

International Patent Cooperation Union (PCT Union)

Assembly

Forty-First (24th Extraordinary) Session Geneva, September 20 to 29, 2010

REPORT

adopted by the Assembly

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/48/1): 1, 3 to 6, 9 to 13, 15 to 17, 19 to 21, 30, 38 and 39.
2. The report on the said items, with the exception of item 30, is contained in the General Report (document A/48/26).
3. The report on item 30 is contained in the present document.
4. The meeting of the Assembly was presided over by Ms. Anne Rejnhold Jørgensen (Denmark), Chair of the PCT Assembly.

ITEM 30 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE PCT UNION

PCT Working Group: Report of the Third Session

5. Discussions were based on document PCT/A/41/1 Rev.
6. In introducing document PCT/A/41/1 Rev., Deputy Director General Pooley stated that, of the great variety of issues discussed by the Working Group at its third session, he wished to particularly highlight the discussions in the Working Group on the study "The Need to Improve the Functioning of the PCT System". That study had been prepared by the Secretariat following agreement by the Working Group at its second session in May 2009 that efforts should continue on improving the PCT, noting that the system could and should function more effectively on behalf of all stakeholders, within the existing legal framework, without limiting the freedom of Contracting States to control substantive patent law issues as well as national search and examination procedures, and that further dialog should be informed by an in-depth study to be prepared by the International Bureau on how the PCT was measuring up to its stated aims.
7. Based on the study prepared by the Secretariat, and following an intensive debate characterized by a constructive spirit of cooperation and compromise, the Working Group had unanimously endorsed a set of recommendations as to the further work aimed at improving the PCT. Those recommendations included measures to help reduce the unsustainable backlogs of some 4.2 million unprocessed patent applications around the world and improve the quality of granted patents. The patent Offices of PCT Member States would play a key role in implementing many of these recommendations.
8. The Working Group had endorsed a number of practical steps to be undertaken by WIPO in close cooperation with Member States for implementation in the near future. These included the deployment of computer systems that would allow third parties to alert patent Offices about information which they believed showed that a patent application did not meet the conditions of patentability. Other electronic systems to be developed would support technology transfer by promoting the licensing of inventions and by helping to identify information about technologies which were in the public domain.
9. The Working Group had also commissioned a series of studies to assess how successful the PCT system had been in disseminating technical information, in facilitating access to technology and in providing technical assistance for developing countries. These studies would include recommendations on ways to boost the PCT's performance in these areas and would also explore the possibility of extra-budgetary funding arrangements to finance technical assistance projects.
10. Deputy Director General Pooley further stated that the recommendations were an important step towards improving the operation of the international patent system for the benefit of all WIPO Member States.
11. Other issues considered by the Working Group included revised proposals concerning the "Eligibility Criteria for Reductions in Certain PCT Fees". Unfortunately, the Working Group had not been able to reach a consensus. The Secretariat would thus further consider the issue with a view to finding alternative solutions which could be agreed upon by all Member States, pending which the *status quo* would remain.
12. The Delegation of El Salvador expressed its support for the Member States' efforts towards optimizing the work of international and national Offices. The Delegation considered that this work should take place constructively in a way supported by Member States so that the desired results could be achieved. In order to do that, WIPO should intensify the process of consultation and schedule workshops and information seminars for

officials responsible for administering the Treaty. With regard to the languages policy, the Delegation reiterated the request which had been made by both the Delegation of El Salvador and the Group of Latin American and Caribbean Countries in the Working Group and in the Program and Budget Committee that an assessment be made of the introduction of Spanish as a working language in the PCT Working Group.

