

International Patent Cooperation Union (PCT Union)

Assembly

Forty-Seventh (20th Ordinary) Session
Geneva, October 5 to 14, 2015

REPORT

adopted by the Assembly

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/55/1): 1 to 6, 10, 11, 19, 31 and 32.
2. The report on the said items, with the exception of item 19, is contained in the General Report (document A/55/13).
3. The report on item 19 is contained in the present document.
4. Ms. Susanne Ås Sivborg (Sweden) was re-elected Chair of the Assembly; Ms. Zheng Huifen (China) and Mr. Sandris Laganovskis (Latvia) were elected Vice-Chairs. In the absence of the Chair and both Vice-Chairs, the Chair of the WIPO General Assembly, Ambassador Gabriel Duque (Colombia), acted as Chair on an *ad hoc* basis and presided over those parts of the discussions referred to in paragraphs 84 and 85.

ITEM 19 OF THE CONSOLIDATED AGENDA

PCT SYSTEM

Report on the PCT Working Group

5. Discussions were based on document PCT/A/47/1.
6. The Secretariat introduced the document, which set out a report of the eighth session of the PCT Working Group. The session had a full agenda, with 30 agenda items and 24 working documents. This again confirmed the great interest in the further development of the PCT System as the backbone and central node of the international patent system. For a number of issues discussed and agreed by the Working Group, separate working documents had been submitted to this Assembly, namely documents PCT/A/47/3, 4 Rev. and 5 Rev. An overview of all items discussed and agreements reached was provided in the Summary by the Chair attached to the document.
 7. The Assembly:
 - (i) took note of the Summary by the Chair of the eighth session of the Working Group contained in document PCT/WG/8/25; and
 - (ii) approved the recommendation concerning the further work of the PCT Working Group set out in paragraph 5 of document PCT/A/47/1.

Quality-Related Work by International Authorities

8. Discussions were based on document PCT/A/47/2.
9. The Secretariat explained that the document set out a brief report on the ongoing quality work by the International Searching and Preliminary Examining Authorities, pursued mainly through the work of the Meeting of International Authorities and, notably, its Quality Subgroup. The main purpose of the document was to report on the outcome of the fifth informal meeting of the Quality Subgroup, which was held in Tokyo in February 2015. During that meeting, International Authorities had continued their discussions on possible measures to improve the overall quality and usefulness of the international work products of the PCT, namely, the international search reports and the international preliminary reports on patentability established by the International Authorities.
10. The Delegation of Japan, representing the host country for the Meeting of International Authorities and its Quality Subgroup in 2015, expressed its gratitude to the participants of both these meetings. In order to improve the quality of search and preliminary examination results of International Searching Authorities, the Japan Patent Office (JPO) had conducted a pilot study with the Swedish Patent and Registration Office in 2014. This pilot was designed to give feedback from designated Offices on international search reports and written opinions of International Searching Authorities, as was referred to in paragraph 6 of the document. Moreover, the JPO and the European Patent Office (EPO) had collaborated by performing a detailed analysis of files in which examination results between the two Offices differed from the search results to investigate the causes of discrepancies. This analysis, which was part of the joint collaborative metrics project referred to in paragraph 7 of the document, had been performed in 2014 and would be repeated in 2015. The Delegation concluded by expressing the hope that this initiative would be conducted to improve the quality of search and examination in every International Searching and Preliminary Examining Authority.

11. The Delegation of the United States of America stated that it was pleased with the work carried out by the Quality Subgroup at its February 2015 meeting in Tokyo and believed that the results obtained would lead to improving the PCT System. In particular, the Delegation expressed satisfaction that the three track approach to evaluate options for making available search strategies had been approved, and added that this approach should provide data to identify an effective way to share information between Offices. On this issue, the Delegation requested the International Bureau to conduct a survey of all users – applicants, patent examiners and third parties – to compare and contrast the search recordation formats used in the three tracks so as to understand better their needs. The Delegation favored gathering additional experience on the voluntary use of standardized clauses by International Authorities before conducting an evaluation of their effectiveness. In addition, the Delegation agreed with the development of improved PCT metrics, as long as they were not excessively burdensome for Offices and properly reflected the issues of importance to Offices and users. Finally, regarding the substantive criteria for appointment of International Authorities, the Delegation supported further work on improving the requirements for quality management systems and on developing a standard application form for requesting appointment as an International Authority.

12. The Assembly took note of the report “Quality-Related Work by International Authorities” contained in document PCT/A/47/2.

Review of the Supplementary International Search System

13. Discussions were based on document PCT/A/47/3.

14. The Secretariat introduced the document, which set out a report by the International Bureau on the supplementary international search system. The report intended to serve as a basis for a review of that system by the Assembly, as had been decided by the Assembly in 2012, following the Assembly’s first review of the system three years after its date of entry into force back in 2009. As the report indicated, the uptake of supplementary international search had remained very low. Replies to a questionnaire on the supplementary international search system which the International Bureau had sent to all stakeholders suggested a number of reasons for the low interest, notably, the requirement to translate an international application if it was not in one of the languages offered by International Authorities for supplementary international search, the level of fees, the lack of an International Authority working in one of the Asian languages offering the service, and possible lack of awareness amongst applicants. None of the responses to the questionnaire suggested that supplementary international search should be discontinued at this stage. The report had been discussed in detail by the PCT Working Group at its most recent session in May 2015. Based on the report, the Working Group had recommended to the Assembly to adopt the decision set out in paragraph 5 of the document. This decision invited the International Bureau to continue to monitor the supplementary international search system for a further five years and to review the system again in 2020, to encourage Offices to continue their efforts to raise awareness of and promote the service to users of the PCT System, and to encourage International Authorities to review the scope and cost of the services that they offer under the system.

15. The Delegation of China stated that the development of the supplementary international search service should increase benefit for users. The Delegation therefore supported a further review of the supplementary international search system in 2020.

16. The Assembly took note of the Review of the Supplementary International Search System contained in document PCT/A/47/3.

17. The Assembly, having reviewed the supplementary international search system three years after the date of entry into force of the system and again in 2015, decided:

“(a) to invite the International Bureau to continue to closely monitor the system for a period of a further five years, and to continue to report to the Meeting of International Authorities and the Working Group on how the system is developing;

“(b) to invite the International Bureau, International Authorities and national Offices and user groups to continue their efforts to raise awareness of and promote the service to users of the PCT system;

“(c) to invite the International Authorities which offer supplementary international searches to consider reviewing the scope of their services provided under the system and consequently the levels of fees charged for the services provided, which should be reasonable; and to invite Authorities which currently do not offer the service to reconsider whether to offer the service in the near future;

“(d) to review the system again in 2020, taking into account further developments until then, notably in relation to developments in collaborative search and examination, and in relation to efforts to improve the quality of the ‘main’ international search.”

Proposed Amendments to the PCT Regulations

18. Discussions were based on document PCT/A/47/4 Rev.

19. The Secretariat introduced the document, which set out proposed amendments of the PCT Regulations. These amendments had been discussed in great detail by the PCT Working Group, which had unanimously agreed to recommend that this Assembly should adopt the amendments as proposed. The proposed amendments in the document related to the following: Transmittal by the Receiving Office of Earlier Search and/or Classification Results to the International Searching Authority (set out in Annex I); Omission of Certain Information from Public Access (set out in Annex II); Transmittal to the International Bureau of Copies of Document Received in the Context of a Request for Restoration of Right of Priority (set out in Annex III); Delays and Force Majeure for Electronic Communications (set out in Annex IV); Languages for Communication with the International Bureau (set out in Annex V); and Information Concerning National Phase Entry and Translations (set out in Annex VI). The Secretariat further explained that the document was a revised version (“Rev.”) of document PCT/A/47/4 as originally published in August. The only change compared to that document was the addition of some minor corrections concerning the proposals for entry into force and transitional arrangements in respect of the proposed amendments to the Rules set out in Annex I to the document, as further explained on the front page of the document.

