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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
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## INTERNATIONAL PATENT COOPERATION UNION (PCT UNION)

### ASSEMBLY

#### First Session (1st Extraordinary)\* Geneva, April 10 to 14, 1978

WORKING DOCUMENT

*prepared by the Director General*

#### The Present Document

1. This working document deals with the questions appearing on the draft agenda of the first session (first extraordinary session) of the Assembly of the International Patent Cooperation Union (hereinafter referred to respectively as “the Assembly” and “the PCT Union”). That draft agenda was prepared on the basis of the advice given by the first and only session (February 6 to 10, 1978) of the PCT Preparatory Committee (hereinafter referred to as “the Preparatory Committee”). The report of the Preparatory Committee referred to in several of the following paragraphs of the present working document bears the document number PCT/PREP/I/6. Copies of that document may be obtained from the International Bureau of WIPO on request. It is referred to hereinafter as “the Report of the Preparatory Committee”.

#### Adoption of the Rules of Procedure of the Assembly

2. Draft Rules of Procedure for the Assembly are contained in Annex I to this working document. The Preparatory Committee recommends their adoption (see paragraph 14 of the Report of the Preparatory Committee; here, as also in other cases, purely editorial changes were made in the texts recommended by the said Committee).

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\* *Editor's Note:* This electronic document has been created from the paper original and may contain errors. Please bring any such errors to the attention of the PCT Legal Division by e-mail at [pct.legal@wipo.int](mailto:pct.legal@wipo.int)

3. *The Assembly is invited to adopt the Rules of Procedure contained in Annex I to this working document.*

#### Admission of Observers

4. The list of States and Organizations which it is proposed to admit as special observers or observers appears in Annex II to this working document. The list of States which it is proposed to admit as special observers or observers is naturally subject to change. The Preparatory Committee recommends that the list be adopted by the Assembly (see paragraph 16 of the Report of the Preparatory Committee).

5. *The Assembly is invited to approve the list of special observers and observers contained in Annex II to this working document.*

#### Appointment of International Searching Authorities and International Preliminary Examining Authorities and Approval of the Agreements Between Those Authorities and the International Bureau

6. It is expected that the following Offices will be candidates for appointment at the first session of the Assembly:

- (i) as International Searching and International Preliminary Examining Authorities:
  - (a) the Japanese Patent Office (as from the date on which Japan will become bound by the PCT),
  - (b) the State Committee for Inventions and Discoveries of the USSR Council of Ministers (Soviet Union) /
  - (c) the Royal Patent and Registration Office of Sweden (as from May 17/ 1978/ the date on which Sweden will become bound by the PCT) /
  - (d) the European Patent Office;
- (ii) as an International Searching Authority:
  - (e) the United States Patent and Trademark Office;
- (iii) as an International Preliminary Examining Authority:
  - (f) the Patent Office of the United Kingdom.

7. The negotiations with the said six Offices are either completed or far advanced and it is expected that the texts of the draft agreements between each of the said six Offices and the International Bureau will be available shortly before the first session of the PCT Assembly. Those texts will be included in several separate documents, which will be distributed as soon as possible and at the latest on April 10/ 1978. It is intended to sign the agreements immediately after their approval by the Assembly in order to enable the said Authorities to be appointed during the first session of the Assembly.

#### Fixing the Date From Which International Applications May Be Filed and the Date From Which Demands for International Preliminary Examination May Be Submitted

8. The Preparatory Committee recommends that the Assembly fix the date from which international applications may be filed and demands for international preliminary examination may be submitted at June 1, 1978 (see paragraph 17 of the Report of the Preparatory Committee).

*9. The Assembly is invited to fix the date from which international applications may be filed and demands for international preliminary examination may be submitted at June 1, 1978.*

#### Amendment of the Regulations Under the Patent Cooperation Treaty

10. The Preparatory Committee recommends that the Assembly amend the PCT Regulations as set out in Annex III to this working document (see paragraphs 34 and 56 of the Report of the Preparatory Committee).

