

International Patent Cooperation Union (PCT Union)

Assembly

Fifty-Third (23rd Ordinary) Session
Geneva, October 4 to 8, 2021

PROPOSED AMENDMENTS TO THE PCT REGULATIONS

Document prepared by the International Bureau

SUMMARY

1. This document contains proposed amendments to the Regulations under the Patent Cooperation Treaty (PCT) (“the Regulations”)¹ based on the recommendations by the PCT Working Group (“the Working Group”) for submission to this session of the Assembly.

PROPOSED AMENDMENTS

2. Annex I sets out proposed amendments to the Regulations as recommended by the Working Group at its thirteenth session from October 5 to 8, 2020. These amendments relate to implementation in the PCT of WIPO Standard ST.26 “Recommended Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings using XML (eXtensible Markup Language)” (see document PCT/WG/13/8 and paragraphs 4 and 5 of document PCT/WG/13/14).

3. Annex II sets out proposed amendments to the Regulations as recommended by the Working Group at its fourteenth session from June 14 to 17, 2021. These amendments relate to strengthening safeguards for applicants and third parties in the case of general disruption that

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

affect meeting time limits under the Regulations (see document PCT/WG/14/11 and paragraphs 8 to 14 of document PCT/WG/14/18).

4. Annex III contains a “clean” text of the relevant Rules as they would stand after amendment.

ENTRY INTO FORCE AND TRANSITIONAL ARRANGEMENTS

5. It is proposed that the Assembly adopt the following decisions in relation to entry into force and transitional arrangements of the proposed amendments set out in Annexes I and II:

(a) The amendments to Rules 5, 12, 13~~ter~~, 19 and 49, set out in Annex I, shall enter into force on the date of the transition from WIPO Standard ST.25 to WIPO Standard ST.26 decided by the WIPO General Assembly at its fifty-fourth (25th ordinary) session, to take place from October 4 to 8, 2021 (see document WO/GA/54/14)², and shall apply to any international application with an international filing date that is on or after that date.

(b) The amendments to Rule 82~~quater~~ set out in Annex II shall enter into force on July 1, 2022, and shall apply to any time limit fixed in the Regulations that expires on or after that date.

6. *The Assembly of the PCT Union is invited to adopt the proposed amendments to the Regulations under the PCT set out in Annexes I and II of document PCT/A/53/3, and the entry into force and transitional arrangements set out in paragraph 5 of the same document.*

[Annexes follow]

² The Committee on WIPO Standards decided that the transition date on which all industrial property Offices were recommended to implement WIPO Standard ST.26 (commonly referred to as “the big bang date”) should be January 2022 (see document CWS/5/7 Rev.1 and paragraph 17 of document CWS/5/21). Document WO/GA/54/14 invites the WIPO General Assembly to consider the postponement of this date to July 1, 2022.

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³ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 5 The Description

5.1 [No Change]

5.2 Nucleotide and/or Amino Acid Sequence Disclosure

(a) Where the international application contains disclosure of ~~one or more~~ nucleotide and/or amino acid sequences that, pursuant to the Administrative Instructions, are required to be included in a sequence listing, the description shall ~~contain a sequence listing~~ include a sequence listing part of the description complying with the standard provided for in the Administrative Instructions ~~and presented as a separate part of the description in accordance with that standard.~~

(b) ~~Where the sequence listing part of the description contains any free text as defined in the standard provided for in the Administrative Instructions, that free text shall also appear in the main part of the description in the language thereof.~~ Language-dependent free text included in the sequence listing part of the description shall not be required to be included in the main body of the description.

Rule 12
Language of the International Application
and Translations for the Purposes of International Search
and International Publication

12.1 *Languages Accepted for the Filing of International Applications*

(a) *[No change]* An international application shall be filed in any language which the receiving Office accepts for that purpose.

(b) *[No change]* Each receiving Office shall, for the filing of international applications, accept at least one language which is both:

(i) a language accepted by the International Searching Authority, or, if applicable, by at least one of the International Searching Authorities, competent for the international searching of international applications filed with that receiving Office, and

(ii) a language of publication.

(c) *[No change]* Notwithstanding paragraph (a), the request shall be filed in any language of publication which the receiving Office accepts for the purposes of this paragraph.

