

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

**INTERNATIONAL PATENT COOPERATION UNION  
(PCT UNION)**

**ASSEMBLY**

**Twenty-Eighth (16<sup>th</sup> Extraordinary) Session  
Geneva, March 13 to 17, 2000**

REPORT

*adopted by the Assembly*

## INTRODUCTION

1. The twenty-eighth (16th extraordinary) session of the PCT Union Assembly was held in Geneva from March 13 to 17, 2000<sup>1</sup>.

2. The following 90 States, members of the PCT Union, were represented at the session: Algeria, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, China, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Estonia, Finland, France, Gabon, Gambia, Georgia,

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<sup>1</sup> This and other documents for the Assembly's session are available on WIPO's Internet site at [http://www.wipo.int/eng/document/govbody/wo\\_pct/index\\_28.htm](http://www.wipo.int/eng/document/govbody/wo_pct/index_28.htm).

Germany, Ghana, Guinea, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Liberia, Lithuania, Madagascar, Malawi, Mali, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Netherlands, New Zealand, Niger, Norway, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Tajikistan, The Former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uzbekistan, Viet Nam, Zimbabwe.

3. The following seven States, members of the International Union for the Protection of Industrial Property (Paris Union), participated in the session as observers: Argentina, Guatemala, Haiti, Jamaica, Mauritius, Panama, Philippines.

4. The following four intergovernmental organizations were represented by observers: Eurasian Patent Organization (EAPO), European Patent Organisation (EPO), African Regional Industrial Property Organization (ARIPO), Organization of African Unity (OAU).

5. The following three international non-governmental organizations were represented by observers: International Association for the Protection of Industrial Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), Institute of Professional Representatives before the European Patent Office (EPI).

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

#### OPENING OF THE SESSION

7. The session was opened by Mr. Jorge Amigo Castañeda (Mexico), Chair of the Assembly. Mr. François Curchod, Deputy Director General of WIPO, conveyed the welcome of the Director General.

#### ADOPTION OF THE AGENDA

8. The Assembly adopted the agenda appearing in document PCT/A/28/1 Rev.

#### ELECTION OF AN ACTING CHAIR

9. The Chair informed the Assembly that he could not attend the whole session. The Assembly unanimously elected Mr. Alan Michael Troicuk (Canada) as Acting Chair for the remainder of the session.

## AMENDMENTS OF THE PCT REGULATIONS RELATING TO THE DRAFT PATENT LAW TREATY

10. The Assembly considered proposed amendments of the Regulations under the PCT<sup>2</sup> relating to the draft Patent Law Treaty (PLT)<sup>3</sup> contained in documents PCT/A/28/2 (prepared by the International Bureau), PCT/A/28/2 Add.1 (proposal by the Netherlands) and PCT/A/28/2 Add.2 (proposal by Germany).

11. The Delegation of the United States of America suggested the deletion of proposed Rule 51*bis*.1(a)(vi) as contained in document PCT/A/28/2, in light of having undertaken a review of the controlling statutory provision. That review revealed that the controlling statutory provision only imposed an obligation on a contractor-applicant to include in the application a statement as referred to in proposed item (vi); it did not provide any authority for the United States Patent and Trademark Office to require such statement.

12. The Assembly unanimously adopted the amendments of the Regulations set out in Annex II to this report and decided that the amendments would enter into force on March 1, 2001.

13. The Assembly noted the following consequences in connection with the applicability of the amendments:

(i) the Rules as amended will apply, as explained in and subject to the following items, to international applications irrespective of when they are filed (that is, whether they are filed before, on or after March 1, 2001);

(ii) the provisions providing for certain declarations under new Rule 4.17, and the related provisions of new or amended Rules 4.1(c)(iii), 4.5(e), 4.6(a), 4.7(b), 4.18, 26*ter*, 47.1(a-*ter*), 48.2(a)(x) and (b)(iv), and 51*bis*.2, will not apply, subject to items (iii) and (iv), to international applications filed before March 1, 2001;

(iii) new Rule 26*ter* will apply to international applications filed before March 1, 2001, to the extent that it will permit the applicant to add a declaration to the request, and new Rule 4.17 and the related provisions mentioned in item (ii) will apply in respect of such an added declaration;

(iv) amended Rule 51*bis*.2 will apply to international applications filed before March 1, 2001, which enter the national phase on or after March 1, 2001, in respect of which indications concerning the inventor are included in the request or a declaration is added to the request under Rule 26*ter* or submitted directly to the designated Office.

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<sup>2</sup> References in this document to “Articles,” “Rules” and “Sections” are, respectively, to those of the Patent Cooperation Treaty (PCT), of the Regulations under the PCT (“the Regulations”) and of the Administrative Instructions under the PCT (“the Administrative Instructions”), or to such provisions as amended or added, as the case may be. Any reference to “national” law, “national” applications, “national” Offices, etc., is to be construed as also including a reference to regional law, regional applications, regional Offices, etc.