13. The Delegation of Egypt thanked the Director General for the support which had been provided to the Egyptian Patent Office by the International Bureau. Egypt, as an International Authority under the PCT, had taken certain steps to ensure that it could fulfill that role and had been very much involved in quality control since 2008. The Delegation noted that there were proposals to make certain amendments to the PCT in order to allow it to provide increased benefits to developing countries, particularly with respect to technology transfer. The studies that had been undertaken needed to be followed up with more studies and more research in order to allow the national Offices to work on the basis of the results that were obtained. The Egyptian Patent Office had already begun to undertake the kind of review that was required internationally, but to go further, Egypt needed to be able to count on appropriate support from WIPO. A number of meetings had been held on quality issues, intending to ensure that national Offices reached the required level of quality. The Meeting of International Authorities held recently in Brazil had been very useful indeed. The Delegation invited all participants to bear this in mind and to assist Egypt as it sought to apply the quality framework of Chapter 21 of the PCT International Search and Preliminary Examination Guidelines.
14. The Delegation of Egypt further expressed the view that additional steps were required in order to ensure that Egypt could properly process patent applications under the PCT system within its national Office. The Delegation believed that the Office was on the right track but needed further work to move ahead. The Delegation was pleased with the recommendations adopted at the third session of the PCT Working Group, especially those which called on the International Bureau to undertake a study into the implementation of Article 51 of the PCT setting up a committee to look at technical assistance issues.
15. The Delegation of Iran stated that it was convinced that there were several possibilities to improve the functionality of the PCT system, within its legal framework, for the benefit of applicants, Offices and third parties in all Contracting States, without limiting the policy space for IP Offices in determining substantive conditions of patentability. Certainly, IP Offices, in examining the patentability of a claim, could consider international reports as a subsidiary and complementary means for their examination, taking into account their national patent laws and executive procedures. There was not, however, any legal obligation for the countries to accept these reports. The Delegation of Iran further stated that it also believed that any reform of the PCT system should amplify the basic aims of the Treaty, which were in the field of procedures for obtaining legal protection for inventions and in the field of the dissemination of technical information and organization of technical assistance, particularly for developing countries. Moreover, since the PCT was a procedural Treaty, the result of its reform should be confined to procedural matters and should not lead to the harmonization of national search and examination procedures.
16. The Delegation welcomed the proposal and recommendations put forward in the PCT Working Group to improve the functionality of the system. In this context, establishment of a third-party observation system could improve the accuracy and efficiency of international reports. It also had taken note of the study of the Secretariat presented to the PCT Working Group which stated that, over the past years, the PCT system had been constantly improved, notably from the viewpoint of applicants. The issue of dissemination of technical information, which linked to important issues for developing countries, should be more elaborated in the future process. In this context, it was important to emphasize that the PCT was intended to encourage technology transfer by a variety of means, and that many stakeholders had benefited from the system. Nevertheless, in several instances, there had been challenges, particularly on access to technologies to be used

freely by developing countries, without seeking a license. A practical solution for encountering these challenges should be elaborated in the course of improving the functionality of the PCT system.