20. The Assembly:

(i) adopted the amendments to the Regulations under the PCT set out in Annexes I and II to this report;

(ii) decided that the amendments of Rules 9, 26*bis*, 48, 82*quater*, 92 and 94 set out in Annex I to this report shall enter into force on July 1, 2016, and shall apply to any international application whose international filing date is on or after July 1, 2016;

(iii) decided that the amendments of Rule 82*quater* shall also apply to international applications whose international filing date is before July 1, 2016, where the event referred to in Rule 82*quater*.1(a), as amended, occurs on or after July 1, 2016;

(iv) decided that the amendments of Rule 92.2(d) shall also apply to correspondence received by the International Bureau on or after July 1, 2016, in

respect of international applications whose international filing date is before July 1, 2016, to the extent provided at the time of promulgation of any Administrative Instructions made under that Rule;

(v) decided that the amendments of Rules 12*bis*, 23*bis*, 41, 86 and 95 set out in Annex II to this report shall enter into force on July 1, 2017, and shall apply to any international application whose international filing date is on or after July 1, 2017;

(vi) decided that the amendments of Rules 86 and 95 shall also apply to any international application whose international filing date is before July 1, 2017, in respect of which the acts referred to in Article 22 or Article 39 are performed on or after July 1, 2017;

(vii) adopted the following Understanding concerning the provisions regarding the excuse of a delay in meeting a time limit due to a general unavailability of electronic communication services in accordance with the amended Rule 82*quater*:

“In adopting the amendments to Rule 82*quater*.1, the Assembly noted that the receiving Office, the International Searching Authority, the Authority specified for supplementary search, the International Preliminary Examining Authority or the International Bureau should, in considering a request under Rule 82*quater*.1 to excuse a delay in meeting a time limit that has not been met due to a general unavailability of electronic communication services, interpret general unavailability of electronic communications to apply to outages that affect widespread geographical areas or many individuals, as distinct from localized problems associated with a particular building or single user.”

(viii) adopted the following Understanding concerning the information which is to be provided in accordance with the amended Rules 86 and 95:

“In adopting the amendments to Rule 86.1(iv), the Assembly noted that the information concerning national phase entry will be made available to the public not only by way of inclusion in the Gazette on the PATENTSCOPE website but also as part of the bulk PCT bibliographic data offered to Offices and other subscribers to the PATENTSCOPE subscription data services.”

Proposed Modifications of the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees

21. Discussions were based on document PCT/A/47/5 Rev.

22. The Secretariat explained the submission by the International Bureau of revised document PCT/A/47/5 Rev. The revised document proposed to postpone a decision on the modifications of the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees, which the PCT Working Group had recommended to be adopted at the present session of the Assembly. The aim of those modifications was to enable the International Bureau to commence hedging of international filing fees as far as the risk resulting from transactions in euro, Japanese yen and United States dollar was concerned. Document PCT/A/47/5, published on August 4, 2015, had originally proposed to modify the Directives as agreed by the Working Group at its eighth session in May 2015, including clarifications on some minor issues which had been identified after that session. Following the eighth session of the Working Group, the WIPO Program and Budget Committee (PBC), at its July 2015 session, had requested the Secretariat to provide an update to its September 2015 session on the progress made in respect of the implementation of the proposed hedging strategy for PCT fee income. The requested update had been provided by way of document WO/PBC/24/INF.3, which was reproduced in document PCT/A/47/5 Rev. Document WO/PBC/24/INF.3 had identified several

concerns and risks which, in the view of the Secretariat, required further research and thorough analysis before committing to a particular hedging strategy and entering into contractual relationships with hedging counterparties. Given the complexity of the issues involved, such work would require time and resources, which could be significant. In the view of the International Bureau, if the hedging strategy were to be implemented without having limited the risks associated with the issues identified, the potential financial cost to the Organization could be considerable. The PBC had discussed document WO/PBC/24/INF.3 at its September 2015 session. In view of the concerns and risks identified therein, the PBC had recommended to the PCT Assembly to allow for more time for the Secretariat to further analyze the issues and to postpone its decision on the proposed modifications of the Directives until such analysis had been undertaken. The International Bureau agreed with this recommendation. Document PCT/A/47/5 Rev. therefore replaced document PCT/A/47/5 and proposed that the PCT Assembly should postpone a decision to adopt the proposed modifications to the Directives. Instead, document PCT/A/47/5 Rev. invited the Secretariat to further analyze the issues regarding the implementation of a hedging strategy for PCT fee income set out in document WO/PBC/24/INF.3 and to submit a progress report to the 2016 session of the Working Group.

23. The Assembly:

- (i) took note of the contents of document PCT/A/47/5 Rev.;
- (ii) invited the Secretariat to further analyze the issues regarding the implementation of a hedging strategy for PCT fee income set out in document WO/PBC/24/INF.3;
- (iii) postponed any decision on the proposed modifications to the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees, as agreed by the PCT Working Group, until such analysis had been undertaken; and
- (iv) invited the Secretariat to submit a progress report to the 2016 session of the PCT Working Group.

Appointment of the Visegrad Patent Institute as an International Searching and Preliminary Examining Authority under the PCT

24. Discussions were based on documents PCT/A/47/6 and 6 Add.

25. The Chair referred to the twenty-eighth session of the PCT Committee for Technical Cooperation in May 2015, which had unanimously agreed to recommend to the Assembly of the PCT Union that the Visegrad Patent Institute (VPI) be appointed as an International Searching and Preliminary Examining Authority under the PCT, as stated in paragraph 5 of document PCT/A/47/6.

26. The Delegation of Hungary, speaking on behalf of the Delegations of the Czech Republic, Hungary, Poland and Slovakia (Visegrad Group, or "V4"), introduced the application for the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT. The Delegation acknowledged the Understanding concerning procedures for appointment of International Authorities adopted by the Assembly in 2014 (see paragraph 25 of document PCT/A/46/6) and stated that it was in full observance of these procedures that the VPI had submitted its application. The PCT Committee for Technical Cooperation had made a unanimous recommendation that the VPI be appointed as an International Searching and Preliminary Examining Authority. The VPI was an intergovernmental organization or co-operation in the field of patents established by the V4 countries. The VPI's main task would be to serve as an International Authority for Central and Eastern Europe in order to attain a wide range of important objectives at various levels. The VPI would fill a territorial gap within the PCT by acting as an International Authority for Central and Eastern Europe, it being noted that

the Group of Central European and Baltic States was the only regional group of WIPO within which there was no functioning International Authority under the PCT. In addition, the VPI would make up for the missing link in the network of PCT International Searching and Preliminary Examining Authorities in Europe, adding further competent resources to those already available, especially in respect of a region currently not having its own International Authority. Through completing the global coverage of International Authorities, the appointment of the VPI would contribute to a better understanding and wider use of the PCT System within the Central and Eastern European region, as well as leading to an improvement in quality of international applications originating from this region. Based on the long established traditions and expertise of the national Offices participating in the Visegrad cooperation, as well as under good quality management, the VPI would seek to become a reliable, efficient and constructive partner in the efforts to improve further the quality and efficiency of the global patent system. The VPI intended to participate actively in other international initiatives and projects aimed at workload sharing, quality improvements, further harmonization and better tailor-made services, for the benefit of users. In addition, the establishment of the VPI would fit in with the concept of the European Patent Network within the European Patent Organisation (EPO), and would also ensure a smooth interaction with the newly emerging regime of the unitary patent protection within the European Union. The VPI would serve the goals of fostering innovation and creativity, as well as promoting economic growth and competitiveness in the Central and Eastern European region. To achieve these goals, the VPI intended to offer applicants a favorable and efficient option for entering the PCT System. Users in all the Visegrad Group Contracting States fully supported the establishment of the VPI and its appointment as an International Searching and Preliminary Examining Authority under the PCT. The Delegation further highlighted the greater role that the Visegrad countries were well placed to play in the international patent system as emerging economies with growing economic output, intensifying participation in European global trade, improving competitiveness and sharpening the focus on innovation. The establishment of the VPI and its request for appointment as an International Authority followed the overall high level political objectives of the Visegrad or V4 co-operation, as recently confirmed by a joint declaration of the Prime Ministers of the Visegrad countries. In terms of its structure and tasks, the VPI would be an intergovernmental organization within the meaning of Article 16 and Rule 36. It would have legal personality and an extensive legal capacity necessary for the fulfillment of its tasks, including the possibility of acting on its own through the Director as its representative in all the matters concerning its role as an International Authority. It was envisaged that the VPI would act as an International Searching and Preliminary Examining Authority for international applications filed not only with the V4 Offices, but also the receiving Offices of European Patent Convention Contracting States adjacent to the V4 countries, provided the latter specified the VPI for that purpose. In fact, Lithuania and Romania had already indicated and confirmed their willingness to do so. When setting up the VPI, the Visegrad countries intended to act in full compliance with their obligations under the European Patent Convention (EPC) and its Protocol on Centralisation, and would do so in concluding and implementing the Agreement with the International Bureau of WIPO in relation to the functioning of the VPI as an International Searching and Preliminary Examining Authority. The structure of the VPI would follow the existing and successful model of the Nordic Patent Institute (NPI), as shown in Table 2 in Annex II to document PCT/CTC/28/2 attached to document PCT/A/47/6. Under the umbrella of the intergovernmental layer, the national Offices of the Contracting States would perform international search and examination on behalf of the VPI. Through harmonization of search and examination tools and practices, as well as through rigorous quality management at all stages of the procedure, it would be ensured that applicants would always receive a uniform VPI service of consistently high quality. The main task of the VPI would be to act as an International Searching and Preliminary Examining Authority, and it was planned that the VPI would also offer international-type searches and supplementary international searches. Concerning the new element for procedures for appointment International Authorities, namely, the involvement of existing International Authorities in the preparations for appointment, the VPI had requested the assistance of the JPO and the NPI to help in the assessment of the extent to which the VPI would meet the