<sup>3</sup> References to “draft PLT Articles” and “draft PLT Rules” are, respectively, to those of the draft Patent Law Treaty (PLT) contained in the basic proposal for submission to the PLT Diplomatic Conference (document PT/DC/3) and of the draft Regulations under the Patent Law Treaty (“draft PLT Regulations”) contained in the basic proposal (document PT/DC/4).

## PROPOSED MODIFICATIONS OF THE ADMINISTRATIVE INSTRUCTIONS RELATING TO THE DRAFT PLT

14. The session of the Assembly provided an opportunity for consultation with Offices pursuant to Rule 89.2(b) regarding proposed modifications of the Administrative Instructions in connection with the amendments of the Regulations (see document PCT/A/28/2, Annex II), in particular, relating to declarations containing standardized wording which may be contained in the request pursuant to amended Rule 4.17.

15. Comments made by Offices and user representatives were noted by the International Bureau and would be taken into account in preparing revised Administrative Instructions with a view to possible further consultation at a later date.

## DEVELOPMENTS REGARDING THE DRAFT PLT; INTERFACE BETWEEN THE DRAFT PLT AND THE PCT

16. The International Bureau noted that the documents for the Diplomatic Conference for the Adoption of the Patent Law Treaty were mailed in November 1999. While the International Bureau had received informal comments from several delegations, no formal proposals for the Diplomatic Conference had yet been submitted.

17. With regard to the interface between the draft PLT and the PCT, the International Bureau indicated that the following issues needed to be discussed at the Diplomatic Conference:

(i) whether existing and future transitional reservations made under the PCT Regulations should have effect under the PLT;

(ii) the harmonization of the use of certain terms in the draft PLT and in the PCT, in particular, the terms “form or contents,” “form,” “Form,” “format” and “means”;

(iii) the international law implications of the automatic incorporation into the PLT of future modifications of the PCT, the Regulations and the Administrative Instructions, in particular in respect of non-PCT Contracting States.

18. The International Bureau indicated that it intended to submit to the Diplomatic Conference a document reporting the results of the PCT Assembly and possibly reflecting on the above-mentioned issues.

## OFFICE OF THE PCT: ACTIVITIES IN 1999

19. The International Bureau presented a summary of the wide range of PCT-related activities in 1999. The presentation highlighted the growth in the number of filings of international applications, which reached 74,023 in 1999, and the increasing use of the PCT-EASY software, introduced in January 1999, which enabled simplified preparation of the PCT request form, including a substantial number of validation checks. The presentation included an overview of the functions of the Office of the PCT, including operations,

administration, training, legal development, development cooperation and information dissemination.

## PCT AUTOMATION

20. The International Bureau, reporting on the progress of the PCT automation (IMPACT) project, outlined the main objectives of the IMPACT Project, the work undertaken so far, the present state of the project, and future steps to be taken (see document PCT/A/28/4).

21. The International Bureau explained that the WIPONET Project would provide Offices with the appropriate mechanisms enabling the secure exchange of data between Offices and the International Bureau.

22. The Assembly:

(i) noted the International Bureau's progress report on the IMPACT Project contained in document PCT/A/28/4; and

(ii) noted that the IMPACT Project plan was being further elaborated by the IMPACT Project team, as indicated in document PCT/A/28/4, paragraph 9; that plan would be available in approximately one month and would be included in the progress report on the IMPACT Project to be submitted to the September 2000 session of the PCT Assembly; the component of that plan relating to PCT electronic filing would thus supersede the present SCIT Action Plan for PCT On-Line Filing<sup>4</sup> (see paragraph 24, below).

## IMPLEMENTATION OF ELECTRONIC FILING AND PROCESSING OF INTERNATIONAL APPLICATIONS

### *General discussion*

23. Discussions were based on document PCT/A/28/3, taking into account the documents reproduced in document PCT/A/28/3 Add.1 relating to the development by the WIPO Standing Committee on Information Technologies (SCIT) of the necessary technical standard<sup>4</sup> to enable implementation of electronic filing and processing of international applications, and the comments of delegations and user representatives reproduced in documents PCT/A/28/3 Add.2 to Add.5.

24. The Assembly agreed that the proposed new Part 7 of the Administrative Instructions (referred to in this document as "Part 7"; see document PCT/A/28/3, Annex II), and draft

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<sup>4</sup> The current version of the draft standard, submitted to the SCIT Task Force by the Trilateral Offices (the European Patent Office, the Japanese Patent Office and the United States Patent and Trademark Office), appears as "Annex F (version 3.1)" (referred to in this document as "draft Annex F") in a SCIT Program Project File, document SCIT/P 8/99 Rev.1, Annex 5, and is reproduced as an attachment in document PCT/A/28/3 Add.1. The Action Plan for PCT On-Line Filing adopted by the SCIT Plenary appears in document SCIT/P 8/99 Rev.1, Annex 6, and is also reproduced as an attachment to document PCT/A/28/3 Add.1.

Annex F needed extensive redrafting, that consultations on the redrafted versions were necessary, and that the target dates included in the present SCIT Action Plan needed to be reviewed accordingly. In particular, promulgation of Administrative Instructions in April 2000 in accordance with the present SCIT Action Plan was not possible.