(d) Notwithstanding paragraph (a), any language-dependent free text matter contained in the sequence listing part of the description ~~referred to in Rule 5.2(a) shall be presented in accordance with the standard provided for in the Administrative Instructions~~ shall be filed in a language which the receiving Office accepts for that purpose. Any language accepted under this paragraph but not accepted under paragraph (a) shall meet the requirements of paragraph (b). The receiving Office may permit but shall not require the language-dependent free text to be filed in more than one language in accordance with the Administrative Instructions.

12.1bis to 12.2 *[No change]*

12.3 *Translation for the Purposes of International Search*

(a) *[No change]* Where the language in which the international application is filed is not accepted by the International Searching Authority that is to carry out the international search, the applicant shall, within one month from the date of receipt of the international application by the receiving Office, furnish to that Office a translation of the international application into a language which is all of the following:

[Rule 12.3(a), continued]

- (i) a language accepted by that Authority, and
- (ii) a language of publication, and
- (iii) a language accepted by the receiving Office under Rule 12.1(a), unless the international application is filed in a language of publication.

(a-bis) For any sequence listing part of the description, paragraph (a) shall only apply to the language-dependent free text; any translation of the language-dependent free text shall be provided in accordance with the Administrative Instructions.

(b) Paragraph (a) shall not apply to the request ~~nor to any sequence listing part of the description.~~

(c) *[No change]* Where, by the time the receiving Office sends to the applicant the notification under Rule 20.2(c), the applicant has not furnished a translation required under paragraph (a), the receiving Office shall, preferably together with that notification, invite the applicant:

- (i) to furnish the required translation within the time limit under paragraph (a);
- (ii) in the event that the required translation is not furnished within the time limit under paragraph (a), to furnish it and to pay, where applicable, the late furnishing fee referred to in paragraph (e), within one month from the date of the invitation or two months from the date of receipt of the international application by the receiving Office, whichever expires later.

(d) and (e) *[No change]*

12.4 *Translation for the Purposes of International Publication*

(a) *[No change]* Where the language in which the international application is filed is not a language of publication and no translation is required under Rule 12.3(a), the applicant shall, within 14 months from the priority date, furnish to the receiving Office a translation of the international application into any language of publication which the receiving Office accepts for the purposes of this paragraph.

(a-bis) For any sequence listing part of the description, paragraph (a) shall only apply to the language-dependent free text; any translation of the language-dependent free text shall be provided in accordance with the Administrative Instructions.

[Rule 12.4, continued]

(b) Paragraph (a) shall not apply to the request ~~nor to any sequence listing part of the description.~~

(c) *[No change]* Where the applicant has not, within the time limit referred to in paragraph (a), furnished a translation required under that paragraph, the receiving Office shall invite the applicant to furnish the required translation, and to pay, where applicable, the late furnishing fee required under paragraph (e), within 16 months from the priority date. Any translation received by the receiving Office before that Office sends the invitation under the previous sentence shall be considered to have been received before the expiration of the time limit under paragraph (a).

(d) and (e) *[No change]*

Rule 13ter
Nucleotide and/or Amino Acid Sequence Listings

13ter.1 *Procedure before the International Searching Authority*

(a) Where the international application contains disclosure of ~~one or more~~ nucleotide and/or amino acid sequences that, pursuant to the Administrative Instructions, are required to be included in a sequence listing, the International Searching Authority may invite the applicant to furnish to it, for the purposes of the international search, a sequence listing ~~in electronic form~~ complying with the standard provided for in the Administrative Instructions, unless such listing ~~in electronic form~~ is already available to it in a form, language and manner acceptable to it, and to pay to it, where applicable, the late furnishing fee referred to in paragraph (c), within a time limit fixed in the invitation.