appointment criteria. The JPO's involvement had been based on a Memorandum of Cooperation between the national industrial property Offices of the V4 countries and the JPO, which had been signed in September 2014. The NPI's assistance had been sought in view of the similarities between its structure, organization, principles, objectives and those of the VPI, as well as of the well-established cooperation between the Nordic countries and the V4 countries. After visiting the V4 Offices, these International Authorities reported to the PCT Committee for Technical Cooperation on the VPI's ability to meet the requirements of appointment, which had revealed no particular issue in respect of which any serious doubt would arise about the VPI's compliance with the appointment criteria. The Delegation thanked the JPO and the NPI for their invaluable assistance in this regard. Referring to the minimum requirements for appointment as an International Searching and Preliminary Examining Authority set out in Rule 36.1, the VPI was confident that, through the joint resources of the participating Offices, it was in full compliance with these criteria. This had been unanimously confirmed by the PCT Committee for Technical Cooperation on the basis of an expert level assessment, and also with regard to the reports of two existing International Authorities. The documents submitted in support of the VPI's application contained a great deal of information on the VPI's search and examination resources and the qualifications of its examiners, on its access to documentation for search and examination purposes, and on the quality management system and internal review arrangements, including those applied at the participating national Offices. Furthermore, the VPI would establish its own quality management system to cover all its procedures and services, which would be certified according to the ISO 9001 standard. Besides the resounding support from the Committee of Technical Cooperation for the appointment of the VPI as an International Authority, references were made by the Committee to the importance of developing appropriate mechanisms to ensure consistency of approach for four Offices as well as procedures between the four Offices in order to ensure smooth work flow and production of work products. Following that advice, the V4 national Offices had stepped up their efforts to establish a working environment ensuring consistency and smooth work flow at the VPI. Various work streams had been launched to that effect and had already delivered a number of tangible results, laying the groundwork for the VPI's efficient and high quality operation. The details of this work were contained in document PCT/A/47/6 Add. Before concluding, the Delegation informed the Assembly that the Agreement on the Visegrad Patent Institute had been ratified by all four countries. The instruments of ratification had been duly deposited by three of the countries, with Poland being expected to be final State to deposit its instrument of ratification in the coming days. The Agreement would therefore enter into force in early December, two months after the final instrument was deposited. This would therefore not hinder the Assembly from taking a positive decision on the appointment of the VPI as an International Authority, since the appointment would only take effect from entry into force of the Agreement between the VPI and the International Bureau as set out in the Annex to document PCT/A/47/6, and this Agreement would only be signed after the VPI Agreement had entered into force and the VPI formally established. This would enable the VPI to become operational as an International Searching and Preliminary Examining Authority on July 1, 2016, as planned. In conclusion, the V4 countries wished to express their firm view that the VPI would be able to meet all the applicable requirements of appointment as an International Searching and Preliminary Examining Authority. The VPI's operation as an International Authority would make an important contribution to economic growth, competitiveness and innovation in the region and beyond, as well as to the proper functioning of the global patent system established under the PCT. The V4 countries therefore requested the Assembly to take a positive decision on the request and appoint the VPI as an International Searching and Preliminary Examining Authority.

27. The Delegation of Romania, speaking on behalf of the Group of Central European and Baltic States (CEBS), supported the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT. The Delegation strongly believed that the VPI fulfilled the criteria provided for International Authorities under the PCT and would offer high quality services to applicants at more attractive costs, which was especially important for small and medium sized enterprises (SMEs) and for individual inventors. Moreover, the new Institute would contribute to spurring innovation and creativity in the region, for the benefit of users of the

patent system, and would be an active and constructive partner in the field of international cooperation. The Group looked forward to support from all members.

28. The Delegation of Austria thanked the representative of the VPI for his report providing additional information which, together with the documentation already available at the meeting of the Committee for Technical Cooperation, provided convincing evidence that the Institute fully met the requirements for appointment as International Searching and Preliminary Examining Authority under the PCT. Based on this documentation and on the positive experience which had been gained during various cooperation activities with the participating Offices, the Delegation of Austria, representing an existing Authority, reiterated its position already stated in the session of the CTC that it fully supported the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT. The Delegation looked forward to welcoming the VPI into the family of PCT Authorities and stood ready to offer support and assistance to the Institute in becoming operational as soon as possible. The Delegation wished all the best to the Institute and to the participating Offices of the Czech Republic, Hungary, Poland and Slovakia.

29. The Delegation of Iceland, speaking as the Chair of the Board of the NPI, thanked the Delegation of Hungary for the presentation of the request for appointment. In the recently adopted Understanding on procedures for appointment of International Authorities, it was stated that Offices seeking appointment were strongly recommended to obtain the assistance of one or more existing International Authorities to help in the assessment to the extent to which the Office met the criteria set out in PCT Rule 36.1. In accordance with the new procedures, the NPI had been invited to visit two of the four Offices forming the VPI, namely the Industrial Property Office of the Czech Republic and the Patent Office of the Republic of Poland. During the visit, representatives from the NPI were presented with detailed information on the setup of the VPI, quality management, legal framework and other information relevant in to compliance with requirements for appointment as International Searching and Preliminary Examining Authority through the involvement of the four participating Offices. The main findings in assessing the VPI and its readiness to meet the requirements for appointment according to PCT Rule 36.1 were outlined in the NPI's report attached to document PCT/CTC/28/2, as annexed to document PCT/A/47/6. The cooperation model of the VPI was based on the NPI cooperation model which, as earlier stated by the Delegation of Hungary, had proved to be quite successful. The NPI's visit to the Industrial Property Office of the Czech Republic and Patent Office of the Republic of Poland had revealed no particular issue in respect of the VPI's compliance with the appointment criteria set out in PCT Rule 36.1. On the contrary, it revealed competence and high standards that the members of the VPI set out as a foundation for their organization. The NPI fully supported the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT.

30. The Delegation of Japan stated that it heartily welcomed any efforts that the VPI could make in terms of contributing to the further development of the PCT, which was an important instrument to all innovators seeking patent protection internationally. As had been mentioned by the Delegation of Hungary, the Japan Patent Office (JPO) had signed a Memorandum of Cooperation with the V4 Offices in September 2014. In accordance with the Memorandum, the JPO had sent experts to the Hungarian Intellectual Property Office and the Industrial Property Office of the Slovak Republic. Based on the observations of the experts, it was noted that the VPI met the minimum requirements to be appointed as International Searching and Preliminary Examining Authority in terms of the number of examiners, PCT minimum documentation and the capacities of examiners. At the session of the PCT Committee for Technical Cooperation held in May, the Committee had unanimously agreed to recommend to the Assembly of the PCT Union that the VPI be appointed as International Searching and Preliminary Examining Authority under the PCT. In addition, taking into account the fact that the quality management system, as well as internal review arrangements, were fully planned at the VPI, the Delegation believed that the VPI as a whole met the minimum requirements for appointment. Therefore, the Delegation fully supported the VPI's appointment as an International Searching and Preliminary Examining

Authority. It was also observed that the cooperation had been beneficial to Japan as well and that the JPO would like to make use of the experience to contribute to discussions in the PCT Working Group and the Quality Subgroup of the Meeting of International Authorities.

31. The Delegation of Ukraine observed that the State Intellectual Property Service of Ukraine had been appointed as an International Searching and Preliminary Examining Authority under the PCT in October 2013 and fully supported the appointment of the VPI as an International Authority. The Delegation was sure that the VPI would carry out its functions successfully in accordance with all of the requirements.

32. The Delegation of Chile stated its firm support for the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT, believing that it had everything necessary in order to perform the functions of an International Authority. The Delegation had noted how the Institute had prepared for appointment and believed that it could close an apparent gap, giving coverage to the countries that made up the Institute. The National Institute of Industrial Property of Chile (INAPI) had been through the same process recently and now operated as an International Searching and Preliminary Examining Authority for its region. The results of this had been far greater and better than initially expected. The Delegation hoped that the VPI would be as successful and as lucky as INAPI and confirmed that the VPI could count on its cooperation. The Delegation looked forward to the participation of the VPI at the upcoming session of the Meeting of International Authorities under the PCT, which would take place in Chile in January 2016.

33. The Delegation of China stated that it had always believed that the PCT's international searching service should be convenient and accessible, so that different regions, languages and countries at different development level could benefit as much as possible from the PCT System. The VPI had met the relevant conditions and therefore the Delegation supported the appointment of VPI as International Searching and Preliminary Examining Authority and expected that the VPI would play a greater role.