25. Several delegations emphasized that the legal framework for electronic filing should have a clear relationship to the provisions of the Treaty, in particular, Articles 10, 11, 14 and 27, and should also clearly implement the main internationally accepted legal requirements of global electronic commerce, that is, authenticity, integrity, confidentiality and non-repudiation.

26. Several delegations noted that the proposed three-level structure of an electronic filing system, as outlined in paragraph 9 of document PCT/A/28/3, was not currently reflected in draft Part 7 or draft Annex F. The Assembly agreed that, for the purposes of the applicable national law, all designated Offices should accept an international application filed in compliance with a single "recommended basic level" without imposing further requirements as to the form or contents of the application.

27. The Assembly agreed that provision needed to be made in the legal and procedural framework for the needs of those designated Offices which accepted documents on paper only (including, but not limited to, Offices of developing countries), and in particular for the furnishing to such Offices of paper copies of documents which existed only in electronic form during the international phase.

28. The Assembly agreed that legal principles should appear as part of the provisions establishing the necessary legal framework in Part 7 rather than in the technical standard contained in Annex F. In particular, the principles of authenticity, integrity, confidentiality and non-repudiation should be primarily addressed in the legal framework rather than in the technical standard.

29. The Delegation of the United States of America, with which several other delegations agreed, expressed the view that some parts of the Administrative Instructions relating to electronic filing should be transferred to the Regulations. In particular, the Delegation of the United States of America proposed that the subject matter of draft Section 713 should be addressed in the Regulations. In response, the International Bureau said that this was indeed the intention but that such a transfer should be made after some experience had been gained in the implementation of the electronic filing system.

30. In connection with draft Section 713, the Delegations of France, Morocco and the United Kingdom, and the representative of the EPO, questioned whether the PCT was the appropriate context to attempt to establish the admissibility of electronic records as evidence in national court proceedings.

31. The Assembly noted that draft PLT Rule 8(2) would have the effect that any Office which accepted electronic filing of international applications under the PCT would also have to accept electronic filing of national applications, applying the same requirements. The International Bureau further noted that the provisions in the draft PLT concerning electronic filing contained the maximum which Offices could require, but that they would be free to accept communications desired by applicants and requiring a different level of technical capability.

32. The Assembly noted that one of the objectives of the IMPACT project was the creation of PCT software for use in electronic filing of international applications. The Assembly agreed that such software would need to be widely accessible as an open standard to PCT applicants in all PCT Contracting States, that it would need both to meet the legal requirements of the PCT (including Part 7 and Annex F) and to be consistent with global standards of electronic commerce, and that applicants using such software could not be asked to comply with additional requirements (relating to the fact that the international application was filed electronically) in the national phase.

*Further work*

33. The International Bureau indicated that the task of defining the requirements for and ultimately producing the PCT electronic filing software would be undertaken in consultation with the PCT Contracting States, the Trilateral Offices, the SCIT Task Force and user representatives. The requirements of potential users of such software (both Offices and applicants) would be identified and documented at the outset in order to ensure that they were addressed by adopting appropriate technical solutions.

34. The Assembly agreed that the redraft of Part 7 and Annex F should take into account the following principles:

(a) the need to proceed with electronic filing of international applications for those receiving Offices which are already in a position to accept such filing, while encouraging other receiving Offices and, where necessary, potential applicants, by providing clear and workable Administrative Instructions and technical standards including appropriate safeguards;

(b) accessibility to all applicants having the necessary equipment and access to a receiving Office that is in a position to accept electronically filed international applications;

(c) acceptability to all designated Offices without the need for applicants to meet further requirements in the national phase arising out of the electronic nature of international applications;

(d) consistency with the general legal principles both of the PCT, particularly as set out in Articles 11, 14 and 27, and of global electronic commerce, including authenticity, integrity, confidentiality and non-repudiation;

(e) use of public key infrastructure (PKI), it being understood that implementation of any future technology achieving the same (or better) results than PKI could be introduced into Annex F when available and feasible;

(f) consistency, to the maximum extent possible, with other WIPO standards;

(g) loss of the international filing date should, to the extent possible, be the last resort penalty in case of a problem arising out of the electronic nature of an international application;

(h) clarification of the relationship and links between Part 7 (the legal framework) and Annex F (the technical solutions).

35. It was agreed that the International Bureau would include in its redraft the relevant modifications of Part 7 and of Annex F necessary to implement filing systems other than on-line filing, for example, filing with other media such as CD-ROM, DVD and diskette.