11. As far as the amounts of certain fees and the prices of certain PCT publications are concerned, the Preparatory Committee expressed the following wishes (see paragraphs 56 to 58 of the Report of the Preparatory Committee):

(i) that the Assembly be informed that the PCT Working Group on Budgetary Questions had based its estimates on the following fees and prices:

basic fee: 500 Swiss francs  
designation fee: 135 Swiss francs  
price of copy of pamphlet: 10 Swiss francs  
yearly subscription price of the Gazette: 500 Swiss francs,

whereas the majority of the Preparatory Committee had been of the opinion that, for an initial period of one year, the fees and prices should be fixed at a level approximately 40% below the amounts referred to above, as follows:

basic fee: US\$ 150 or 300 Swiss francs  
designation fee: US\$ 40 or 80 Swiss francs  
price of copy of pamphlet: US\$ 3 or 6 Swiss francs  
yearly subscription price of the Gazette: US\$ 150 or 300 Swiss francs,

the latter amounts being reflected in Annex III to this working document;

(ii) that the Assembly be informed that the proposed level of amounts would, in the case of the basic-fee part of the international fee, correspond to an increase of approximately 50% of the amount of that fee in the 1970 text (that is, the original text of the Regulations under the PCT approved by the Diplomatic Conference of 1970) when expressed in Swiss francs and that the increase corresponds to the increase in the cost of living in Switzerland since 1970, whereas the exchange rate between the Swiss franc and the US dollar applied in the recommended fees and prices is 2:1;

(iii) that the Assembly be informed that the report of the PCT Working Group on Budgetary Questions had stated that "it was suggested that the International Bureau should study the possibility of fixing the fees for the initial period of the PCT at a specially low level in order to increase the attractiveness of the system for the users, at least during that period, provided lower fees would not have very significant budgetary implications. Lower fees

could contribute in an important way to a more rapid growth of the number of international applications filed” (document PCT/WG/BUD/I/6, paragraph 29);

(iv) that the paper now constituting Annex IV to this working document, which had also been submitted to the Preparatory Committee and which reflects the (not very significant) budgetary implications of the amounts of fees and prices recommended for an initial period of one year, be submitted to the Assembly;

(v) that the Assembly be informed that several delegations in the Preparatory Committee had reserved their position on the recommended amounts of fees and prices on the ground that they would first have to submit the matter to their competent authorities.

12. It was only after the closing of the first (and only) session of the Preparatory Committee that the International Bureau realized that Rules 58 and 61 of the PCT Regulations should also be amended. Rule 58, dealing with the international preliminary examination fee, should be completed by providing for the cases -- apparently not covered by the present text of the PCT Regulations -- where the said fee is not paid, or not paid in full, by the date on which it should have been paid (in full) and where the International Preliminary Examining Authority would make some refund (at least partial) because the main work to which the fee relates will not be carried out in view of the fact that the demand has been considered as if it had not been submitted. The proposal is to add two new Rules -- which would be Rules 58.2 and 58.3 -- to follow Rule 58.1. New Rule 58.2 would provide in effect that, in the event that, under Rule 58.1(b), a preliminary examination fee is fixed (this will probably always be the case) and is not paid, the International Preliminary Examining Authority will invite the applicant to pay the missing (part of the) fee within one month from the date of the invitation, and if the latter:

- complies with the invitation within the prescribed time limit, the delay will have no legal consequence;
- fails to comply with the invitation within the prescribed time limit, the demand will be considered as if it had not been submitted. (A consequential amendment would be required to Rule 61.1(b) relating to the notification of the applicant that the demand will be considered as if it had not been submitted.)

New Rule 58.3 would provide for a possibility for refunding the preliminary examination fee or part thereof by the International Preliminary Examining Authority where the demand is considered as if it had not been submitted under Rule 57.4(c), Rule 58.2(c) (in cases where partial payment was made) or Rule 60.1(c). Annex V to this working document contains the text of the proposed new Rules 58.2 and 58.3 and the amendment to Rule 61.1(b).