17. The Delegation of Iran further stated that it wished to encourage the International Bureau to increase its activities in the field of capacity building for IP offices, by devoting more related resources in this respect. Moreover, for the success of the system, it was imperative to explore practical and affordable ways for national Offices to develop their online searching capabilities and access to effective search systems.
18. The Delegation stated that offering realistic reductions to developing countries in the fees required for the filing of international applications would encourage wider use of the PCT system by these countries; this would not contradict the interests of developed countries but encourage nationals of developing countries to further participate and contribute to the development of technology and related activities and consequently to the improvement of the world economy, from which ultimately all countries would benefit.
19. The Delegation of South Africa stated that it supported the deliberations towards the improvement of the PCT system in a balanced and objective manner. The Delegation welcomed the principles entrenched at the last session of the Working Group, namely, the work for the improvement of the PCT, following an incremental and member-driven approach, within the legal framework of the existing Treaty, which was procedural in nature and did not limit the freedom of the Contracting States regarding substantive patent law issues. The Delegation also highly appreciated the facilitative role of the WIPO Secretariat in preparing the working documents and carrying out the consultative process for the PCT Working Group. The Delegation emphasized that mainstreaming the Development Agenda and addressing the development concerns in all aspects of the work related to improving the PCT was important to it.
20. The Delegation of South Africa expressed the view that there already was a positive example of synergy between the work to improve the PCT and the Development Agenda. The Delegation wished to thank the Director General and the PCT Sector of WIPO for the prompt response to its request for capacity building and awareness seminars, which would take place at the end of October 2010 at a number of South African universities and in the South African Patent Office. The Delegation pointed out that, in fact, cooperation activities between the PCT Sector of WIPO and the Companies and Intellectual Property Registration Office of South Africa had been going on for a number of years. Outreach activities had been organized in various universities with the objective of encouraging universities to utilize the international patent system, including the PCT, to stimulate technology transfer and to obtain commercial returns from research. The Delegation stated that it was now able to add more value by aligning the program to the strategic objectives of the PCT system and the strategic goals under the WIPO Medium Term Strategic Plan.
21. The Delegation of Sweden stated that the Swedish Patent and Registration Office, being one of the International Authorities under the PCT, wished to congratulate the PCT Working Group for endorsing the recommendations drawn from the study "The Need for Improving the Functioning of the PCT System". The Delegation further stated that it wished to again reiterate its support for the ongoing work and its willingness to collaborate in this important work to develop the PCT system.
22. The Delegation of Brazil stated that it had participated actively in the discussions of the PCT Working Group and thus limited itself to a short statement. It wished to reiterate Brazil's interest in the improvement of the functioning of the PCT system, which could contribute to raising the quality of patent examinations in all jurisdictions, within the limits of national legislation. Progress made in the PCT Working Group showed that members

were finding a way forward in a subject not free of divisive issues. Key to the good disposition prevailing in this process was the member-driven nature of the discussions in the Working Group.

23. The Delegation of Barbados wished to place on record its thanks to the International Bureau for its efforts to arrive at criteria for determining which countries should be entitled to benefit from PCT fee reductions. It stated that it wished to reiterate that the criteria which were to be developed had to be fair and balanced, taking into account the special circumstances that existed in certain developing countries.
24. The Delegation of Trinidad and Tobago stated that the PCT continued to be a very important mechanism for Trinidad and Tobago as it continued to benefit from the utilization of the PCT system. In 2009, 97% of all patent applications arrived through the PCT route. Recognizing the flourishing rate of PCT filing of patent applications, Trinidad and Tobago willingly welcomed any positive alteration to the PCT system from which the operations of the Intellectual Property Office would benefit. It had noted the great enthusiasm PCT Contracting States had exhibited in continuing to propose enhancements to the PCT system and stated that it would like to encourage the International Bureau to continue in its quest to improve the PCT System so that all stakeholders benefitted.
25. The Delegation of Trinidad and Tobago further stated that it believed that whatever modifications were sought to improve the functioning of the PCT, they had to take into account the needs of developing countries, particularly those with smaller technical capacities. It therefore requested that ample consideration be given to the circumstances under which the smaller IP Offices operated, so that, when new systems were developed, it was ensured that all Offices could benefit from their use.
26. Even though the numbers of nationals making use of the PCT system was minimal, the Trinidad and Tobago Intellectual Property Office had promoted the system to facilitate PCT filings. Additionally, the Trinidad and Tobago Intellectual Property Office had actively embarked on public awareness programs to encourage the citizens of Trinidad and Tobago to make use of the PCT system. Further encouragement would, of course, come from the continuation of the 90% discount on international filing fees that applicants from Trinidad and Tobago currently enjoyed. Further confidence would come once Member States had arrived at consensus to retain and extend discounted fees. The Delegation noted that it appreciated the strenuous and well thought-out contributions to the discussions on the eligibility criteria for fee reductions by the Delegation from Barbados and stated that it supported the positions put forward by that Delegation. Trinidad and Tobago would continue to make use of the PCT system and endorsed whatever changes would be required for the future further development of the system.
27. The Delegation of Switzerland, speaking on behalf of Group B, stated that the global IP services that WIPO provided to Member States, in particular the registration system for patents, were of paramount importance to all stakeholders. Group B commended the performance of these systems but, at the same time, questioned how the system could do better for the users on the ground. If it did not keep pace with technological and business evolution, there was the risk of not only disappointing existing users but also of losing opportunities to grow. The increase in demand on WIPO's capacity meant that it was important that all worked together in identifying how to improve service delivery, since it was WIPO's services, in particular the PCT, that generated around 90% of its revenue. The continued enhancement of such services and their quality in a cost effective manner had always been and would remain a major strategic goal that WIPO members fully supported.
28. The Delegation further stated that, in this regard, the confirmation of the support by WIPO's Member States for the PCT roadmap during the last session of the PCT Working Group was very promising for the further development of the PCT system. It was of fundamental importance to ensure that the PCT was able to continue to deliver results