36. The International Bureau stated that it envisaged the following procedural steps could be taken following the present consultation:

(a) the IMPACT project team would coordinate and provide leadership in the redrafting of Annex F in consultation with interested Offices, in particular, drawing on the expertise of the Trilateral Offices, as they had delivered the first draft of Annex F. The redrafting exercise would take into account comments made by the SCIT Task Force, and the IMPACT project team would continue to coordinate its work with the Office of the PCT; at the same time, the Office of the PCT would redraft Part 7, coordinating its work with the redrafting of Annex F;

(b) once redrafted, Annex F would be the subject of consultation with all PCT Contracting States and Authorities, with the members of the SCIT Task Force and with user representatives; redrafted Part 7 would also be the subject of consultation with all PCT Contracting States and Authorities and with user representatives;

(c) when there was agreement on both Part 7 and Annex F, they would both be promulgated; Annex F would then become the PCT standard and would be referred to SCIT for adaptation and adoption as a WIPO Standard; the promulgation of Part 7 would mean that Rule 89*bis* would enter into force, thus legally enabling the electronic filing of international applications under the PCT with those receiving Offices which had notified their acceptance of such filings.

37. The Assembly agreed that a redraft of Part 7 and Annex F should be made available by the International Bureau by May 10, 2000, on the PCT electronic forum and the SCIT area of WIPO's website and would be discussed at a broadly-constituted informal consultation meeting to be convened during the same week as the next SCIT meeting, scheduled to take place in Geneva from July 10 to 14, 2000. Participants would include PCT Contracting States and Authorities, observer States, other observers and user representatives. Delegations at that meeting should comprise, where possible, both legal and information technology specialists, including the members of the SCIT Task Force. The results of the consultation meeting would be reported to the September 2000 session of the PCT Assembly.

#### PROPOSED MODIFICATIONS OF THE ADMINISTRATIVE INSTRUCTIONS RELATING TO PCT ELECTRONIC FILING

38. The session of the Assembly provided an opportunity for consultation pursuant to Rule 89.2(b) regarding proposed new Part 7 (see document PCT/A/28/3, Annex II and the comments of Offices and user representatives set out in documents PCT/A/28/3 Add.2 to Add.5). Those comments and other comments made on all draft Sections during the consultation will be taken into account by the International Bureau in preparing revised Administrative Instructions.

39. Certain conclusions reached during the consultation and certain comments of delegations relating to general matters are noted in the following paragraphs.

*Draft Section 701*

40. It was noted, in relation to Section 701(a), that the words “original” and “authentic” should be avoided and that descriptive words should be used, along the lines of the proposal by the Delegation of Japan or the proposal by the Delegation of the United States of America (see document PCT/A/28/3 Add.2, Annexes III (JP) and VI (US), respectively).

41. The International Bureau indicated its intention that the next draft of Part 7 would include a Section containing definitions of relevant terms. The representative of the EPO pointed to the need for definitions of “record copy” and “true copy” in the context of electronic filing.

*Draft Section 702*

42. The Delegation of Australia underlined the importance for applicants of being accorded an international filing date for electronically filed international applications, even in cases where the application was filed in a format which was not accepted by the receiving Office but where the Office could read the text of the application.

43. It was noted that electronically filed international applications which complied with the requirements of the Administrative Instructions would have to be accepted by receiving Offices accepting electronic filing and that the legal effect of such applications would have to be recognized by all designated Offices.

44. The Delegation of the United States of America suggested that draft Section 702(b)(ii) should include a reference to methods of on-line payment which would be acceptable to the receiving Office.

45. The Delegation of Japan proposed that Section 702(b) cover the type of electronic signature acceptable to the receiving Office and that the format described in Section 702(a) should include not only the document format but also the electronic envelope format (see document PCT/28/3 Add.1, Annex 5, pages 31 to 34). The Delegation proposed that, in relation to Section 702(a), where the international application was not in a format acceptable to the receiving Office, the receiving Office should not be obliged to receive or process the application. In relation to Section 702(f), the Delegation requested that the scope of the phrase “in a particular case” be made clear.

*Draft Section 703*

46. It was agreed that the Section should not imply that the document whose receipt was acknowledged was being treated as an international application or that it had received an international filing date.

*Draft Section 704*

47. The Delegation of Australia expressed concern over the possible loss of an international filing date in a case where an electronically filed international application was considered as not “fully and successfully received” by the receiving Office.

48. In response to the question raised by several delegations as to how Offices were to deal with the question of multiple time zones, it was concluded that further study of the question was necessary.

*Draft Section 705*

49. Although it was agreed that loss of an international filing date should only be a measure of last resort and that the circumstances in which this provision would apply would need to be clearly defined in the Administrative Instructions, it was understood that, in principle, applications which were found to be illegible should not be accorded an international filing date and that it was important to strike an appropriate balance between the rights of applicants to obtain and retain their international filing date with the burden on Offices to cope with infected files.

50. The Delegation of Kenya raised a question as to the fate of international applications filed in electronic form on diskette which were infected by a virus where the virus infection was only detected at a later stage, noting particularly that receiving Offices of developing countries may not be in a position to detect all viruses. The Delegation stressed the need for a safeguard such as the filing of the application on paper in parallel. In response, the International Bureau stated that modifications to draft Part 7 would be made to attempt to deal with this difficulty. The International Bureau also confirmed that, via the WIPONET project, it would centrally distribute virus checking software to all Offices receiving the WIPONET hardware and software package and a central virus scanning system would be put in place to ensure all filings were virus free prior to processing. Manuals containing security guidelines would be distributed to all Offices which were users of the WIPONET system.

