examination may be submitted. Such dates shall not be later than six months after this Treaty has entered into force according to the provisions of Article 63(1), or after Chapter II has become applicable under Article 63 (3), respectively.

PARAGRAPH (6)(a): The Director General notifies the declaration to all States members of the Paris Union (Article 69)(iv).

PARAGRAPH (6)(b): The declaration under paragraph (3) is to the effect that "international publication of international applications is not required."

PARAGRAPH (7): –

NOTES ON ARTICLE 65

PARAGRAPH (1): –

PARAGRAPH (2): Chapter II deals with international preliminary examination.

Article 66
Denunciation

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) Denunciation shall take effect six months after receipt of the said notification by the Director General. It shall not affect the effects of the international application in the denouncing State if the international application was filed, and, where the denouncing State has been elected, the election was made, prior to the expiration of the said six-month period.

Article 67
Signature and Languages

(1)(a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the German, Japanese, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(2) This Treaty shall remain open for signature at Washington until December 31, 1970.

Article 68
Depositary Functions

(1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations annexed hereto to the Governments of all States party to the Paris Convention for the Protection of Industrial Property and, on request, to the Government of any other State.

(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and the Regulations to the Governments of all Contracting States and, on request, to the Government of any other State.

NOTES ON ARTICLE 66

PARAGRAPH (1): –

PARAGRAPH (2): –

NOTES ON ARTICLE 67

PARAGRAPH (1)(a) and (b): –

PARAGRAPH (2): –

NOTES ON ARTICLE 68

PARAGRAPH (1): The Treaty was open for signature until the end of 1970 (see Article 67(2)).

PARAGRAPH (2): –

PARAGRAPH (3): –

PARAGRAPH (4): –

Article 69 Notifications

The Director General shall notify the Governments of all States party to the Paris Convention for the Protection of Industrial Property of:

- (i) signatures under Article 62,
- (ii) deposits of instruments of ratification or accession under Article 62,
- (iii) the date of entry into force of this Treaty and the date from which Chapter II is applicable in accordance with Article 63(3),
- (iv) any declarations made under Article 64(1) to (5),
- (v) withdrawals of any declarations made under Article 64(6)(b),
- (vi) denunciations received under Article 66, and
- (vii) any declarations made under Article 31(4).

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Treaty.

DONE at Washington, on June 19, 1970.*

Algeria (A. Dahmouche); Argentina, December 21, 1970 (Pedro E Real); Austria, December 22, 1970 (Hans Georg Rudofsky); Belgium, December 30, 1970 (Walter Loridan); Brazil (Miguel A O de Almeida); Canada (A. M. Laidlaw); Denmark (E. Tuxen); Federal Republic of Germany (Rupprecht v Keller, Kurt Haertel); Finland (Erkki Tuuli); France, December 31, 1970 (Charles Lucet); Holy See (Mario Peressin); Hungary (E. Tasnádi); Iran, July 7, 1970 (Dr. A. Aslan Afshar); Ireland (M. J. Quinn); Israel (Z. Sher, Mayer Gabay); Italy (Giorgio Ranzi); Ivory Coast, December 3, 1970 (T. Ahoua); Japan (B. Yoshino, Y. Aratama); Luxembourg, December 30, 1970 (Jean Wagner); Madagascar, December 10, 1970 (Jules A. Razafimbahiny); Monaco, December 31, 1970 (Professor Dr. Charles Schertenleib); Netherlands, December 31, 1970 (R. B. Van Lynden); Norway (Leif Nordstrand); Philippines (Suarez); Romania, December 28, 1970 (Corneliu Bogdan); Senegal, December 29, 1970 (Cheikh I. Fall); Sweden (Göran Borggard); Switzerland (Dr. Walter Stamm); Syria, December 29, 1970 (George J. Tomeh); Togo, December 23, 1970 (Dr. Ohin); Union of Soviet Socialist Republics, December 23, 1970 (A. Dobrynin); United Arab Republic (Moh. Abdel Salam); United Kingdom of Great Britain and Northern Ireland (Edward Armitage, James David Fergusson); United States of America (Eugene M. Braderman, William E. Schuyler, Jr.); Yugoslavia (Prof. Dr. Stojan Pretnar).

* *Editor's Note:*

All the signatures were affixed June 19, 1970, unless otherwise indicated. A written declaration that the Signatory State did not consider itself bound by Article 59 of the Treaty was made at the time of signing on behalf of Hungary, Romania and the Union of Soviet Socialist Republics.

NOTES ON ARTICLE 69

- ITEM (i): Article 62 deals with ways in which a State may become party to the Treaty;
- ITEM (ii): Article 62 deals with ways in which a State may become party to the Treaty;
- ITEM (iii): Article 63 deals with the entry into force of the Treaty;
- ITEM (iv): Article 64 deals with reservations;
- ITEM (v): Article 64 deals with reservations;
- ITEM (vi): Article 66 deals with denunciations;

- ITEM (vii): The declaration under Article 31(4) is to the effect that the State bound by Chapter II is prepared to be elected by residents or nationals of a State not bound by Chapter II but who are entitled to file international applications and to demand international preliminary examination pursuant to a decision of the Assembly (see Article 31(2)(b)).