which met the needs of applicants, Offices and third parties. This would enable the PCT to remain effective and attractive in the future and retain the central place that it had in the international patent framework and the financing of WIPO. Group B members were therefore looking forward to continuing to progress the work at the next session of the PCT Working Group.

29. The Delegation concluded by expressing the view that, besides the functioning of the PCT system itself, there had also been an interesting exchange of views during the last session of the Working Group on the need to coordinate with other development activities and, in particular, the need to review the technical assistance activities provided so far in connection with the PCT. Due to the importance of WIPO members having the capacity to properly use and benefit from the PCT system, Group B members were interested in interacting with other WIPO members - within currently existing WIPO Committees - in order to better understand their current needs and to see how to better allocate available resources for technical assistance. In this regard, the Delegation recalled the specific technical assistance proposals presented by the African Group during the last session of the PCT Working Group.
30. The Delegation of China welcomed the fact that the PCT Working Group had made significant progress and reached consensus on a set of recommendations on how to improve the PCT system, and welcomed the fact that the Member States of the PCT had made such great efforts to reach that consensus. It expressed the view that the improvements to the PCT system should be done within its current legal framework, and that improvements should be gradual, pragmatic and coherent to ensure that the PCT system could adopt its role as a patent application system at a global level. The Delegation further stated that it believed that the PCT system should provide better services for its users, and that the evolution of the system should also take into account the needs of users from developing countries. The Delegation concluded by stating that it would continue to actively support the improvement of the PCT system.
31. The Delegation of Egypt, speaking on behalf of the Development Agenda Group, stated that the Development Agenda Group believed that the adoption of the WIPO Development Agenda contributed to challenging the universal applicability of "one size fits all" IP protection models or the advisability of the harmonization of laws leading to higher protection standards in all countries, irrespective of the level of development. In this regard, the PCT Member States had an interest in the reform and the improvement of the functioning of the PCT system. The Development Agenda Group was avidly interested in the ongoing discussions in the PCT Working Group and favored deepening the analysis and continuing the debate on the reform of the PCT, within the parameters agreed during previous sessions of the PCT Working Group. In addition to the above mentioned principle, the Development Agenda Group underlined the need to ensure that the reform of the PCT system did not entail any harmonization of patent law in substance or in practice, as stipulated in Article 27(5) of the PCT.
32. The Delegation wished to thank the Secretariat for the study that had been prepared for the third session of the PCT Working Group entitled "The Need for Improving the Functioning of the PCT System" (document PCT/WG/3/2). It believed that this study was a good basis for discussion on the issue of the reform of the PCT. The study pointed to problems in the processing of applications, where an increasing number of applications on the one hand and inadequate manpower capacity in Offices on the other, had led to unsustainable backlogs and the increased possibility of the grant of invalid patents. This was an issue of concern. It noted, however, that while improving the quality of international reports addressed partly the supply side by dealing with the problems of backlogs, the causal problems leading to the backlogs on the demand side also needed to be addressed in order to come up with sustainable long-term solutions. The reasons behind the flood of patent applications, which seemed to far exceed the level of actual innovation in the world, needed to be addressed. It needed to be recognized that an

effective, long-term and sustainable resolution of the problems of backlogs and quality would require augmenting the capacity of Offices to conduct search and examination as comprehensive as possible for every application in a timely manner. This would require enhanced support for Offices, especially in developing countries, which had to be provided in accordance with the provisions of PCT and the recommendations of the Development Agenda.