51. The Delegation of China raised the question whether all international applications in electronic form could not be filed with a single receiving Office, namely the International Bureau as receiving Office, and in this way avoid many of the problems under discussion.

52. The Delegation of Australia, supported by the Delegation of the Netherlands, suggested that Section 705(b) should be redrafted in such a way that the international filing date would be accorded, but that the Office would have the possibility to require an uninfected copy of the file (or a paper copy).

*Draft Section 706*

53. The Delegation of the United States of America stated that use of the ticket mechanism in the context of PCT electronic filing would be reviewed at the next meeting of the Trilateral Electronic Filing Working Group.

54. The Delegations of Australia, the United Kingdom, the Netherlands, France and Germany expressed doubts concerning whether the ticket mechanism, as explained in document PCT/A/28/3 Add.1, satisfied the requirements of Article 11 or their respective national or regional laws for according a filing date. In this regard, the Delegation of the Netherlands expressed the view that the date of receipt of the ticket could not be the date on which the Office was in a position to determine whether the relevant legal requirements for according an international filing date were satisfied, and that the ticket should more correctly be seen as a declaration of intent to file.

55. While noting the considerable attractiveness of the ticket mechanism, the Delegation of Australia expressed additional concern about implementing an electronic filing system which relied on proprietary technology, such as the ticket mechanism, for the submission of international applications and related documents. The International Bureau noted that to be consistent with the general principles of software development it was advisable to avoid the use of proprietary technology.

56. In response to a question from the Delegation of France as to the advantages of the ticket mechanism, the Delegation of Japan explained that the ticket mechanism would provide protection to an applicant where a transmission was interrupted or where, because of the length of the international application, it took several hours to transmit the full application electronically and, as a result, the date changed between the transmission of the digest and the receipt of the full application. The Delegation of Japan indicated that the ticket mechanism could indeed be used for the transmission of larger files over the Internet, and that, if the ticket mechanism was not implemented, an alternative mechanism to accomplish the same objectives should be offered for the purpose of safeguarding international filing dates.

57. The representative of the EPO suggested a compromise position in which the ticket mechanism would be technically implemented but without having legal effect so far as the according of an international filing date was concerned. Several delegations expressed support for the practical benefits which could be achieved through the use of the ticket mechanism, and indicated that such a mechanism could be implemented so as to enable applicants to seek relief in cases where time limits (subsequent to the international filing date of the international application) had not been complied with, similarly to the operations of existing Rule 82.

58. It was agreed that the legal and technical aspects of the possible implementation of the ticket mechanism would be further reviewed.

#### *Draft Section 709*

59. Several delegations stated that a mere reference to the technical standard as contained in Annex F was not sufficient to clarify the legal consequences of the use of certain types of electronic signatures by applicants or whether and to what extent applicants would have a choice between the various types of electronic signatures referred to in draft Annex F. The representative of the EPO suggested that the draft Section should list the types of electronic signatures deemed acceptable and that the wording in draft Section 701(b) referring to Rule 51*bis* should be moved into this provision, since that wording was originally intended to resolve signature-related problems. The Delegation of France stated that the Administrative Instructions should indicate which type of signature might be needed for particular situations.

60. In response to a question from the Delegation of the United Kingdom, the Delegation of the United States of America stated that there was a need to provide for the possibility of using signature standards other than those contained in the PKI system, in order to make electronic filing accessible to as many users as possible. The Delegation further indicated that, if the possibility of simple electronic signatures was offered to applicants, designated Offices should have the right to request further proof concerning the authenticity of international applications. On the same point, the Delegation of the Netherlands suggested that the question of the right to ask for further proof should be dealt with in the context of Rule 51*bis* rather than in the Administrative Instructions.

61. The International Bureau expressed the hope that Contracting States would agree on a basic level of electronic signature requirements which would be acceptable to Offices at all stages in the life of the international application.

*Draft Section 711*

62. The Delegation of the United States of America stated that the current draft did not provide a sound basis for the presumption of integrity, and that further elaboration was needed. In response, the Delegation of Australia indicated a preference for using more liberal wording, along the lines of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, so that applicant's rights were not prejudiced if an Office failed to comply with the detailed record keeping requirements contained in draft Annex F.

*Draft Section 713*

63. The representative of the EPO suggested that the Section should be redrafted to emphasize the requirement that designated Offices must give legal effect in the national phase to electronic records, and to papers produced on the basis of electronic records.

*Public Key Infrastructure (PKI)*

64. Several delegations stated that use of PKI was seen as necessary for PCT electronic filing so far as their respective Offices were concerned as receiving Offices and designated Offices, and that a coordinated PKI policy within the context of the PCT needed to be established.

65. Several delegations stated that, in relation to the level of authentication of identity to be required for a PKI certificate, they were not concerned with the actual identity of the applicant, but rather wanted to ensure that in subsequent processing (for example, in the case of withdrawals), the person taking the subsequent action was the same person who filed the application. As a result, those delegations proposed that a PKI should incorporate a standard of "relative identity" rather than "absolute identity." There was a general expression of interest in the use of PKI based on a minimum level of authentication of identity (for example, use of low-level digital certificates), although this needed to be balanced against the need for levels of authentication to be meaningful and useful to designated Offices.