34. The Delegation of Singapore supported the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT. There were strong merits to building on the expertise of the participating national Offices. With the harmonization of search and examination tools and practices the VPI would be well placed to deliver consistent, high quality service in the Central and Eastern European region and perhaps even beyond. The VPI's diverse multi lingual and technically qualified staff, together with the visits by the JPO and NPI, had given further confidence that the VPI would comply with all the criteria. The VPI had put in a huge amount of effort to ensure that its bid was credible and of high quality. The Delegation therefore expressed its unequivocal support for the bid and was confident that the appointment would greatly boost the value of the PCT.

35. The Delegation of the Russian Federation thanked the Delegation of Hungary for presenting very detailed information on the VPI. The Delegation believed that the VPI had the appropriate technical resources and supported the appointment of the VPI as an International Searching and Preliminary Examining Authority. This would open additional possibilities for users of the PCT System in Central and Eastern Europe. The Delegation wished colleagues from the VPI every success in their work.

36. The Delegation of Montenegro supported the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT and wished the four constituent Offices smooth work and smooth production of consistent work products towards fulfilling their efforts to become operational on July 1, 2016, as planned. This appointment was of great significance for the region of the CEBS Group, including for Montenegro. The Delegation informed the Assembly that, at the end of July, Montenegro had adopted a new law on patents which required patent owners to submit evidence of patentability by the end of the ninth year. Collaboration with the VPI was a great opportunity for Montenegro. Considering intellectual

property issues, the Delegation expressed its appreciation of the VPI logo and wished the Institute well with its marketing image and marketing goals.

37. The Delegation of the United States of America joined with the delegates of Romania, Australia, Japan, Ukraine, Chile, Montenegro and others in support of the VPI becoming an International Searching and Preliminary Examining Authority. The Delegation also supported approval of the draft agreement between VPI and the International Bureau and looked forward to VPI beginning its operations as an International Authority next year.

38. The delegation of Finland wholeheartedly supported the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT. The hard work that the four countries had done in preparing their application was noted. The Delegation had the greatest confidence that the VPI would achieve excellent results and warmly welcomed the Institute to the family of International Authorities.

39. The Delegation of Spain fully supported the request from the VPI to be appointed as an International Searching and Preliminary Examining Authority. The Delegation was also satisfied with the documents presented, which provided sufficient documentary evidence that the Institute met the necessary requirements.

40. The Delegation of Greece supported the appointment of the VPI and was confident that the Institute would further foster innovation and contribute to the development of the Central and Eastern European region.

41. The Delegation of Australia supported the appointment of the VPI as an International Searching and Preliminary Examining Authority. The Delegation had supported their application through the PCT Working Group and Meeting of International Authorities and looked forward to them being involved in the Quality Subgroup and the Meeting of International Authorities in the future.

42. The Delegation of Uganda supported the establishment of the VPI, which was a step in the right direction towards furthering the aims of the PCT. The Institute would no doubt play a large role as an International Searching and Preliminary Examining Authority.

43. The Delegation of the Republic of Korea joined with other delegations in supporting the appointment of the VPI as an International Authority.

44. The Delegation of Ghana supported the VPI in its application to serve as an International Searching and Preliminary Examining Authority for its region and thanked the Institute for the comprehensive information provided on how it fulfilled all the requirements. The Delegation was confident that the VPI had the capacity to perform the tasks ahead and to further improve the quality and efficiency of their individual Offices.

45. The Assembly, having heard the Representative of the Visegrad Patent Institute and taking into account the advice of the PCT Committee for Technical Cooperation set out in paragraph 5 of document PCT/A/47/6:

(i) approved the text of the draft Agreement between the Visegrad Patent Institute and the International Bureau as set out in the Annex to document PCT/A/47/6; and

(ii) appointed the Visegrad Patent Institute as an International Searching Authority and an International Preliminary Examining Authority with effect from the entry into force of the Agreement until December 31, 2017.

46. The Director General congratulated the Delegations of the Czech Republic, Hungary, Poland and Slovakia and the VPI on the appointment of the VPI as an International Searching and Preliminary Examining Authority under the PCT, and stated that the International Bureau looked forward to working with the VPI in its new capacity as an International Searching and Preliminary Examining Authority.

47. The Delegation of Hungary, speaking on behalf of the Delegations of the Czech Republic, Hungary, Poland and Slovakia (Visegrad Group, or "V4"), thanked all delegations for their unequivocal and unanimous support to the appointment of the VPI as an International Searching and Preliminary Examining Authority and stated that it felt encouraged and honored by the level of support that it had received. The Delegation gave assurance that the VPI would work hard to deserve the confidence and live up to the trust of the PCT membership to make the VPI a reliable partner in the field of international patent co-operation under the PCT. The Delegation also thanked the Director General and the Secretariat for their continuous and highly valuable assistance provided throughout the process. Finally, the Delegation concluded by stating that the application of the VPI had confirmed that the new procedures for appointment of International Authorities were efficient, transparent and enabled a proper assessment of the appointment criteria. The procedures also helped the candidate Office or intergovernmental organization prepare for the procedure and its future tasks. The Assembly and other competent PCT bodies were well advised to apply these procedures to any future appointments of International Authorities.

Amendment of the Agreement Concerning the Functioning of the State Intellectual Property Service of Ukraine as an International Searching and Preliminary Examining Authority under the PCT

48. Discussions were based on document PCT/A/47/7.

49. The Secretariat introduced the document, which set out proposed amendments of the Agreement concerning the functioning of the State Intellectual Property Service of Ukraine as an International Authority. The Secretariat recalled the appointment by the Assembly in 2013 of the State Intellectual Property Service of Ukraine as an International Searching Authority and International Preliminary Examining Authority under the PCT, and the approval of the text of a draft agreement between the State Intellectual Property Service of Ukraine and the International Bureau. The agreement had been signed on September 30, 2013. Since then, the part of the Service responsible for administration of patent processing had become a separate unit titled "State Enterprise 'Ukrainian Institute of Intellectual Property'". The State Enterprise was independent of the State Service, but the State Service remained responsible for policy and oversight. The document therefore requested the Assembly to approve amendments to the Agreement to reflect the change of name of the part of the Office responsible for conducting the international search and preliminary examination. The amendments did not change the substance of the Authority or the Agreement. The State Enterprise retained all the examiners, search facilities, IT systems and other facilities and expertise and is substantively the body which was appointed by the Assembly as an International Searching and Preliminary Examining Authority back in 2013.

50. The Delegation of Ukraine underscored that the Agreement remained one between the State Intellectual Property Service of Ukraine and the International Bureau of WIPO. However, the State Enterprise would operate as an International Searching Authority and International Preliminary Examining Authority. In accordance with Article 11 of the Agreement, the present Agreement between the parties could be amended subject to the approval by the Assembly. The Delegation therefore requested the Assembly to approve the proposed amendments as set out in the document.

51. The Assembly:

- (i) took note of the contents of document PCT/A/47/7; and
- (ii) approved the amendments to the agreement between the State Intellectual Property Service of Ukraine and the International Bureau as set out in the Annex to document PCT/A/47/7.

Matters concerning the Lisbon Union: Proposal of the United States of America to the Patent Cooperation Treaty Assembly

52. Discussions were based on document PCT/A/47/8.

53. The Delegation of the United States of America, in introducing document PCT/A/47/8, stated that it was concerned that excess PCT receipts were funding the expenses of the Lisbon Union without the consent of the PCT Union, contrary to the provisions of Regulations 4.6, 4.7 and 4.8 of the WIPO Financial Regulations and Rules. Before it explained the background of its proposal, it wished to first state part of its opening statement, which the Ambassador of the United States of America had not had time to deliver on the floor. The Ambassador had been about to say, and the Delegation quoted: "Let me be clear, we support PCT revenue being used to support the overall activities of the organization because these activities have continually been supported by the full WIPO membership. We are objecting only to PCT revenue being used to support the Lisbon System, which by its own Treaty is required to be self-funding, and which recently has been expanded in an undemocratic manner. In contrast the Madrid and Hague systems represent global consensus solutions." Its proposal would not entail any need to raise the unitary contribution, because WIPO's global protection services which were truly global, namely, the PCT, Madrid and Hague Systems, continued to grow in popularity and generated the bulk of the funding for WIPO's non-registration activities. The Lisbon Union had repeatedly shown a deficit, not covered out of the Lisbon Union reserves, and thus should decide measures to redress the financial situation. The Delegation had identified possible sources of funds to cover the 2016-17 Lisbon Union deficit. These funds were currently at WIPO. The first source of funding was the Madrid Union surplus, which was far above the Madrid Union surplus target. This would be taken up under the Madrid Union Assembly. Another source that it had identified was available funds-in-trust for the 2016-2017 biennium, which were available for that biennium in the accounts of certain Lisbon Union Member States. The PCT Union had a surplus and it could decide to allow the Lisbon Union to use some part of that surplus, rather than having it placed in the PCT reserve fund. But that use was for the PCT Union to decide. The United States of America, as a member of the PCT Union, did not support the Lisbon Union using the funds of the PCT Union. Should the Hague Union request a loan, as it had previously done, from the Madrid Union, the Delegation could support such a loan. However, the Delegation could not support a loan to the Lisbon Union, for several reasons. At the Assemblies in 2014, the Lisbon Union had declared that no other union had an interest in its actions and as such it did not have to seek the advice of the WIPO Coordination Committee under Article 8.3(i) of the WIPO Convention; it then had claimed the right to use Madrid and PCT Unions reserves to fund its closed diplomatic conference. The Lisbon Union was the same Union that had consistently refused to meet the financial terms of its own Agreement. Instead, it had retained its subsidization by the other more successful unions without explicit consent of those unions. The Delegation was concerned about the lack of transparency that had been tolerated historically when it came to the low functioning Lisbon Union and the expectation held by its members that such a lack of transparency as well as a lack of accountability should be allowed to continue. The Delegation thought that this should be an institutional concern for all WIPO Members, and questioned how WIPO could allow one union to spend resources of the Organization and refuse to allow other Member States which had a real and significant interest in its activities to participate. The Lisbon Union itself had decided that it did not have to consult with the Coordination Committee because no other union had an interest in the Lisbon Agreement's revision effort. The Lisbon Union itself had decided

