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INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

ASSEMBLY

Thirty-Sixth (16th Ordinary) Session
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**PROPOSAL BY BRAZIL ON BROADENING THE PCT USERS BASE AND
STRENGTHENING THE SYSTEM BY MEANS OF A PRUDENT AND SUSTAINABLE
PCT FEE REDUCTION FOR DEVELOPING COUNTRIES**

Document prepared by the Secretariat

1. On September 25, 2007, the Government of Brazil requested the Secretariat that its proposal entitled "Broadening the PCT Users Base and Strengthening the System by Means of a Prudent and Sustainable PCT Fee Reduction for Developing Countries" be issued as a formal document for consideration under item 8(b) of the adopted Agenda.

2. The proposal by Brazil is set out in the Annexes to this document.

3. *The Assembly of the PCT Union is invited:*

(i) to adopt the proposed amendments of the Schedule of Fees annexed to the Regulations under the PCT set out in Annex II of this document; and

(ii) to decide that those amendments shall enter into force on January 1, 2008.

[Annexes follow]

ANNEX I

PROPOSAL BY BRAZIL

BROADENING THE PCT USERS BASE AND STRENGTHENING THE SYSTEM
BY MEANS OF A PRUDENT AND SUSTAINABLE PCT FEE REDUCTION
FOR DEVELOPING COUNTRIES

During the Eleventh Session of the WIPO Program and Budget Committee, held from 25 to 28 June 2007, the issue of yet another PCT fee reduction in the amount of 15% was raised, generating considerable debate and creating much uncertainty as to how the Organization should proceed with the proposed revision of the current 2006/2007 Program and Budget and with the elaboration of the Program and Budget for the 2008/2009 biennium.

The issue polarized Members and provoked among many of them concerns that with such a significant reduction in the PCT fees important programs and initiatives geared towards further strengthening WIPO's role as a UN Specialized Agency for promoting development and intellectual property could be somewhat hindered. This would be particularly unwarranted when the membership is about to commit in the General Assembly of 2007 to the creation of a new Committee dedicated to Development and Intellectual property, with a mandate to implement 45 agreed recommendations which considerably enhance the breath of WIPO's workload and responsibilities, especially as it relates to developing countries.

Not all arguments presented in favor of the fee reduction should be dismissed *a priori*. Ideally, any Organization should follow a disciplined process by which it strives to remain strictly within the confines of allocations officially budgeted, avoiding to the extent possible upward revisions during the course of implementation. WIPO is, however, a unique UN Agency with the capacity to self-finance the greater part of its activities, mostly, but not exclusively, through the fee system charged for international patent applications under the Patent Cooperation Treaty. As these grow and therefore as the system progresses so does the Organization, to the benefit of all members and especially the constituency of users of the PCT system. A point also seems to have been made by the consideration put forth that resources generated from the PCT should not be diverted disproportionately to activities in WIPO not directly related to the PCT.

Brazil can sympathize with the view that WIPO's program and budget should not rely disproportionately on PCT revenues and on the generation of surpluses, thus becoming a moving and unbalanced target -- notwithstanding a benign one -- difficult to oversee and control. On the other hand, the PCT and the surpluses generated by it do greatly increase the capacity of the Organization to serve all stakeholders and to further the cause of development and intellectual property within the framework of such important UN agreed objectives as the Millennium Development Goals.

To the extent that the International Bureau of WIPO can identify room for curtailing within reasonable safety margins the degree to which future surpluses might be generated from expected growth in PCT international patenting activities, Brazil, however, would like to propose that discussions take into consideration the huge asymmetries that can be identified in the use of the PCT system from a North-South perspective. Taking WIPO figures for 2006, international applications originated with developed countries amounted to approximately 91.1% of the total, while developing countries (Members of G-77 as well as those considered to be developing by OCDE standards) were responsible for no more than 8.9% of all

international applications. These figures are particularly striking considering that the membership of developing countries, LDCs and the so called “Certain Countries in Europe and Asia” (most of which are classified as developing countries for purposes of OECD cooperation activities) represent more than 80% of the total Member States of the PCT. Developing countries and LDCs alone now represent more than half of the PCT Contracting States.

A document of the Office of the PCT¹ acknowledges in fact that “[A]s the level of PCT membership of DCs and LDCs increases, the need for greater PCT Outreach will continue to grow. Consequently, out reach will be a means of providing aid to these countries on all relevant matters relating to the PCT in order to make the PCT system of greater value and benefit to them.”

In this light, Brazil firmly believes that no measure would achieved the stated goal of increasing the value and benefit of the PCT system for developing countries as much as a fee reduction that is specifically targeted to encouraging an increase in the PCT users community originated in those countries.