66. The Delegation of France questioned whether a PCT electronic filing system based on the use of PKI was the only system which could fully address the four main information security requirements (integrity, confidentiality, authentication, non-repudiation) and whether the PCT electronic filing system should be framed in a technology-neutral manner so as to allow for the development of further technologies. The Delegation also wondered whether it would not be desirable for Certification Authorities to be third parties so as to comply with the main internationally accepted legal requirements of electronic commerce and, in particular, with the requirements relating to authenticity and integrity.

67. The Delegation of the United States of America strongly urged the International Bureau to become a Certification Authority for PCT applicants. In response, the International Bureau stated that its participation in PKI, for example, as a Certification Authority, was currently under consideration and that it was hoped that a proposal would be developed before the Assembly's next session in September 2000.

68. It was agreed that the International Bureau should begin work on a uniform PKI policy. The International Bureau explained that it would begin this process by looking first at the requirements of PCT users and Contracting States.

*Electronic records management (ERM)*

69. The Delegation of the United States of America proposed a new Rule 93.5 (see document PCT/A/28/3 Add. 2, Annex VI (US), page 2), providing that national Offices which accepted or maintained electronic records would certify that those records were maintained in accordance with the requirements of Annex F, and would provide copies of such certification for the purposes of evidentiary proceedings. The Delegations of the United Kingdom and France reserved their position on that proposal; several delegations indicated their preference for third party certification or audits of compliance with the applicable ERM requirements.

70. Several delegations proposed that guidelines on ERM be developed rather than requiring compliance with the content of Annex F.

71. The Delegation of Australia proposed returning to the wording of the UNCITRAL Model Law in relation to the effects of the keeping of electronic records, and that any certification issued for the purposes of evidentiary proceedings in relation to those records should correspondingly be only to the effect that the electronic records had been kept in accordance with the principles set out in the UNCITRAL Model Law and not with the requirements in Annex F. However, the Delegation did support a separate document on electronic records management as guidelines for Offices on how to best meet the UNCITRAL principles.

*National security*

72. It was noted, in relation to a comment by the Delegation of France, that Article 27(8) already provided a basis for any Contracting State to apply measures deemed necessary for the preservation of its national security. It was agreed that clarification should be made, where necessary, of matters regarding the preservation of national security.

*73. The Assembly unanimously adopted this report on March 17, 2000.*

[Annex I follows]

ANNEXE I/ANNEX I

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS MEMBRES/MEMBER STATES

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

AFRIQUE DU SUD/SOUTH AFRICA

Cecilia 'Maelia PETLANE (Mrs.), Assistant Director, South African Patents and Trademarks Office, Pretoria

ALGÉRIE/ALGERIA

Amor BOUHNİK, directeur général de l'Institut algérien de la propriété industrielle, Alger

ALLEMAGNE/GERMANY

Carolin HÜBENETT (Mrs.), Head, Section of International Industrial Property Law, German Patent and Trade Mark Office, Munich

ARMÉNIE/ARMENIA

Sarkis KHANTARDJIAN, President, Armenian Patent Office, Yerevan

AUSTRALIE/AUSTRALIA

David HERALD, Deputy Commissioner, IP Australia, Canberra

AUTRICHE/AUSTRIA

Peter HOFBAUER, Technical Department 16, Presidential Department II, Austrian Patent Office, Vienna

AZERBAÏDJAN/AZERBAIJAN

Habib SULEYMANOV, Main Expert, State Register Department, State Committee for Science and Engineering, Baku

BÉLARUS/BELARUS

Alexander CHENADO, Chief Specialist, Preliminary Examination Division, The Belarus Patent Office, Minsk

BELGIQUE/BELGIUM

Stefan DRISQUE, ingénieur, chef de la Section production et comptabilité à l'Office de la propriété industrielle, Ministère des affaires économiques, Bruxelles

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[L'annexe II suit/Annex II follows]

AMENDMENTS OF THE PCT REGULATIONS:

TEXT OF THE AMENDED RULES

**Rule 4**

**The Request (Contents)**

4.1 *Mandatory and Optional Contents; Signature*

(a) and (b) [No change]

(c) The request may contain:

(i) [No change]

(ii) a request to the receiving Office to prepare and transmit the priority document to the International Bureau where the application whose priority is claimed was filed with the national Office or intergovernmental authority which is the receiving Office,

(iii) declarations as provided in Rule 4.17.

(d) [No change]

4.2 to 4.4 [No change]

4.5 *The Applicant*

(a) to (d) [No change]

(e) Where the applicant is registered with the national Office that is acting as receiving Office, the request may indicate the number or other indication under which the applicant is so registered.

4.6 *The Inventor*

(a) Where Rule 4.1(a)(v) or (c)(i) applies, the request shall indicate the name and address of the inventor or, if there are several inventors, of each of them.

(b) and (c) [No change]

#### 4.7 *The Agent*

(a) If an agent is appointed, the request shall so indicate, and shall state the agent's name and address.

