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ASSEMBLY

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ADDITION OF PORTUGUESE AS A LANGUAGE OF PUBLICATION

Proposal submitted by Brazil

SUMMARY

1. This document contains a proposal for amendment of the Regulations¹ so as to add Portuguese to the list of languages referred to in Rule 48.3(a) in which international applications may be published.

ADDITION OF PORTUGUESE AS A LANGUAGE OF PUBLICATION

Proposed Amendment of Rule 48.3

2. Present Rule 48.3(a) lists the languages in which international applications may be published ("languages of publication"): Arabic, Chinese, English, French, German, Japanese, Russian and Spanish.

¹ References in this document to "Articles" and "Rules" are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT ("the Regulations"), or to such provisions as proposed to be amended or added, as the case may be. References to "national laws", "national applications", "the national phase", etc., include reference to regional laws, regional applications, the regional phase, etc.

3. Under Rule 48, an international application filed in one of those languages is published in the language in which it was filed. An international application which is not filed in a language of publication is published as a translation of the international application furnished by the applicant into a language of publication (that translation may also be used for the purposes of the international search).
4. The Government of Brazil proposes that Portuguese be included in the list of languages referred to in Rule 48.3(a) in which international applications may be published.
5. Portuguese is an official language of eight States in four continents, of which four States (Brazil, Guinea-Bissau, Mozambique and Portugal) are currently members of the PCT. It is also spoken by large numbers of individuals in other States, with an estimated total 240 million speakers worldwide.
6. According to the 2007 WIPO Patent Report, about 1,660,000 patent applications were filed worldwide in 2005. Brazil occupies the 13th position with regard to the total number of patent filings in 2005. The same report shows that, as far as regional patents granted by the European Patent Office (EPO) are concerned, Portugal occupies the 14th position with regard to the total number of patents granted in 2005 by the EPO and subsequently validated in one or more member States of the European Patent Convention.
7. According to the PCT Yearly Review 2006, Brazil ranks 6th with regard to the number of international applications filed by applicants from developing countries, being the only Portuguese-speaking country listed.
8. The addition of Portuguese as a language of publication would mean that an international application filed in Portuguese would be published in that language, eliminating the need for an international application filed in Portuguese to be translated, for the purposes of international publication, into one of the eight current publication languages (see paragraph 2, above). Moreover, should the Brazilian National Institute of Industrial Property (INPI) be appointed as an International Searching and Preliminary Examining Authority, as proposed by the Government of Brazil (see document PCT/A/36/6), it would also eliminate the need for an applicant who chose INPI to act as International Searching Authority to furnish a translation for the purposes of international search, noting that INPI, as an International Searching Authority, would accept international applications in Portuguese for the purposes of international search.
9. The addition of Portuguese as a language of publication would also mean that any receiving Office would be free to decide to accept Portuguese for the filing of the request, in which case the request form would be made available in that language and applicants could file the request in Portuguese with such a receiving Office.
10. It is to be expected that the addition of Portuguese to the list of PCT publication languages and the appointment of the Brazilian National Institute of Industrial Property as an International Authority will result in an increased use of the PCT system by applicants from Brazil and other Lusophone countries, especially individual inventors and small and medium-sized enterprises (SMEs), noting that it would become possible for an international application to be filed, searched and published in just one language, without the need for the applicant to furnish any translation during the international phase of the PCT procedures.

11. It is expected that the International Bureau could absorb the additional work related to the publication of international applications in Portuguese without undue difficulty. Initial discussions with the International Bureau show that there would already be some capacity within the staff in post to handle international applications in Portuguese and that additional staff requirements, even if the number of applications from Lusophone countries increases significantly, would probably be no more than one Portuguese-speaking examiner and one translator-reviser competent in Portuguese (as well as at least one other language of publication) to oversee the quality of translation work. The translation work itself would in general be outsourced. From a financial point of view, the impact would be minimized by the increase in the revenue from the international filing fees, enabling WIPO to enhance its efforts at fostering the creation, protection and utilization of intellectual property around the world.

12. Noting the time that would be required, in particular, by the International Bureau, to implement the necessary changes to the procedural and legal framework and to related IT systems, it is proposed that the proposed amendments to the PCT Regulations enter into force on January 1, 2009, and that they apply to international applications whose international filing date is on or after January 1, 2009.

13. The Assembly of the PCT Union is invited:

(i) to adopt the proposed amendments of the Regulations under the PCT set out in Annex I; and

(ii) to adopt the proposed decision set out in Annex II relating to entry into force.

[Annexes follow]

ANNEX I

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:²

ADDITION OF PORTUGUESE AS A LANGUAGE OF PUBLICATION

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² Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. Certain provisions that are not proposed to be amended may be included for ease of reference.

Rule 48

International Publication

48.1 and 48.2 [No change]

48.3 *Languages of Publication*

(a) If the international application is filed in Arabic, Chinese, English, French, German, Japanese, [Portuguese](#), Russian or Spanish (“languages of publication”), that application shall be published in the language in which it was filed.

(b) [No change] If the international application is not filed in a language of publication and a translation into a language of publication has been furnished under Rule 12.3 or 12.4, that application shall be published in the language of that translation.

(c) [No change] If the international application is published in a language other than English, the international search report to the extent that it is published under Rule 48.2(a)(v), or the declaration referred to in Article 17(2)(a), the title of the invention, the abstract and any text matter pertaining to the figure or figures accompanying the abstract shall be published both in that language and in English. The translations shall be prepared under the responsibility of the International Bureau.

48.4 to 48.6 [No change]

[Annex II follows]

ANNEX II

PROPOSED DECISION RELATING TO ENTRY INTO FORCE

It is proposed that the Assembly adopt the following decision concerning entry into force of the proposed amendments of the Regulations set out in Annex I:

“The amendments set out in Annex I shall enter into force on January 1, 2009, and shall apply to international applications whose international filing date is on or after January 1, 2009.”

[End of Annex II and of document]