33. The Delegation further stated that PCT Article 51 called for the setting up of a Committee for Technical Assistance, which had not been established so far. It believed that it should be set up now so as to enable the Secretariat to look at technical assistance requirements comprehensively and address them in a focused manner. With regard to the outcome of the third session of the PCT Working Group on the study proposals, the Delegation supported the recommendations as adopted in the report of the session. It particularly supported the introduction of a new recommendation introduced as paragraph 149*bis* that a follow-up study be conducted by the International Bureau, which should involve WIPO's Chief Economist, to analyze the root causes behind the surge of patent applications and the consequent heavy load on the international patent system. It also fully supported the introduction of another new recommendation included in paragraph 204*bis* that a study be conducted by the International Bureau to look into the issue of coordination of technical assistance for developing countries, as envisaged in PCT Article 51, in a focused manner and guided by the Development Agenda recommendations, and to make recommendations on terms of reference for the possible establishment of the Committee for Technical Assistance. This study would be presented for decision to the 4th session of the Working Group. The study should also identify and assess existing agreements with relevant international financing organizations and intergovernmental organizations for financing of technical assistance projects under PCT Article 51(4) and make recommendations regarding the possibility of seeking further such agreements. The Delegation looked forward to the studies by the Chief Economist as well as the study on the coordination of technical assistance envisaged in PCT Article 51. It also looked forward to the terms of reference to be prepared by the Secretariat for the possible establishment of the Committee for Technical Assistance. In concluding, the Delegation stated that it looked forward to a positive outcome during the forthcoming session of the PCT Working Group.
34. The Delegation of Japan stated that it supported the statement made by Switzerland on behalf of Group B. It further wished to compliment the initiative by Director General Gurry and Deputy Director General Pooley and their team. It welcomed the recommendations on how to improve the PCT system which had been approved by the PCT Working Group at its meeting in June 2010. Noting that the PCT was one of the core pillars of WIPO's international IP systems, the Delegation wished to express its full support for the recommendations and related activities aimed at providing better services for PCT Member States as well as users.
35. The Delegation of Algeria stated that Algeria welcomed the detailed study by the Secretariat on the need for improving the functioning of the PCT system. It thanked Deputy Director General Pooley for the informal consultations which had been initiated shortly before the session of the PCT Working Group in May 2010. Algeria had taken note of the numerous problems facing the PCT system which had been identified in the study, such as the shortage of examiners, the problems related to quality of international search and examination reports, the duplication of work, the backlogs and dealing with patent applications by intellectual property Offices, but in the view of the Delegation the study had not gone into a detailed analysis of intrinsic causes of these problems.
36. Algeria was particularly interested in improving the functioning of the PCT system, which was the main source of income for the Organization, and believed that any solution designed to achieve such an improvement should be overall, comprehensive, balanced and consensus-based. It should also be viewed in the context of the recommendations of

the Development Agenda, respecting PCT Article 27(5) which guaranteed the freedom for Contracting States to set the substantive conditions of patentability. The Delegation supported improving the quality of international search and examination reports and was of the view that improved dissemination of patent information was just one of the elements that could actually facilitate achieving that objective. With regard to the systematic validation of international search reports by intellectual property Offices of developing countries, the Delegation expressed the view that this would risk restricting the room for maneuver for Offices in developing countries, given the interpretation of patentability criteria. This was why the Delegation felt that it was important to strengthen the capacities of Offices of developing countries, in particular by way of WIPO providing training to examiners. The Delegation also supported the implementation of the Committee for Technical Assistance provided for in PCT Article 51 and the organization by WIPO of workshops and seminars on how to use the PCT System for users in developing countries, and on practical solutions for improving the functioning of the system.