*13. The Assembly is invited to amend the Regulations under the PCT as set forth in Annexes III and V to this working document.*

#### Consideration of Matters Concerning Relations Between the International Bureau and Prospective Receiving, Designated and Elected Offices

14. At the time of writing the present working document, there are no questions that the Director General would wish to submit under this item of the draft agenda to the Assembly for the latter's consideration. Should the situation remain unchanged by the date of the opening of the first session of the Assembly, the Director General will propose that this item be omitted from the agenda. Otherwise, he would deal with such matters in a separate preparatory document which he would prepare for the Assembly as soon as the need therefore arises (see paragraph 88 of the Report of the Preparatory Committee).

Establishment of the Committee for Technical Cooperation (CTC); Appointment of its Members; Adoption of its Rules of Procedure

15. The Preparatory Committee recommends that, on these subjects, the Assembly adopt the decisions and the Rules of Procedure set out in Annexes VI and VII to this working document (see paragraphs 70 and 71 of the Report of the Preparatory Committee).

*16. The Assembly is invited to adopt the decisions and the Rules of Procedure contained in Annexes VI and VII to this working document.*

Establishment of the Committee for Technical Assistance (CTA); Election of its Members; Adoption of its Rules of Procedure

17. The Preparatory Committee recommends that, on these subjects, the Assembly adopt the decisions and the Rules of Procedure set out in Annexes VIII and IX to this working document (see paragraphs 67 and 68 of the Report of the Preparatory Committee).

*18. The Assembly is invited to adopt the decisions and the Rules of Procedure contained in Annexes VIII and IX to this working document.*

Establishment of Other Committees and of Working Groups

19. The Preparatory Committee recommends that the Assembly establish, under this agenda item, one committee but no working groups, the committee being entitled the PCT Committee for Administrative and Legal Matters (CAL), and that, for the purpose r it adopt the decisions and the Rules of Procedure set out in Annexes X and XI to this working document (see paragraphs 78 and 83 of the Report of the preparatory Committee).

*20. The Assembly is invited to adopt the decisions and the Rules of Procedure contained in Annexes X and XI to this working document.*

Recommendations Concerning the Copyright Protection of Certain PCT Publications

21. The PCT Advisory Committee for Administrative Questions r in its eighth session held in October 1977 r discussed the question of copyright in PCT publications. These discussions were based on a memorandum by the International Bureau which is attached to this working document as Annex XII. The essence of that memorandum was that r in the view of the International Bureau, PCT publications (mainly the pamphlets containing the published international applications and the PCT Gazette) were protected by copyright r at least by virtue of Protocol 2 of the Universal Copyright Convention in the 57 States which have ratified or acceded to that Protocol r and that r for budgetary reasons r it was imperative that reproduction of PCT publications should not be allowed free of charge since one of the two main sources of income of the International Bureau in connection with the PCT is expected to be derived from the sale of PCT publications.

22. Whereas the latter view was generally shared by the PCT Advisory Committee for Administrative Questions r the former was questioned by many delegations r which r drawing an analogy from the situation of the publications of their respective national Offices –to which naturally, the Universal Copyright Convention is not applicable – expressed doubts as to whether the PCT publications could be granted copyright protection in their countries. The

discussions are reflected in the Report of the said session of the said Committee and the relevant passages of that Report are attached to this working document as Annex XIII. In the same session, the International Bureau was asked to study the situation existing on the national level and to circulate a questionnaire seeking certain information. It would seem that the national Patent Offices have no legal limitations on the making of copies. At the time of writing the present working document, the correctness of this assertion has still to be verified and, should the International Bureau be informed by any national Office before the meeting of the Assembly of the existence of any legal limitation in this respect r such information will be conveyed to the Assembly when it meets. The International Bureau sent out a questionnaire on the number of copies prepared in each national Office and the price charged per copy. The replies are tabulated in Annex XIV to this working document.