to hold a diplomatic conference. The Program and Budget Committee (PBC) had agreed to fund that Conference on assurances that it would be open to equal and full participation by all Paris Union members; all knew how that had turned out. The diplomatic conference had ultimately not been open to all WIPO members or Paris Union members, though oddly, it had been open to two non-Paris Union members, namely, the European Union and the African Intellectual Property Organisation (OAPI). Other Unions' fee income had funded the effort to create a new geographical indications registry. For that reason, among others, other Unions clearly had an interest in what the Lisbon Union was doing. The Lisbon Union should not be able to have it both ways, using general revenue to fund a closed diplomatic conference. If the Lisbon Agreement were of no interest to other unions, then the budget of those unions should not be used to fund its operations. In conclusion, the Delegation was asking the PCT Assembly to take a decision to require its consent before other fee-funded registration unions obligated PCT fee income to cover the under-performing Lisbon Union's expenses.

54. The Delegation of Switzerland stated that, as it had explained at another point in time, it was very much attached to the unitary budget of the Organization and believed this principle was essential for WIPO. The principle of a unitary budget allowed activities which were under WIPO's mandate to be carried out without necessarily generating their own surplus. This had been the case for many years for the Hague System, as was clearly shown in the documents that were mentioned in the proposal that the Assembly had before it. With regard to other parts of the proposal, the Delegation did not believe that those resulted in a violation of PCT Article 57(1), as that Article was changed by the constitutional reform in 2003 by the Assemblies, which also decided on the unitary budget principle. In fact, the quote in this document with regard to Article 57(1)(c) was changed at that point. The Delegation believed that the budgetary documents had been fully in accordance with the practices of this Organization over the last 20 years, which had been unanimously adopted by the Assemblies in 2003. The Delegation was thus not in a position to support the proposal set out in document PCT/A/47/8. However, it wished to make some comments with regard to the fees and financing of the Lisbon System, and would like to recall that there were proposals on this subject which would be examined by the Lisbon Union Assembly which would be meeting soon.

55. The Delegation of Iran (Islamic Republic of) stated that, in its understanding, the Lisbon Union was an independent union and the PCT Union was another independent union. There was no hierarchy between these unions. It thus wished to seek clarification through the Chair as to the relationship between the PCT Union and the Lisbon Union, and the reason for putting forward the proposal under this agenda item. Furthermore, in accordance with the program and budget, 76 per cent of the budget of WIPO was provided by the PCT; the Delegation thus sought clarification and information as to which committees, treaties and unions this budget was allocated to, and what the legal base for allocation of PCT revenues to other sections of WIPO was. The Delegation, of course, strongly supported the unitary contribution system. It understood that system; it only sought clarification in detail as to which sections of WIPO, which treaties and which unions were using the revenue of the PCT.

56. The Delegation of Australia stated that it wished to briefly make a more general statement on these issues. It shared a lot of the concerns raised by the Delegation of the United States of America, especially those that surrounded the transparency of the budget and the sustainability of the Lisbon Union. It wished to encourage the Lisbon Union to develop a plan to promote the sustainability of the system and expressed the view that this should be based on the excellent document that had been provided by the Secretariat and should also take into account some of the proposals raised by the Delegation of the United States of America in its intervention.

57. The Delegation of Mexico stated that it supported what was expressed by the Delegation of Switzerland. It was not in a position to accept the proposal that was under discussion at this point in time. The Delegation wished to continue to support the unitary budget, which was part of the solidarity principle of the UN system. It was thus not in a position to support the proposal.

58. The Delegation of Cuba stated that it supported the principle of the unitary budget adopted by the General Assembly.
59. The Delegation of Italy stated that it supported the position expressed by the Delegation of Switzerland. It was not in the position to support the proposal contained in document PCT/A/47/8, for the same reasons already expressed by the Delegation of Switzerland.
60. The Delegation of Hungary stated that it had noted the proposal put forward by the Delegation of the United States of America. It was of the view that it would represent an unwarranted and unjustifiable departure from the unitary budget for this Organization. It was for that reason that it was unable to support this proposal. It further wished to comment on some elements of the statement by the Delegation of the United States of America. It believed that it was wrong to state that, with the exception of the Lisbon System, all registration systems were self-financing. In fact, the Hague Union had generated a deficit 20 times higher than that of the Lisbon Union, while its membership was only around double that of the Lisbon Union. It further wanted to point out that the anxiety about the Lisbon Union's financial situation emerged in an Organization that had a surplus for the last year of 37 million Swiss francs. It further wanted to react to the comments made by the Delegation of the United States of America on the way the diplomatic conference had been convened and conducted. It could not subscribe to the view that the diplomatic conference had been convened in an illegal manner or that it had been held in an undemocratic manner. The Conference had been convened in full accordance with the applicable legal provisions and never ever in the history of WIPO Diplomatic Conferences had observer delegations been able to play such an active role and contribute to the negotiations to such a large extent as at the Diplomatic Conference for the Adoption of the Geneva Act of the Lisbon Agreement.
61. The Delegation of Japan stated that, considering that most of WIPO's activities were supported by fees paid by PCT applicants, Member States had a responsibility to show them how their money was used to promote worldwide protection of IP and to develop business infrastructure. In this context, the Delegation generally supported enhancing the fairness and transparency of each union's financial situation. It further was necessary for each union to make sincere efforts to achieve balanced revenues and expenditures. At the same time, however, taking into account the need to supply enough resources to enable every program to be effectively implemented and to promote the global IP system, and the need to make the Organization fully functional as a whole, the Delegation was satisfied with WIPO's current practices.
62. The Delegation of France thanked the Delegation of the United States of America for the proposal that it had made to the PCT Assembly. At this point in time, it did not want to talk about how other unions operated; each union would have its own assembly. With regard to the proposal by the Delegation of the United States of America, it had been carefully examined by the National Institute of Industrial Property (INPI) in Paris. As a matter of principle, the Delegation was not in a position to support the proposal because it opened a Pandora's box, namely, the need to come back every two years to ask the PCT Union whether it was willing to finance certain activities or not. The Delegation recalled that the Permanent Missions had had a session with the Delegation of the United States of America and had looked at the way the budget was built. 76 per cent of the income was from the PCT; in its view, this Pandora's box could not be opened, as it would set a precedent, for example, in a couple of years, for expenses for the WIPO Academy or for development expenses. The Delegation thus wished to stick with the unitary budget principle, which was a central motor that generated resources and benefits for most of the 12 programs which were not financed by their own revenue. Nevertheless wished to thank the Delegation of the United States of America for having brought this discussion to the Assembly, which had allowed a greater understanding by everybody as to how the WIPO budget was constructed.

63. The Delegation of Portugal stated that, with regard to the proposal put forward in document PCT/A/47/8, it reiterated the importance of keeping the unitary budget principle, which had many advantages for the Organization. The Delegation was thus not in a position to support the proposal, similar to other delegations which had already spoken.

64. The Delegation of Montenegro expressed its support for the statement made by the Delegations of Switzerland and Hungary on the proposal by the Delegation of the United States of America. It particularly supported the statement made by the Delegation of Hungary on the Diplomatic Conference for the Adoption of Geneva Act of the Lisbon Agreement. It further was in favor of the principle of a unitary budget.

65. The Delegation of the Dominican Republic stated that it supported the principle of the unitary budget.

66. The Delegation of Uganda stated that, as much as the proposal by the Delegation of the United States of America looked persuasive, the Delegation was unable to support it for the simple reason that it was a departure from the hitherto adhered to principle of the unitary budget.