(b) Where the agent is registered with the national Office that is acting as receiving Office, the request may indicate the number or other indication under which the agent is so registered.

#### 4.8 *Common Representative*

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

4.9 to 4.16 [No change]

#### 4.17 *Declarations Relating to National Requirements Referred to in Rule 51bis.1(a)(i) to (v)*

The request may, for the purposes of the national law applicable in one or more designated States, contain one or more of the following declarations, worded as prescribed by the Administrative Instructions:

(i) a declaration as to the identity of the inventor, as referred to in Rule 51bis.1(a)(i);

(ii) a declaration as to the applicant's entitlement, as at the international filing date, to apply for and be granted a patent, as referred to in Rule 51bis.1(a)(ii);

(iii) a declaration as to the applicant's entitlement, as at the international filing date, to claim priority of the earlier application, as referred to in Rule 51bis.1(a)(iii);

(iv) a declaration of inventorship, as referred to in Rule 51bis.1(a)(iv), which shall be signed as prescribed by the Administrative Instructions;

(v) a declaration as to non-prejudicial disclosures or exceptions to lack of novelty, as referred to in Rule 51bis.1(a)(v).

#### 4.18 *Additional Matter*

(a) The request shall contain no matter other than that specified in Rules 4.1 to 4.17, provided that the Administrative Instructions may permit, but cannot make mandatory, the inclusion in the request of any additional matter specified in the Administrative Instructions.

(b) If the request contains matter other than that specified in Rules 4.1 to 4.17 or permitted under paragraph (a) by the Administrative Instructions, the receiving Office shall *ex officio* delete the additional matter.

### **Rule 26ter**

#### **Correction or Addition of Declarations Under Rule 4.17**

##### *26ter.1 Correction or Addition of Declarations*

The applicant may correct or add to the request any declaration referred to in Rule 4.17 by a notice submitted to the International Bureau within a time limit of 16 months from the priority date, provided that any notice which is received by the International Bureau after the expiration of that time limit shall be considered to have been received on the last day of that time limit if it reaches it before the technical preparations for international publication have been completed.

##### *26ter.2 Processing of Declarations*

(a) Where the receiving Office or the International Bureau finds that any declaration referred to in Rule 4.17 is not worded as required or, in the case of the declaration of inventorship referred to in Rule 4.17(iv), is not signed as required, the receiving Office or the International Bureau, as the case may be, may invite the applicant to correct the declaration within a time limit of 16 months from the priority date.

(b) Where the International Bureau receives any declaration or correction under Rule 26ter.1 after the expiration of the time limit under Rule 26ter.1, the International Bureau shall notify the applicant accordingly and shall proceed as provided for in the Administrative Instructions.

### **Rule 47**

#### **Communication to Designated Offices**

##### *47.1 Procedure*

(a) and (a-bis) [No change]

(a-ter) The notification under paragraph (a-bis) shall include any declaration referred to in Rule 4.17(i) to (iv), and any correction thereof under Rule 26ter.1, which was received by the International Bureau before the expiration of the time limit under Rule 26ter.1, provided that the designated Office has informed the International Bureau that the applicable national law requires the furnishing of documents or evidence relating to the matter to which the declaration relates.

(b) to (e) [No change]

47.2 to 47.4 [No change]

**Rule 48**

**International Publication**

48.1 [No change]

48.2 *Contents*

(a) The pamphlet shall contain:

(i) to (viii) [No change]

(ix) any information concerning a priority claim considered not to have been made under Rule 26*bis*.2(b), the publication of which is requested under Rule 26*bis*.2(c),

(x) any declaration referred to in Rule 4.17(v), and any correction thereof under Rule 26*ter*.1, which was received by the International Bureau before the expiration of the time limit under Rule 26*ter*.1.

(b) Subject to paragraph (c), the front page shall include:

(i) and (ii) [No change]

(iii) the abstract; if the abstract is both in English and in another language, the English text shall appear first,

(iv) an indication that the request contains any declaration referred to in Rule 4.17 which was received by the International Bureau before the expiration of the time limit under Rule 26*ter*.1.

(c) to (i) [No change]

48.3 to 48.6 [No change]

**Rule 51bis**

**Certain National Requirements Allowed Under Article 27**

*51bis.1 Certain National Requirements Allowed*

(a) Subject to Rule 51bis.2, the national law applicable by the designated Office may, in accordance with Article 27, require the applicant to furnish, in particular:

- (i) any document relating to the identity of the inventor,
- (ii) any document relating to the applicant's entitlement to apply for or be granted a patent,
- (iii) any document containing any proof of the applicant's entitlement to claim priority of an earlier application where the applicant is not the applicant who filed the earlier application or where the applicant's name has changed since the date on which the earlier application was filed,
- (iv) where the international application designates a State whose national law requires that national applications be filed by the inventor, any document containing an oath or declaration of inventorship,
- (v) any evidence concerning non-prejudicial disclosures or exceptions to lack of novelty, such as disclosures resulting from abuse, disclosures at certain exhibitions and disclosures by the applicant during a certain period of time.