23. It is to be noted that Article 57 of the PCT entitled II Finances II provides that the budget of the PCT Union is to be financed from, among other sources r income derived by the International Bureau from the “sale of or *royalties* on, the publications of the International Bureau concerning the Union” (paragraph (3) (ii); emphasis added). Since the payment of royalties on a publication can be stipulated only where that publication is protected by copyright, it is difficult to imagine why the PCT speaks of royalties if it was not the intention of the Contracting States to recognize that PCT publications would be under copyright protection.

24. Finally, it should be borne in mind that r according to the estimates of the PCT Working Group on Budgetary Questions r of the two main sources of income (other than contributions by States) – that is, fees and the sale of PCT publications -- the income from fees would represent 58% and the income from the sale of PCT publications 42%. It is therefore evident that only such free reproduction of PCT publications should be allowed as is absolutely unavoidable, and every effort must be made to prevent the reproduction of PCT publications by persons other than the International Bureau since otherwise one of the two main sources of income of the International Bureau could be seriously jeopardized, with the consequence that the principle of a self-supporting budget for the PCT would probably never be attained.

25. Consequently, it is proposed that the Assembly

- (i) invite the Director General to affix a copyright notice on all PCT publications,
- (ii) recommend all States members of the PCT to assist the International Bureau in enforcing the latter’s copyright in PCT publications, consistently with the international treaty obligations of those States and with their national laws,
- (iii) recommend all national and regional Offices handling international applications to arrive at an agreement with the International Bureau in respect of the production by those Offices of copies of PCT publications, in particular international applications, for purposes other than use by their own employees in discharging their official functions; such agreements should provide for appropriate payment to the International Bureau for the production of copies (paper, microfiche or other) of PCT publications by such Offices.

*26. The Assembly is invited to approve the invitation and the recommendations suggested in the preceding paragraph.*

DRAFT RULES OF PROCEDURE OF THE ASSEMBLY OF THE INTERNATIONAL  
PATENT COOPERATION (PCT) UNION

Rule 1: Application of the General Rules of Procedure

The Rules of Procedure of the Assembly of the International Patent Cooperation (PCT) Union shall consist of the General Rules of Procedure of WIPO, supplemented and amended by the provisions set forth hereinafter.

Rule 2: Special Observers

(1) The following shall be invited as “special observers” to all sessions of the Assembly:

(i) States not members of the PCT Union which contribute to the budget of the PCT Union,

(ii) intergovernmental authorities having the power to grant patents effective in one or more States members of the PCT Union.

(2) Special observers shall have the same rights in the sessions of the Assembly as States members of the Assembly, except the right to vote.

Rule 3: Draft Agenda

The draft agenda of each session shall be drawn up by the Director General. In the case of ordinary sessions, such draft shall follow the instructions of the Executive Committee once the Executive Committee is established (see PCT Articles 53(9) and 54(6) (a)). In the case of extraordinary sessions, the said draft shall include the item or items mentioned in the request referred to in Article 53(11) (c) of the Patent Cooperation Treaty.

Rule 4: Publication of the Report

The report on the work of each session, or a summary drawn up by the International Bureau, shall be published in the *Gazette* of the PCT Union and in the reviews of the World Intellectual Property Organization *La Propriété industrielle* and *Industrial Property*.

[Annex II follows]

## SPECIAL OBSERVERS AND OBSERVERS

### Special Observers

- (i) the States not members of the PCT Union which contribute to the budget of the PCT Union, that is, at present: Australia, Austria, Belgium, Canada, Cuba, Denmark, Egypt, Finland, Hungary, Iran, Ireland, Israel, Japan, Netherlands, Norway, Philippines, Romania, Spain, Yugoslavia (19)
- (ii) the European Patent Office
- (iii) the Office of the African Intellectual Property Organization (OAPI)

### Observers

(i) all States members of the Paris Union which are not members of the PCT Union and which have no special observer status,