67. The Delegation of the Democratic People's Republic of Korea stated that it could not support the proposal and that it supported the unitary budget of WIPO.

68. The Delegation of Monaco stated that, as the great majority of delegations that had taken the floor so far, it was not in a position to support the proposal put forward by the Delegation of the United States of America. This position of principle was based on the points that had been raised by other delegations. The Delegation was very much attached to the principle of the unitary budget, in accordance with the reforms adopted in 2003, which Monaco had accepted formally in 2004.

69. The Delegation of Georgia stated that it fully aligned itself with the statements made by the Delegations of Switzerland and Hungary and that it supported unitary budget principle of WIPO.

70. The Delegation of Serbia stated that it supported the unitary budget.

71. The Delegation of Bulgaria stated that it aligned itself with the statements made by the Delegations of Switzerland and Hungary.

72. The Delegation of Croatia stated that it associated itself with the statements by those delegations that supported the unitary budget principle, in an Organization that had a dozen unions and 130 programs and in which around three quarters of income came from one of the systems, namely, the PCT System. In its view, it would seriously undermine the sound financial system of the Organization if the proposal by the Delegation of the United States of America were adopted. It could therefore not support the proposal.

73. The Delegation of the Slovakia aligned itself with the statements by the Delegations of Hungary, Switzerland and France and other delegations that had supported the unitary budget principle. It was its understanding that the proposal by the United States of America sought to change the entire methodology as to how finances were distributed throughout all of the unions. From its point of view, that would seriously undermine the principle which had been agreed with regard to areas which were not creating any surplus. The Delegation thus expressed the view that the system should be kept as it was now.

74. The Delegation of Tunisia stated that it had listened to those delegations that had supported the unitary budget for WIPO and that it supported those delegations.

75. The Delegation of the United States of America thanked all delegations that had addressed its proposal. The Delegation had heard some questions posed to the Secretariat and had a couple of questions that it would like to pose. It further wished to address some misunderstandings with regard to what had been referred to as the unitary budget. The United States of America had consistently supported what was known as the unitary contribution system and had submitted an information document to this session of the Assemblies as well as to the PBC which expressed its understanding. Nevertheless, it was keen to hear from the Secretariat as to its understanding of the unitary contribution system and whether that system was meant to fund the fee-funded registration unions. A second question was whether any concept referred to as the unitary budget was indeed in force. It was the Delegation's understanding that the 2003 constitutional reform was not in force and that in fact the concept of a unitary budget had been rejected. The Delegation fully supported the unitary contribution system and, as the Delegation had mentioned in an earlier statement, it fully supported revenues of the PCT being used to fund all WIPO activities supported by the full WIPO membership. It further requested clarification by the Secretariat on the questions posed by the Delegation of Iran (Islamic Republic of), because it also had some confusion in that regard. Finally, the Delegation requested that this item be kept open pending resolution of all of the budgetary items on the agenda.

76. The Director General referred to the two questions raised by the Delegation of Iran (Islamic Republic of). The first question referred to the relationship between the PCT Union and the Lisbon Union and the reasons for tabling the proposal to the PCT Assembly on matters concerning the Lisbon Union. This question was a matter for the Delegation of the United States of America that had submitted the proposal. The second question, concerned the basis for allocation of PCT revenues to other programs undertaken within WIPO. This issue was considered in the PBC. The International Bureau had published financial statements to the Member States along with a draft Program and Budget. The draft Program and Budget presented two views: a unitary presentation of the budget by reference to the programs, and in its Annexes, a view of the source of funding by reference to the unions.

77. The Secretariat responded to the question raised by the Delegation of the United States of America on the unitary contribution system. This system referred to the practice concerning the contributions of WIPO Member States since 1994. In 1993, the Assemblies of Member States decided that any country that adhered to the contribution-financed WIPO Convention as well as any of the six contribution-financed unions (Paris, Berne, IPC, Nice, Locarno and Vienna) would pay one single contribution to the Organization rather than the amount of contributions corresponding to the number of treaties that it was party to.

78. The Delegation of the United States of America clarified the questions that it asked the Secretariat. First, the Delegation wished to know the authority under which the PCT Union funded other programs outside of the Union. Second, the Delegation asked for further clarification of the unitary budget and whether that prescribed any particular allocation from one union to another, or whether an income-funded union needed to discuss funding another union. In this regard, the Delegation believed that there had been a misunderstanding that its proposal would affect the so-called unitary budget. The Delegation believed that the unitary budget that had been proposed as part of constitutional reform had never been adopted.

79. The Director General responded to the questions raised by the Delegation of the United States of America by explaining that the authority for expenditure derived from the process for agreeing the Program and Budget. WIPO was unusual as contributions from Member States accounted for 5 per cent of income, the remainder coming as a consequence of the operations of the PCT, Madrid and Hague systems. The authority for allocations therefore came from Member States by approval of the budget, which had been the case since the Organization came into its present incarnation in 1970. As far as the so-called unitary budget was concerned, the Delegation of the United States of America was correct that the expression "unitary budget" was an expression used by WIPO members to refer to the presentation of the

Program and Budget in a single document which showed the finances of the Organization in which the revenue was derived by the different unions and the proposed expenditure made by the different programs. As indicated in the response to the question by the Delegation of Iran (Islamic Republic of), the draft Program and Budget set out two views, first a unitary presentation by program, and second the view by source of funding with respect to the various unions. This was complicated by common expenses incurred by all of the unions like buildings, human resources, administration and finance. These common expenses were for the benefit of all the different unions, treaties and programs in the Organization. In this respect, the Director General referred to a presentation made by the Secretariat at the request of Member States the previous week, the slides of which had been made available. The allocation of the common expenses was made by a complex allocation formula which had been explained at the presentation.

80. The Delegation of the United States of America thanked the Director General for his response and wished to clarify that the PCT Assembly taking the decision proposed not to subsidize an income-producing union would not undermine the unitary budget, and asked under what authority the Lisbon Union received a subsidy from other income-producing unions absent their expressed consent.

81. The Director General responded to the further questions raised by the Delegation of the United States of America. A decision of the PCT Union not to subsidize a specific income-producing union such as the Lisbon Union would not affect any other part of the so-called “unitary budget”, even though there was no such thing as a unitary budget, but rather a unitary presentation of the budget. It would also not affect the sharing of revenue from other unions to the Lisbon Union, nor would it affect the sharing of PCT revenue with unions other than the Lisbon Union. In terms of the authority under which the Lisbon Union received subsidies from other income-producing unions, this was given in the adoption of the Program and Budget, where the decision paragraph specified the approval of all the unions administered by WIPO. The various unions, including the PCT Union, therefore gave explicit consent to the expenditure of the Lisbon Union when adopting the budget for the Organization.

82. The Delegation of the United States of America considered the response of the Director General and the Secretariat to be helpful to explain any apparent confusion about the unitary contribution system, the non-existent “unitary budget” and the process in WIPO to ensure coherence among income-producing and contribution-financed unions. The Delegation concluded by requesting this agenda item to be left open pending the other open items relating to the budget of the Organization.

83. The Chair announced that Agenda Item 19 “PCT System” would remain open, pending informal consultations on document PCT/A/47/8 (being undertaken together with related issues covered under other agenda items).

84. During the session, the Chair of the General Assembly provided regular updates on the evolution of those informal consultations to the plenary of the Assemblies, including the Assembly of the PCT Union. The updates are reported under Agenda Item 11 “Report of the Program and Budget Committee”.

85. The Assembly of the PCT Union considered document PCT/A/47/8 and did not reach consensus

[Annexes follow]

AMENDMENTS TO THE PCT REGULATIONS
TO ENTER INTO FORCE JULY 1, 2016

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Rule 9
Expressions, Etc., Not to Be Used

9.1 *[No change] Definition*

The international application shall not contain:

- (i) expressions or drawings contrary to morality;
- (ii) expressions or drawings contrary to public order;
- (iii) statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person (mere comparisons with the prior art shall not be considered disparaging *per se*);
- (iv) any statement or other matter obviously irrelevant or unnecessary under the circumstances.

9.2 *Noting of Lack of Compliance*

The receiving Office, the International Searching Authority, the Authority specified for supplementary search and the International Bureau may note lack of compliance with the prescriptions of Rule 9.1 and may suggest to the applicant that he voluntarily correct his international application accordingly, in which case the receiving Office, the competent International Searching Authority, the competent Authority specified for supplementary search and the International Bureau, as applicable, shall be informed of the suggestion.

9.3 *[No change] Reference to Article 21(6)*

"Disparaging statements," referred to in Article 21(6), shall have the meaning as defined in Rule 9.1(iii).