(b) [Deleted] ~~Where at least part of the international application is filed on paper and the International Searching Authority finds that the description does not comply with Rule 5.2(a), it may invite the applicant to furnish, for the purposes of the international search, a sequence listing in paper form complying with the standard provided for in the Administrative Instructions, unless such listing in paper form is already available to it in a form and manner acceptable to it, whether or not the furnishing of a sequence listing in electronic form is invited under paragraph (a), and to pay, where applicable, the late furnishing fee referred to in paragraph (c), within a time limit fixed in the invitation.~~

(c) The furnishing of a sequence listing in response to an invitation under paragraph (a) ~~or (b)~~ may be subjected by the International Searching Authority to the payment to it, for its own benefit, of a late furnishing fee whose amount shall be determined by the International Searching Authority but shall not exceed 25% of the international filing fee referred to in item 1 of the Schedule of Fees, not taking into account any fee for each sheet of the international application in excess of 30 sheets, ~~provided that a late furnishing fee may be required under either paragraph (a) or (b) but not both.~~

(d) If the applicant does not, within the time limit fixed in the invitation under paragraph (a) ~~or (b)~~, furnish the required sequence listing and pay any required late furnishing fee, the International Searching Authority shall only be required to search the international application to the extent that a meaningful search can be carried out without the sequence listing.

[Rule 13ter.1, continued]

(e) Any sequence listing not contained in the international application as filed, whether furnished in response to an invitation under paragraph (a) ~~or (b)~~ or otherwise, shall not form part of the international application, but this paragraph shall not prevent the applicant from amending the description in relation to a sequence listing pursuant to Article 34(2)(b).

(f) [Deleted] ~~Where the International Searching Authority finds that the description does not comply with Rule 5.2(b), it shall invite the applicant to submit the required correction. Rule 26.4 shall apply *mutatis mutandis* to any correction offered by the applicant. The International Searching Authority shall transmit the correction to the receiving Office and to the International Bureau.~~

13ter.2 and 13ter.3 *[No Change]*

Rule 19.4
The Competent Receiving Office

19.1 to 19.3 *[No change]*

19.4 *Transmittal to the International Bureau as Receiving Office*

(a) Where an international application is filed with a national Office which acts as a receiving Office under the Treaty but

(i) that national Office is not competent under Rule 19.1 or 19.2 to receive that international application, or

(ii) that international application is not in a language accepted under Rule 12.1(a) or the language dependent free text contained within the sequence listing part of the description is not in a language accepted under Rule 12.1(d) by that national Office but is in a language accepted under that Rule by the International Bureau as receiving Office, or

(ii-bis) all or part of the international application is filed in electronic form in a format not accepted by that national Office, or

(iii) that national Office and the International Bureau agree, for any reason other than those specified under items (i), ~~and~~ (ii) and (ii-bis), and with the authorization of the applicant, that the procedure under this Rule should apply, that international application shall, subject to paragraph (b), be considered to have been received by that Office on behalf of the International Bureau as receiving Office under Rule 19.1(a)(iii).

(b) and (c) *[No change]*

Rule 49
Copy, Translation and Fee under Article 22

49.1 to 49.4 *[No change]*

49.5 *Contents of and Physical Requirements for the Translation*

(a) *[No change]*

(a-bis) No designated Office shall require the applicant to furnish to it a translation of any text matter contained in the sequence listing part of the description if such sequence listing part complies with Rule 12.1(d) and ~~if the description complies with Rule 5.2(b)~~ includes the language-dependent free text in a language which the designated Office accepts for the purpose, save that a designated Office which supplies published sequence listings to database providers may require a translation of the sequence listing part of the description into English, in accordance with the Administrative Instructions, where the language-dependent free text is not included in English.

(b) to (l) *[No change]*

49.6 *[No change]*

[Annex II follows]

DRAFT PROPOSED AMENDMENTS
TO THE PCT REGULATIONS⁴

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⁴ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 82^{quater}

Excuse of Delay in Meeting Time Limits and Extension of Time Limits

82^{quater}.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, epidemic, 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.

(d) The need for evidence may be waived by the Office, Authority or the International Bureau under the conditions set and published by that Office, Authority or the International Bureau, as the case may be. In such case, the interested party must submit a statement that the failure to meet the time limit was due to the reason for which the Office, Authority or the International Bureau waived the requirement concerning the submission of evidence. The Office or Authority shall notify the International Bureau accordingly.

82^{quater}.2 *Unavailability of Electronic Means of Communication at the Office*

(a) *[No change]* Any national Office or intergovernmental organization may provide that, where a time limit fixed in the Regulations for performing an action before that Office or organization is not met due to the unavailability of any of the permitted electronic means of communication at that Office or organization, delay in meeting that time limit shall be excused, provided that the respective action was performed on the next working day on which the said electronic means of communication were available. The Office or organization concerned shall publish information on any such unavailability including the period of the unavailability, and notify the International Bureau accordingly.