37. The Representative of the Third World Network expressed the view that the PCT system should be understood in the wider context of the emerging inequitable international patent regime. Statistics on PCT applications clearly showed that developed countries were the clear beneficiaries of the system. Out of 155,000 international applications, 92,000 originated from just three developed countries, namely, the United States of America, Japan and Germany. This clearly showed that the PCT system was a tool to obtain patent protection for corporations from developed countries in a cost-effective manner. Any reform of the PCT should not result in shifting the burden, in the name of efficiency, from developed countries to developing countries. Furthermore, it should not result in any way in the harmonization of substantive aspects of patent law. It should clearly address the unfulfilled Treaty obligation related to technology transfer.

38. The Assembly:

- (i) noted the report of the third session of the PCT Working Group contained in document PCT/WG/3/14 Rev. and reproduced in the Annex to document PCT/A/41/1 Rev.; and
- (ii) approved the recommendation concerning the further work of the PCT Working Group set out in paragraph 13 of document PCT/A/41/1 Rev.

Proposed Amendments of the PCT Regulations

39. Discussions were based on document PCT/A/41/2 Rev.

40. The Assembly:

- (i) adopted the proposed amendments of the Regulations under the PCT set out in the Annex to this report;
- (ii) decided that the amendments of Rules 12.2, 48.2, 53.9, 55.3, 62.1, 62.2, 66.9, 70.2 and 92.2 set out in the Annex to this report shall enter into force on July 1, 2011, and shall apply to international applications whose international filing date is on or after July 1, 2011;
- (iii) decided that the amendments of Rule 49.5 set out in the Annex to this report shall enter into force on July 1, 2011, and shall apply to international applications in respect of which the applicant has performed the acts referred to in Article 22 or Article 39 on or after July 1, 2011, and in respect of which an amendment under Article 19 or 34 was filed on or after July 1, 2009; and

- (iv) decided that the amendments of Rule 70.16 set out in the Annex to this report shall enter into force on July 1, 2011, and shall apply to any international preliminary examination report which is completed in accordance with Rule 70.4 on or after July 1, 2011, irrespective of the international filing date of the international application concerned.

Quality Management Systems for the PCT International Authorities

- 41. Discussions were based on document PCT/A/41/3.
- 42. In introducing document PCT/A/41/3, the Secretariat stated that document PCT/A/41/3 had been drawn-up so as to draw attention to the fact that, as in previous years, the annual reports by PCT International Authorities on their quality management systems had been published on WIPO's website. Furthermore, document PCT/A/41/3 informed on recent efforts by PCT International Authorities to improve their quality management systems and, most notably, the quality of the PCT work products, namely, international search reports, written opinions and international preliminary examination reports.
- 43. Both issues had featured prominently on the agenda of the most recent Meeting of International Authorities (PCT/MIA) held in February 2010 in Rio de Janeiro, Brazil, where it had been agreed to introduce a new common template for future reports on quality management systems. Furthermore, it had been agreed to set up a Quality Sub-group to discuss quality related issues in greater detail, noting the importance of the PCT as a work sharing tool, that confidence in the high quality of international reports was essential to effective use of those reports by Offices during national phase processing, and that confidence was best served by an effective evaluation of the value of the reports for the purposes of assisting Offices of PCT Member States in processing international applications which had entered the national phase. As its first two concrete projects, this Quality Sub-group would discuss the possible establishment of quality feedback systems and third party observation systems, in line with the recommendations to set up such systems as agreed by the PCT Working Group.
- 44. The Assembly took note of the content of document PCT/A/41/3.

[Annex follows]

ANNEX

AMENDMENTS OF THE PCT REGULATIONS
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Rule 12
Language of the International Application
and Translations for the Purposes of International Search
and International Publication

12.1 to 12.1~~ter~~ [No change]

12.2 *Language of Changes in the International Application*

(a) Any amendment of the international application shall, subject to Rules 46.3 and 55.3, be in the language in which the application is filed.