(b) and (c) [No change]

(d) The national law applicable by the designated Office may, in accordance with Article 27(2)(ii), require that the translation of the international application furnished by the applicant under Article 22 be:

- (i) verified by the applicant or the person having translated the international application in a statement to the effect that, to the best of his knowledge, the translation is complete and faithful;
- (ii) certified by a public authority or sworn translator, but only where the designated Office may reasonably doubt the accuracy of the translation.

(e) The national law applicable by the designated Office may, in accordance with Article 27, require the applicant to furnish a translation of the priority document, provided that such a translation may only be required where the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable.

(f) If, on March 17, 2000, the proviso in paragraph (e) is not compatible with the national law applied by the designated Office, that proviso shall not apply in respect of that Office for as long as that proviso continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by November 30, 2000. The information received shall be promptly published by the International Bureau in the Gazette.

*51bis.2 Certain Circumstances in Which Documents or Evidence May Not Be Required*

(a) Where the applicable national law does not require that national applications be filed by the inventor, the designated Office shall not, unless it may reasonably doubt the veracity of the indications or declaration concerned, require any document or evidence:

(i) relating to the identity of the inventor (Rule 51bis.1(a)(i)), if indications concerning the inventor, in accordance with Rule 4.6, are contained in the request or if a declaration as to the identity of the inventor, in accordance with Rule 4.17(i), is contained in the request or is submitted directly to the designated Office;

(ii) relating to the applicant's entitlement, as at the international filing date, to apply for and be granted a patent (Rule 51bis.1(a)(ii)), if a declaration as to that matter, in accordance with Rule 4.17(ii), is contained in the request or is submitted directly to the designated Office;

(iii) relating to the applicant's entitlement, as at the international filing date, to claim priority of an earlier application (Rule 51bis.1(a)(iii)), if a declaration as to that matter, in accordance with Rule 4.17(iii), is contained in the request or is submitted directly to the designated Office.

(b) Where the applicable national law requires that national applications be filed by the inventor, the designated Office shall not, unless it may reasonably doubt the veracity of the indications or declaration concerned, require any document or evidence:

(i) relating to the identity of the inventor (Rule 51bis.1(a)(i)) (other than a document containing an oath or declaration of inventorship (Rule 51bis.1(a)(iv)), if indications concerning the inventor, in accordance with Rule 4.6, are contained in the request;

(ii) relating to the applicant's entitlement, as at the international filing date, to claim priority of an earlier application (Rule 51bis.1(a)(iii)), if a declaration as to that matter, in accordance with Rule 4.17(iii), is contained in the request or is submitted directly to the designated Office;

(iii) containing an oath or declaration of inventorship (Rule 51bis.1(a)(iv)), if a declaration of inventorship, in accordance with Rule 4.17(iv), is contained in the request or is submitted directly to the designated Office.

(c) If, on March 17, 2000, paragraph (a) is not compatible, in relation to any item of that paragraph, with the national law applied by the designated Office, paragraph (a) shall not apply in respect of that Office in relation to that item for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by November 30, 2000. The information received shall be promptly published by the International Bureau in the Gazette.

*51bis.3 Opportunity to Comply with National Requirements*

(a) Where any of the requirements referred to in Rule 51bis.1(a)(i) to (iv) and (c) to (e), or any other requirement of the national law applicable by the designated Office which that Office may apply in accordance with Article 27(1) or (2), is not already fulfilled during the same period within which the requirements under Article 22 must be complied with, the designated Office shall invite the applicant to comply with the requirement within a time limit which shall not be less than two months from the date of the invitation. Each designated Office may require that the applicant pay a fee for complying with national requirements in response to the invitation.

(b) Where any requirement of the national law applicable by the designated Office which that Office may apply in accordance with Article 27(6) or (7) is not already fulfilled during the same period within which the requirements under Article 22 must be complied with, the applicant shall have an opportunity to comply with the requirement after the expiration of that period.

(c) If, on March 17, 2000, paragraph (a) is not compatible with the national law applied by the designated Office in relation to the time limit referred to in that paragraph, the said paragraph shall not apply in respect of that Office in relation to that time limit for as long as the said paragraph continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by November 30, 2000. The information received shall be promptly published by the International Bureau in the Gazette.

### **Rule 53**

#### **The Demand**

53.1 to 53.4 [No change]

#### *53.5 Agent or Common Representative*

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

53.6 to 53.9 [No change]

### **Rule 66**

#### **Procedure Before the International Preliminary Examining Authority**

66.1 to 66.6 [No change]

#### *66.7 Priority Document*

(a) [No change]

(b) If the application whose priority is claimed in the international application is in a language other than the language or one of the languages of the International Preliminary Examining Authority, that Authority may, where the validity of the priority claim is relevant for the formulation of the opinion referred to in Article 33(1), invite the applicant to furnish a translation in the said language or one of the said languages within two months from the date of the invitation. If the translation is not furnished within that time limit, the international preliminary examination report may be established as if the priority had not been claimed.

66.8 and 66.9 [No change]

[End of Annex and of document]