[Rule 82quater.2, continued]

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

82quater.3 Extension of Time Limits due to General Disruption

(a) Any receiving Office, International Searching Authority, Authority specified for supplementary search, International Preliminary Examining Authority or the International Bureau may establish a period of extension such that time limits fixed in the Regulations within which a party has to perform an action before that Office, Authority or International Bureau may be extended when the State in which it is located is experiencing a general disruption caused by an event listed in Rule 82quater.1(a) which affects the operations at the said Office, Authority or International Bureau thereby interfering with the ability of parties to perform actions before that Office, Authority or International Bureau within the time limits fixed in the Regulations. The Office, Authority or the International Bureau shall publish the commencement and the end date of any such period of extension. The period of extension shall not be longer than two months from the date of commencement. The Office or Authority shall notify the International Bureau accordingly.

(b) After establishing a period of extension under paragraph (a), the Office, Authority or the International Bureau concerned may establish additional periods of extension, if necessary under the circumstances. In that case, paragraph (a) applies *mutatis mutandis*.

(c) The extension of a time limit under paragraph (a) or (b) need not be taken into account by any designated or elected Office if, at the time the information referred to in paragraph (a) or (b) is published, national processing before that Office has started.

[Annex III follows]

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Rule 5
The Description

5.1 *[No Change]*

5.2 *Nucleotide and/or Amino Acid Sequence Disclosure*

(a) Where the international application contains disclosure of nucleotide and/or amino acid sequences that, pursuant to the Administrative Instructions, are required to be included in a sequence listing, the description shall include a sequence listing part of the description complying with the standard provided for in the Administrative Instructions.

(b) Language-dependent free text included in the sequence listing part of the description shall not be required to be included in the main body of the description.

Rule 12
Language of the International Application
and Translations for the Purposes of International Search
and International Publication

12.1 *Languages Accepted for the Filing of International Applications*

(a) to (c) *[No change]*

(d) Notwithstanding paragraph (a), any language-dependent free text contained in the sequence listing part of the description shall be filed in a language which the receiving Office accepts for that purpose. Any language accepted under this paragraph but not accepted under paragraph (a) shall meet the requirements of paragraph (b). The receiving Office may permit but shall not require the language-dependent free text to be filed in more than one language in accordance with the Administrative Instructions.

12.1*bis* to 12.2 *[No change]*

12.3 *Translation for the Purposes of International Search*

(a) *[No change]*

(a-*bis*) For any sequence listing part of the description, paragraph (a) shall only apply to the language-dependent free text; any translation of the language-dependent free text shall be provided in accordance with the Administrative Instructions.

(b) Paragraph (a) shall not apply to the request.

(c) to (e) *[No change]*

12.4 *Translation for the Purposes of International Publication*

(a) *[No change]*

(a-*bis*) For any sequence listing part of the description, paragraph (a) shall only apply to the language-dependent free text; any translation of the language-dependent free text shall be provided in accordance with the Administrative Instructions.

(b) Paragraph (a) shall not apply to the request.

(c) to (e) *[No change]*

Rule 13ter
Nucleotide and/or Amino Acid Sequence Listings

13ter.1 Procedure before the International Searching Authority

(a) Where the international application contains disclosure of nucleotide and/or amino acid sequences that, pursuant to the Administrative Instructions, are required to be included in a sequence listing, the International Searching Authority may invite the applicant to furnish to it, for the purposes of the international search, a sequence listing complying with the standard provided for in the Administrative Instructions, unless such listing is already available to it in a form, language and manner acceptable to it, and to pay to it, where applicable, the late furnishing fee referred to in paragraph (c), within a time limit fixed in the invitation.

(b) [Deleted]

(c) The furnishing of a sequence listing in response to an invitation under paragraph (a) may be subjected by the International Searching Authority to the payment to it, for its own benefit, of a late furnishing fee whose amount shall be determined by the International Searching Authority but shall not exceed 25% of the international filing fee referred to in item 1 of the Schedule of Fees, not taking into account any fee for each sheet of the international application in excess of 30 sheets.