Rule 26bis
Correction or Addition of Priority Claim

26bis.1 and 26bis.2 [No change]

26bis.3 *Restoration of Right of Priority by Receiving Office*

(a) to (e) [No change]

(f) The receiving Office may require that a declaration or other evidence in support of the statement of reasons referred to in paragraph (b)(ii) be filed with it within a time limit which shall be reasonable under the circumstances.

(g) [No change]

(h) The receiving Office shall promptly:

(i) [no change] notify the International Bureau of the receipt of a request under paragraph (a);

(ii) [no change] make a decision upon the request;

(iii) notify the applicant and the International Bureau of its decision and the criterion for restoration upon which the decision was based;

(iv) subject to paragraph (h-bis), transmit to the International Bureau all documents received from the applicant relating to the request under paragraph (a) (including a copy of the request itself, any statement of reasons referred to in paragraph (b)(ii) and any declaration or other evidence referred to in paragraph (f)).

[Rule26bis.3, continued]

(h-bis) The receiving Office shall, upon a reasoned request by the applicant or on its own decision, not transmit documents or parts thereof received in relation to the request under paragraph (a), if it finds that:

- (i) this document or part thereof does not obviously serve the purpose of informing the public about the international application;
- (ii) publication or public access to any such document or part thereof would clearly prejudice the personal or economic interests of any person; and
- (iii) there is no prevailing public interest to have access to that document or part thereof.

Where the receiving Office decides not to transmit documents or parts thereof to the International Bureau, it shall notify the International Bureau accordingly.

(i) and (j) *[No change]*

Rule 48
International Publication

48.1 [No change]

48.2 *Contents*

(a) [No change]

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

(i) to (vi) [No change]

(vii) where applicable, an indication that the published international application contains information concerning a request under Rule 26*bis*.3 for restoration of the right of priority and the decision of the receiving Office upon such request;

(viii) [deleted]

(c) to (k) [No change]

(l) The International Bureau shall, upon a reasoned request by the applicant received by the International Bureau prior to the completion of the¹ technical preparations for international publication, omit from publication any information, if it finds that:

(i) this information does not obviously serve the purpose of informing the public about the international application;

(ii) publication of such information would clearly prejudice the personal or economic interests of any person; and

(iii) there is no prevailing public interest to have access to that information.

Rule 26.4 shall apply *mutatis mutandis* as to the manner in which the applicant shall present the information which is the subject of a request made under this paragraph.

¹ An editorial change has been made by the Secretariat beyond the text agreed by the Assembly to align the text in new Rule 48.2(l) with other references to “the completion of the technical preparations for international publication” used elsewhere in Rule 48.2; the word “the” has been inserted following the words “prior to the completion of” and before the words “technical preparations ...”. This editorial change only concerns the English version of this document.

(m) Where the receiving Office, the International Searching Authority, the Authority specified for supplementary search or the International Bureau notes any information meeting the criteria set out under paragraph (l), that Office, Authority or Bureau may suggest to the applicant to request the omission from international publication in accordance with paragraph (l).

[Rule 48.2, continued]

(n) Where the International Bureau has omitted information from international publication in accordance with paragraph (l) and that information is also contained in the file of the international application held by the receiving Office, the International Searching Authority, the Authority specified for supplementary search or the International Preliminary Examining Authority, the International Bureau shall promptly notify that Office and Authority accordingly.

48.3 to 48.6 *[No change]*

Rule 82quater
Excuse of Delay in Meeting Time Limits

82quater.1 Excuse of Delay in Meeting Time Limits

(a) Any interested party may offer evidence that a time limit fixed in the Regulations for performing an action before the receiving Office, the International Searching Authority, the Authority specified for supplementary search, the International Preliminary Examining Authority or the International Bureau was not met due to war, revolution, civil disorder, strike, natural calamity, a general unavailability of electronic communications services or other like reason in the locality where the interested party resides, has his place of business or is staying, and that the relevant action was taken as soon as reasonably possible.

(b) [No change] Any such evidence shall be addressed to the Office, Authority or the International Bureau, as the case may be, not later than six months after the expiration of the time limit applicable in the given case. If such circumstances are proven to the satisfaction of the addressee, delay in meeting the time limit shall be excused.

(c) [No change] The excuse of a delay need not be taken into account by any designated or elected Office before which the applicant, at the time the decision to excuse the delay is taken, has already performed the acts referred to in Article 22 or Article 39.

Rule 92
Correspondence

92.1 *[No change]*

92.2 *Languages*

(a) *[No change]* 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]* Any letter from the applicant to the International Searching Authority or the International Preliminary Examining Authority may be in a language other than that of the international application, provided the said Authority authorizes the use of such language.

(c) *[Remains deleted]*

(d) Any letter from the applicant to the International Bureau shall be in English, French or any other language of publication as may be permitted by the Administrative Instructions.

(e) *[No change]* Any letter or notification from the International Bureau to the applicant or to any national Office shall be in English or French.

92.3 and 92.4 *[No change]*

Rule 94
Access to Files

94.1 *Access to the File Held by the International Bureau*

(a) [No change] At the request of the applicant or any person authorized by the applicant, the International Bureau shall furnish, subject to reimbursement of the cost of the service, copies of any document contained in its file.

(b) The International Bureau shall, at the request of any person but not before the international publication of the international application and subject to Article 38 and paragraphs (d) to (g), furnish copies of any document contained in its file. The furnishing of copies may be subject to reimbursement of the cost of the service.

(c) [No change] The International Bureau shall, if so requested by an elected Office, furnish copies of the international preliminary examination report under paragraph (b) on behalf of that Office. The International Bureau shall promptly publish details of any such request in the Gazette.

(d) The International Bureau shall not provide access to any information contained in its file which has been omitted from publication under Rule 48.2(l) and to any document contained in its file relating to a request under that Rule.

(e) Upon a reasoned request by the applicant, the International Bureau shall not provide access to any information contained in its file and to any document contained in its file relating to such a request, if it finds that:

- (i) this information does not obviously serve the purpose of informing the public about the international application;
- (ii) public access to such information would clearly prejudice the personal or economic interests of any person; and
- (iii) there is no prevailing public interest to have access to that information.

Rule 26.4 shall apply *mutatis mutandis* as to the manner in which the applicant shall present the information which is the subject of a request made under this paragraph.

(f) Where the International Bureau has omitted information from public access in accordance with paragraphs (d) or (e), and that information is also contained in the file of the international application held by the receiving Office, the International Searching Authority, the Authority specified for supplementary search or the International Preliminary Examining Authority, the International Bureau shall promptly notify that Office and Authority accordingly.

[Rule 94.1, continued]

(g) The International Bureau shall not provide access to any document contained in its file which was prepared solely for internal use by the International Bureau.

94.1bis Access to the File Held by the Receiving Office

(a) At the request of the applicant or any person authorized by the applicant, the receiving Office may provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(b) The receiving Office may, at the request of any person, but not before the international publication of the international application and subject to paragraph (c), provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(c) The receiving Office shall not provide access under paragraph (b) to any information in respect of which it has been notified by the International Bureau that the information has been omitted from publication in accordance with Rule 48.2(I) or from public access in accordance with Rule 94.1(d) or (e).

94.1ter Access to the File Held by the International Searching Authority

(a) At the request of the applicant or any person authorized by the applicant, the International Searching Authority may provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(b) The International Searching Authority may, at the request of any person, but not before the international publication of the international application and subject to paragraph (c), provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(c) The International Searching Authority shall not provide access under paragraph (b) to any information in respect of which it has been notified by the International Bureau that the information has been omitted from publication in accordance with Rule 48.2(I) or from public access in accordance with Rule 94.1(d) or (e).

(d) Paragraphs (a) to (c) shall apply *mutatis mutandis* to the Authority specified for supplementary search.

94.2 Access to the File Held by the International Preliminary Examining Authority

(a) At the request of the applicant or any person authorized by the applicant, the International Preliminary Examining Authority shall provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(b) At the request of any elected Office, but not before the establishment of the international preliminary examination report and subject to paragraph (c), the International Preliminary Examining Authority shall provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(c) The International Preliminary Examining Authority shall not provide access under paragraph (b) to any information in respect of which it has been notified by the International Bureau that the information has been omitted from publication in accordance with Rule 48.2(l) or from public access in accordance with Rule 94.1(d) or (e).