(b) and (c) [No change]

12.3 and 12.4 [No change]

Rule 48
International Publication

48.1 [No change]

48.2 *Contents*

(a) to (h) [No change]

(i) If the authorization by the receiving Office, the International Searching Authority or the International Bureau of a rectification of an obvious mistake in the international application under Rule 91.1 is received by or, where applicable, given by the International Bureau after completion of the technical preparations for international publication, a statement reflecting all the rectifications shall be published, together with the sheets containing the rectifications, or the replacement sheets and the letter furnished under Rule 91.2, as the case may be, and the front page shall be republished.

(j) and (k) [No change]

48.3 to 48.6 [No change]

Rule 49
Copy, Translation and Fee under Article 22

49.1 to 49.4 [No change]

49.5 *Contents of and Physical Requirements for the Translation*

(a) For the purposes of Article 22, the translation of the international application shall contain the description (subject to paragraph (a-bis)), the claims, any text matter of the drawings and the abstract. If required by the designated Office, the translation shall also, subject to paragraphs (b), (c-bis) and (e),

(i) [no change]

(ii) if the claims have been amended under Article 19, contain both the claims as filed and the claims as amended (the claims as amended shall be furnished in the form of a translation of the complete set of claims furnished under Rule 46.5(a) in replacement of all the claims originally filed), and

(iii) [no change]

(a-bis) to (l) [No change]

49.6 [No change]

Rule 53
The Demand

53.1 to 53.8 [No change]

53.9 *Statement Concerning Amendments*

(a) If amendments under Article 19 have been made, the statement concerning amendments shall indicate whether, for the purposes of the international preliminary examination, the applicant wishes those amendments:

(i) to be taken into account, in which case a copy of the amendments and of the letter required under Rule 46.5(b) shall preferably be submitted with the demand; or

(ii) [no change]

(b) and (c) [No change]

Rule 55
Languages (International Preliminary Examination)

55.1 and 55.2 [No change]

55.3 Language and Translation of Amendments and Letters

(a) Subject to paragraph (b), if the international application has been filed in a language other than the language in which it is published, any amendment under Article 34, as well as any letter referred to in Rule 66.8(a), Rule 66.8(b) and Rule 46.5(b) as applicable by virtue of Rule 66.8(c), shall be submitted in the language of publication.

(b) Where a translation of the international application is required under Rule 55.2:

- (i) any amendment and any letter referred to in paragraph (a); and
- (ii) any amendment under Article 19 which is to be taken into account under Rule 66.1(c) or (d) and any letter referred to in Rule 46.5(b);

shall be in the language of that translation. Where such amendments or letters have been or are submitted in another language, a translation shall also be submitted.

(c) If an amendment or letter is not submitted in a language as required under paragraph (a) or (b), the International Preliminary Examining Authority shall invite the applicant to submit the amendment or letter in the required language within a time limit which shall be reasonable under the circumstances. That time limit shall not be less than one month from the date of the invitation. It may be extended by the International Preliminary Examining Authority at any time before a decision is taken.

(d) If the applicant fails to comply, within the time limit under paragraph (c), with the invitation to furnish an amendment in the required language, the amendment shall not be taken into account for the purposes of the international preliminary examination. If the applicant fails to comply, within the time limit under paragraph (c), with the invitation to furnish a letter referred to in paragraph (a) in the required language, the amendment concerned need not be taken into account for the purposes of the international preliminary examination.

Rule 62

Copy of the Written Opinion by the International Searching Authority and of Amendments under Article 19 for the International Preliminary Examining Authority

62.1 Copy of Written Opinion by International Searching Authority and of Amendments Made before the Demand Is Filed

Upon receipt of a demand, or a copy thereof, from the International Preliminary Examining Authority, the International Bureau shall promptly transmit to that Authority:

- (i) a copy of the written opinion established under Rule 43*bis*.1, unless the national Office or intergovernmental organization that acted as International Searching Authority is also acting as International Preliminary Examining Authority; and
- (ii) a copy of any amendment under Article 19, any statement referred to in that Article, and the letter required under Rule 46.5(b), unless that Authority has indicated that it has already received such a copy.