A first step in this direction, though an extremely limited one, was the decision by the Twenty-Fourth Session (11th Ordinary) of the International PCT Union of October 1997 (PCT/A/XXIV/5), by which a 75% reduction in fees was agreed to for international applications filed by “(...) any applicant who is a natural person and who is a national of and resides in a State whose per capita national income is below US\$3,000 (...)”.

Bearing in mind the argument that future surpluses generated by increases in PCT patenting activities should be curtailed to some degree, that this should be done in a way that does not promote more distortions in the ratio of PCT to non-PCT related WIPO activities financed from PCT income, and that a reduction in the 9 to 1 gap in the North-South usage of the PCT would be a priority for the majority of signatories, Brazil proposes to take the 1997 PCT Assembly decision one step further. In other words, serious consideration should be given to additional and more effective measures that encourage members still not in a position to reap the benefits of the PCT system to make greater use of it.

Within the bounds of administrative prudence and for a five year trial period after which the impact of the measure would be assessed, it is proposed concretely that the Program and Budget Committee and the PCT Assembly consider a reduction in the PCT international filing fee and handling fee of 37.5% for developing countries only, while maintaining the 75% reduction for countries with a per capita national income below US\$3,000, as per the 1997 decision. The measure would be effective from January 1, 2008.

Preliminary calculations on the basis of WIPO data regarding PCT international applications for 2006, and using a broad classification of developing countries that would include all members of G-77 plus those countries considered to be developing for the purposes of OECD cooperation activities (this includes many eastern European countries), indicates that the application of the aforementioned reduction of 37.5% in 2006 would have led to a reduction

¹ WIPO. Office of the PCT. Outreach to Developing Countries, Least-Developed Countries and Certain Countries in Europe and Asia.

of approximately 3.33% in total collected PCT fees during the year. This seems to be a prudent, reasonable and effective margin of reduction in revenues, suitable to the objectives sought and commensurate with ensuring the future sustainability of the PCT system as well as of WIPO in general.

Preliminary calculation of impact of proposed reduction in a 2006 scenario:

Total PCT International Applications in 2006:

147,500 or 236,000,000 Swiss francs

Total PCT International Applications in 2006 originated with developing countries (G-77 members and OECD defined):

13,116 or 20,985,600 Swiss francs

Revenue forgone in 2006 with 37.5% reduction in fees for developing countries:

7,869,600 Swiss francs or 3.33% of total.

The advantage to applicants from developing countries would translate into a reduction of the PCT international filing fee and handling fee from the current level of 1,600 Swiss francs to the lower discounted rate of 1,000 Swiss francs. The difference would be meaningful and should be effective in increasing the level of patenting activities originating in those countries. Furthermore, it would not expose the WIPO budget to undue risk, while supporting a reduction in the ratio of PCT to non-PCT WIPO activities funded from PCT income. More importantly, it would generate a meaningful bias in favor of developing countries, albeit a modest one if compared to the 9 to 1 gap against these countries in terms of their current share of PCT value and benefits. Of course other complementary measures might be needed to support greater developing country participation as applicants in the PCT system, such as WIPO programs to assist applicants in developing countries with the drafting of patents, among other enhanced outreach activities.

[Annex II follows]

ANNEX II

PROPOSED AMENDMENT OF THE REGULATIONS UNDER THE PCT

SCHEDULE OF FEES

*(as proposed to be amended with effect from January 1, 2008
for an initial and renewable 5 year period)*

Fees	Amounts
1. International filing fee: (Rule 15.2)	1,400 Swiss francs plus 15 Swiss francs for each sheet of the international application in excess of 30 sheets
2. Handling fee: (Rule 57.2)	200 Swiss francs

Reductions

3. The international filing fee is reduced by the following amount if the international application is, as provided for in the Administrative Instructions, filed:
- | | |
|---|------------------|
| (a) on paper together with a copy in electronic form, in character coded format, of the request and the abstract: | 100 Swiss francs |
| (b) in electronic form, the request not being in character coded format: | 100 Swiss francs |
| (c) in electronic form, the request being in character coded format: | 200 Swiss francs |
| (d) in electronic form, the request, description, claims and abstract being in character coded format: | 300 Swiss francs |
4. All fees (where applicable, as reduced under item 3) are further reduced by:
- | | |
|---|--|
| (a) 37.5% for international applications filed by any applicant who is a natural person and who is a national of and resides in a Members State of the Group of 77 at the United Nations or in a State classed as a developing country by the OECD Development Assistance Committee; | |
| (b) 75% for international applications filed by any applicant who is a natural person and who is a national of and resides in a State whose per capita income is below US\$3,000 (according to the average national income figures used by the United Nations for determining its scale of assessments for the contributions payable for the years 2005, 2006, 2007); | |

provided that, if there are several applicants, each must satisfy the criteria set out in either sub-item (a) or (b).

[End of Annex II and end of document]