94.2bis Access to the File Held by the Designated Office

If the national law applicable by any designated Office allows access by third parties to the file of a national application, that Office may allow access to any documents relating to the international application, contained in its file, to the same extent as provided by the national law for access to the file of a national application, but not before the earliest of the dates specified in Article 30(2)(a). The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

94.3 Access to the File Held by the Elected Office

If the national law applicable by any elected Office allows access by third parties to the file of a national application, that Office may allow access to any documents relating to the international application, including any document relating to the international preliminary examination, contained in its file, to the same extent as provided by the national law for access to the file of a national application, but not before the earliest of the dates specified in Article 30(2)(a). The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

[Annex II follows]

AMENDMENTS TO THE PCT REGULATIONS
TO ENTER INTO FORCE JULY 1, 2017

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Rule 12bis
Submission by the Applicant of Documents Relating to Earlier Search

12bis.1 Furnishing by the Applicant of Documents Related to Earlier Search in Case of Request under Rule 4.12

(a) Where the applicant has, under Rule 4.12, requested the International Searching Authority to take into account the results of an earlier search carried out by the same or another International Searching Authority or by a national Office, the applicant shall, subject to paragraphs (b) to (d), submit to the receiving Office, together with the international application, a copy of the results of the earlier search, in whatever form (for example, in the form of a search report, a listing of cited prior art or an examination report) they are presented by the Authority or Office concerned.

(b) Where the earlier search was carried out by the same Office as that which is acting as the receiving Office, the applicant may, instead of submitting the copy referred to in paragraph (a), indicate the wish that the receiving Office prepare and transmit it to the International Searching Authority. Such request shall be made in the request and may be subjected by the receiving Office to the payment to it, for its own benefit, of a fee.

(c) Where the earlier search was carried out by the same International Searching Authority, or by the same Office as that which is acting as the International Searching Authority, no copy referred to in paragraph (a) shall be required to be submitted under that paragraph.

(d) Where a copy referred to in paragraph (a) is available to the receiving Office or the International Searching Authority in a form and manner acceptable to it, for example, from a digital library, and the applicant so indicates in the request, no copy shall be required to be submitted under that paragraph.

12bis.2 Invitation by the International Searching Authority to Furnish Documents Related to Earlier Search in Case of Request under Rule 4.12

(a) The International Searching Authority may, subject to paragraphs (b) and (c), invite the applicant to furnish to it, within a time limit which shall be reasonable under the circumstances:

- (i) a copy of the earlier application concerned;
- (ii) where the earlier application is in a language which is not accepted by the International Searching Authority, a translation of the earlier application into a language which is accepted by that Authority;
- (iii) where the results of the earlier search are in a language which is not accepted by the International Searching Authority, a translation of those results into a language which is accepted by that Authority;

[Rule 12bis.2(a), continued]

- (iv) a copy of any document cited in the results of the earlier search.

- (b) Where the earlier search was carried out by the same International Searching Authority, or by the same Office as that which is acting as the International Searching Authority, or where a copy or translation referred to in paragraph (a) is available to the International Searching Authority in a form and manner acceptable to it, for example, from a digital library, or in the form of the priority document, no copy or translation referred to in paragraph (a) shall be required to be submitted under that paragraph.

- (c) Where the request contains a statement under Rule 4.12(ii) to the effect that the international application is the same, or substantially the same, as the application in respect of which the earlier search was carried out, or that the international application is the same, or substantially the same, as that earlier application except that it is filed in a different language, no copy or translation referred to in paragraphs (a)(i) and (ii) shall be required to be submitted under those paragraphs.

Rule 23bis
Transmittal of Documents Relating to Earlier Search or Classification

23bis.1 Transmittal of Documents Relating to Earlier Search in Case of Request under Rule 4.12

(a) The receiving Office shall transmit to the International Searching Authority, together with the search copy, any copy referred to in Rule 12bis.1(a) related to an earlier search in respect of which the applicant has made a request under Rule 4.12, provided that any such copy:

- (i) has been submitted by the applicant to the receiving Office together with the international application;
- (ii) has been requested by the applicant to be prepared and transmitted by the receiving Office to that Authority; or
- (iii) is available to the receiving Office in a form and manner acceptable to it, for example, from a digital library, in accordance with Rule 12bis.1(d).

(b) If it is not included in the copy of the results of the earlier search referred to in Rule 12bis.1(a), the receiving Office shall also transmit to the International Searching Authority, together with the search copy, a copy of the results of any earlier classification effected by that Office, if already available.

23bis.2 Transmittal of Documents Relating to Earlier Search or Classification for the Purposes of Rule 41.2

(a) For the purposes of Rule 41.2, where the international application claims the priority of one or more earlier applications filed with the same Office as that which is acting as the receiving Office and that Office has carried out an earlier search in respect of such an earlier application or has classified such earlier application, the receiving Office shall, subject to paragraphs (b), (d) and (e), transmit to the International Searching Authority, together with the search copy, a copy of the results of any such earlier search, in whatever form (for example, in the form of a search report, a listing of cited prior art or an examination report) they are available to the Office, and a copy of the results of any such earlier classification effected by the Office, if already available. The receiving Office may also transmit to the International Searching Authority any further documents relating to such an earlier search which it considers useful to that Authority for the purposes of carrying out the international search.

(b) Notwithstanding paragraph (a), a receiving Office may notify the International Bureau by April 14, 2016 that it may, on request of the applicant submitted together with the international application, decide not to transmit the results of an earlier search to the International Searching Authority. The International Bureau shall publish any notification under this provision in the Gazette.

[Rule 23bis.2, continued]

(c) At the option of the receiving Office, paragraph (a) shall apply *mutatis mutandis* where the international application claims the priority of one or more earlier applications filed with an Office different from the one which is acting as the receiving Office and that Office has carried out an earlier search in respect of such an earlier application or has classified such earlier application, and the results of any such earlier search or classification are available to the receiving Office in a form and manner acceptable to it, for example, from a digital library.

(d) Paragraphs (a) and (c) shall not apply where the earlier search was carried out by the same International Searching Authority or by the same Office as that which is acting as the International Searching Authority, or where the receiving Office is aware that a copy of the earlier search or classification results is available to the International Searching Authority in a form and manner acceptable to it, for example, from a digital library.

(e) To the extent that, on October 14, 2015, the transmission of the copies referred to in paragraph (a), or the transmission of such copies in a particular form, such as those referred to in paragraph (a), without the authorization by the applicant is not compatible with the national law applied by the receiving Office, that paragraph shall not apply to the transmission of such copies, or to the transmission of such copies in the particular form concerned, in respect of any international application filed with that receiving Office for as long as such transmission without the authorization by the applicant continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by April 14, 2016. The information received shall be promptly published by the International Bureau in the Gazette.

Rule 41
Taking into Account Results of Earlier Search and Classification

41.1 Taking into Account Results of Earlier Search in Case of a Request under Rule 4.12

Where the applicant has, under Rule 4.12, requested the International Searching Authority to take into account the results of an earlier search and has complied with Rule 12*bis*.1 and:

(i) the earlier search was carried out by the same International Searching Authority, or by the same Office as that which is acting as the International Searching Authority, the International Searching Authority shall, to the extent possible, take those results into account in carrying out the international search;

(ii) the earlier search was carried out by another International Searching Authority, or by an Office other than that which is acting as the International Searching Authority, the International Searching Authority may take those results into account in carrying out the international search.

41.2 Taking into Account Results of Earlier Search and Classification in Other Cases

(a) Where the international application claims the priority of one or more earlier applications in respect of which an earlier search has been carried out by the same International Searching Authority, or by the same Office as that which is acting as the International Searching Authority, the International Searching Authority shall, to the extent possible, take the results of any such earlier search into account in carrying out the international search.

(b) Where the receiving Office has transmitted to the International Searching Authority a copy of the results of any earlier search or of any earlier classification under Rule 23*bis*.2(a) or (b), or where such a copy is available to the International Searching Authority in a form and manner acceptable to it, for example, from a digital library, the International Searching Authority may take those results into account in carrying out the international search.

Rule 86
The Gazette

86.1 *Contents*

The Gazette referred to in Article 55(4) shall contain:

(i) to (iii) *[no change]*

(iv) information concerning events at the designated and elected Offices notified to the International Bureau under Rule 95.1 in relation to published international applications;

(v) *[no change]*

86.2 to 86.6 *[No change]*

Rule 95
Information and Translations from Designated and Elected Offices

95.1 Information Concerning Events at the Designated and Elected Offices

Any designated or elected Office shall notify the International Bureau of the following information concerning an international application within two months, or as soon as reasonably possible thereafter, of the occurrence of any of the following events:

(i) following the performance by the applicant of the acts referred to in Article 22 or Article 39, the date of performance of those acts and any national application number which has been assigned to the international application;

(ii) where the designated or elected Office explicitly publishes the international application under its national law or practice, the number and date of that national publication;

(iii) where a patent is granted, the date of grant of the patent and, where the designated or elected Office explicitly publishes the international application in the form in which it is granted under its national law, the number and date of that national publication.

95.2 Furnishing of Copies of Translations

(a) *[No change]* At the request of the International Bureau, any designated or elected Office shall provide it with a copy of the translation of the international application furnished by the applicant to that Office.

(b) *[No change]* The International Bureau may, upon request and subject to reimbursement of the cost, furnish to any person copies of the translations received under paragraph (a).

[End of Annex II and of document]