62.2 Amendments Made after the Demand Is Filed

If, at the time of filing any amendments under Article 19, a demand has already been submitted, the applicant shall preferably, at the same time as he files the amendments with the International Bureau, also file with the International Preliminary Examining Authority a copy of such amendments, any statement referred to in that Article and the letter required under Rule 46.5(b). In any case, the International Bureau shall promptly transmit a copy of such amendments, statement and letter to that Authority.

Rule 66
Procedure before the International Preliminary Examining Authority

66.1 to 66.8 [No change]

66.9 *[Deleted]*

Rule 70
**International Preliminary Report on Patentability by the International Preliminary
Examining Authority (International Preliminary Examination Report)**

70.1 [No change]

70.2 *Basis of the Report*

(a) to (c) [No change]

(c-*bis*) If the claims, description or drawings have been amended but the replacement sheet or sheets were not accompanied by a letter indicating the basis for the amendment in the application as filed, as required under Rule 46.5(b)(iii), Rule 46.5(b)(iii) being applicable by virtue of Rule 66.8(c), or Rule 66.8(a), as applicable, the report may be established as if the amendment had not been made, in which case the report shall so indicate.

(d) and (e) [No change]

70.3 to 70.15 [No change]

70.16 *Annexes to the Report*

(a) The following replacement sheets and letters shall be annexed to the report:

- (i) each replacement sheet under Rule 66.8 containing amendments under Article 34 and each letter under Rule 66.8(a), Rule 66.8(b) and Rule 46.5(b) as applicable by virtue of Rule 66.8(c);
- (ii) each replacement sheet under Rule 46.5 containing amendments under Article 19 and each letter under Rule 46.5; and
- (iii) each replacement sheet under Rule 26.4 as applicable by virtue of Rule 91.2 containing a rectification of an obvious mistake authorized by that Authority under Rule 91.1(b)(iii) and each letter under Rule 26.4 as applicable by virtue of Rule 91.2;

unless any such replacement sheet has been superseded or considered reversed by a later replacement sheet or an amendment resulting in the cancellation of an entire sheet under Rule 66.8(b); and

- (iv) where the report contains an indication referred to in Rule 70.2(e), any sheet and letter relating to a rectification of an obvious mistake which is not taken into account pursuant to Rule 66.4*bis*.

[Rule 70.16, continued]

(b) Notwithstanding paragraph (a), each superseded or reversed replacement sheet referred to in that paragraph and any letter referred to in that paragraph relating to such superseded or reversed sheet shall also be annexed to the report where:

- (i) the International Preliminary Examining Authority considers that the relevant superseding or reversing amendment goes beyond the disclosure in the international application as filed and the report contains an indication referred to in Rule 70.2(c);
- (ii) the relevant superseding or reversing amendment was not accompanied by a letter indicating the basis for the amendment in the application as filed and the report is established as if the amendment had not been made and contains an indication referred to in Rule 70.2(c-bis).

In such a case, the superseded or reversed replacement sheet shall be marked as provided by the Administrative Instructions.

Rule 92
Correspondence

92.1 [No change]

92.2 *Languages*

(a) Subject to Rules 55.1 and 55.3 and to paragraph (b) of this Rule, any letter or document submitted by the applicant to the International Searching Authority or the International Preliminary Examining Authority shall be in the same language as the international application to which it relates. However, where a translation of the international application has been transmitted under Rule 23.1(b) or furnished under Rule 55.2, the language of such translation shall be used.

(b) [No change]

(c) *[Remains deleted]*

(d) and (e) [No change]

92.3 and 92.4 [No change]

[End of Annex and of document]