(d) If the applicant does not, within the time limit fixed in the invitation under paragraph (a), furnish the required sequence listing and pay any required late furnishing fee, the International Searching Authority shall only be required to search the international application to the extent that a meaningful search can be carried out without the sequence listing.

(e) Any sequence listing not contained in the international application as filed, whether furnished in response to an invitation under paragraph (a) or otherwise, shall not form part of the international application, but this paragraph shall not prevent the applicant from amending the description in relation to a sequence listing pursuant to Article 34(2)(b).

(f) [Deleted]

13ter.2 and 13ter.3 [No Change]

Rule 19.4
The Competent Receiving Office

19.1 to 19.3 *[No change]*

19.4 *Transmittal to the International Bureau as Receiving Office*

(a) Where an international application is filed with a national Office which acts as a receiving Office under the Treaty but

(i) that national Office is not competent under Rule 19.1 or 19.2 to receive that international application, or

(ii) that international application is not in a language accepted under Rule 12.1(a) or the language dependent free text contained within the sequence listing part of the description is not in a language accepted under Rule 12.1(d) by that national Office but is in a language accepted under that Rule by the International Bureau as receiving Office, or

(ii-*bis*) all or part of the international application is filed in electronic form in a format not accepted by that national Office, or

(iii) that national Office and the International Bureau agree, for any reason other than those specified under items (i), (ii) and (ii-*bis*), and with the authorization of the applicant, that the procedure under this Rule should apply, that international application shall, subject to paragraph (b), be considered to have been received by that Office on behalf of the International Bureau as receiving Office under Rule 19.1(a)(iii).

(b) and (c) *[No change]*

Rule 49
Copy, Translation and Fee under Article 22

49.1 to 49.4 *[No change]*

49.5 *Contents of and Physical Requirements for the Translation*

(a) *[No change]*

(a-bis) No designated Office shall require the applicant to furnish to it a translation of any text matter contained in the sequence listing part of the description if such sequence listing part complies with Rule 12.1(d) and includes the language-dependent free text in a language which the designated Office accepts for the purpose, save that a designated Office which supplies published sequence listings to database providers may require a translation of the sequence listing part of the description into English, in accordance with the Administrative Instructions, where the language-dependent free text is not included in English.

(b) to (l) *[No change]*

49.6 *[No change]*

Rule 82^{quater}

Excuse of Delay in Meeting Time Limits and Extension of Time Limits

82^{quater}.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, epidemic, 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) and (c) *[No change]*

(d) The need for evidence may be waived by the Office, Authority or the International Bureau under the conditions set and published by that Office, Authority or the International Bureau, as the case may be. In such case, the interested party must submit a statement that the failure to meet the time limit was due to the reason for which the Office, Authority or the International Bureau waived the requirement concerning the submission of evidence. The Office or Authority shall notify the International Bureau accordingly.

82^{quater}.2 [No change]

82^{quater}.3 Extension of Time Limits due to General Disruption

(a) Any receiving Office, International Searching Authority, Authority specified for supplementary search, International Preliminary Examining Authority or the International Bureau may establish a period of extension such that time limits fixed in the Regulations within which a party has to perform an action before that Office, Authority or International Bureau may be extended when the State in which it is located is experiencing a general disruption caused by an event listed in Rule 82^{quater}.1(a) which affects the operations at the said Office, Authority or International Bureau thereby interfering with the ability of parties to perform actions before that Office, Authority or International Bureau within the time limits fixed in the Regulations. The Office, Authority or the International Bureau shall publish the commencement and the end date of any such period of extension. The period of extension shall not be longer than two months from the date of commencement. The Office or Authority shall notify the International Bureau accordingly.

[Rule 82quater.3, continued]

(b) After establishing a period of extension under paragraph (a), the Office, Authority or the International Bureau concerned may establish additional periods of extension, if necessary under the circumstances. In that case, paragraph (a) applies *mutatis mutandis*.

(c) The extension of a time limit under paragraph (a) or (b) need not be taken into account by any designated or elected Office if, at the time the information referred to in paragraph (a) or (b) is published, national processing before that Office has started.

[End of Annex III and of document]