- (ii) the following intergovernmental organizations

United Nations (UN)  
Council for Mutual Economic Assistance (CMEA)<sup>1</sup>  
Commission of the European Communities (CEC)  
Interim Secretariat for the Community Patent Convention

- (iii) the following international non-governmental organizations:

Asian Patent Attorneys Association (APAA)  
Committee of National Institutes of Patent Agents (CNIPA)  
Council of European Industrial Federations (CEIF)  
European Federation of Agents of Industry in Industrial Property (FEMIP)  
European Industrial Research Management Association (EIRMA)  
Inter-American Association of Industrial Property (ASIPI)  
International Association for the Protection of Industrial Property (AIPPI)  
International Chamber of Commerce (ICC)  
International Federation of Inventors' Associations (IFIA)  
International Federation of Pharmaceutical Manufacturers Associations (IFPMA)  
International Federation of Patent Agents (FICPI)  
Licensing Executives Society (International) (LES)  
Pacific Industrial Property Association (PIPA)  
Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA)  
Union of Industries of the European Community (UNICE)

[Annex III follows]

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<sup>1</sup> Where the agenda of the session contains one or more specific items which, in the opinion of the Director General, is of special and direct interest to this Organization, the invitation will be extended to it to attend during the discussion of that specific item or those specific items.



DRAFT AMENDMENTS TO THE REGULATIONS UNDER THE PCT

Rule 4.10 (d) (first sentence)

(d) If the filing date of the earlier application as indicated in the request does not fall within the period of one year preceding the international filing date, the receiving Office, or, if the receiving Office has failed to do so, the International Bureau, shall invite the applicant to ask either for the cancellation of the declaration made under Article 8(1) or, if the date of the earlier application was indicated erroneously, for the correction of the date so indicated

Rule 11.6(a) and (b)

11.6 Margins

(a) The minimum margins of the sheets containing the request, the description, the claims, and the abstract, shall be as follows:

-top: 2 cm  
-left side: 2.5 cm  
-right side: 2 cm  
bottom: 2 cm

(b) The recommended maximum, for the margins provided for in paragraph (a), is as follows:

-top: 4 cm  
-left side: 4 cm  
-right side: 3 cm  
-bottom: 3 cm

Rule 11.13 (a)

11.13 Special Requirements for Drawings

(a) Drawings shall be executed in durable, black, sufficiently dense and dark, uniformly thick and well-Defined, lines and strokes without colorings

Rule 15.2

15.2 Amounts

(a) The amount of the basic fee shall be:

(i) if the international application contains not more than 30 sheets:  
US \$150 or 300 Swiss francs,

(ii) if the international application contains more than 30 sheets:  
US \$150 or 300 Swiss francs plus US \$3 or 6 Swiss francs per sheet in excess of 30 sheets.

(b) The amount of the designation fee for each designated States or each group of designated States for which the same regional patent is sought shall be: US \$40 or 80 Swiss francs.

Rule 32bis

Withdrawal of the Priority Claim

Rule 32bis.1 Withdrawals

(a) The applicant may withdraw the priority claim made in the international application under Article 8(1) at any time before the international publication of the international application.

(b) Where the international application contains more than one priority claim, the applicant may exercise the right provided for in paragraph (a) in respect of one or more or all of them.

(c) Where the withdrawal of the priority claim, or, in the case of more than one such claim, the withdrawal of any of them, causes a change in the priority date of the international application, any time limit which is computed from the original priority date and which has not already expired shall be computed from the priority date resulting from that change. In the case of the time limit of 18 months referred to in Article 21(2) (a), the International Bureau may nevertheless proceed with the international publication on the basis of the said time limit as computed from the original priority date if the withdrawal is effected during the period of 15 days preceding the expiration of that time limit.

(d) For any withdrawal under paragraph (a), the provisions of Rule 32.1(c) and (d) and Rule 74bis.1 shall apply mutatis mutandis

Rules 48.2(a) (v) and 48.3(c)

Rule 48.2 Contents

(a)...

(v) subject to paragraph (g), the international search report or the declaration under Article 17 (2) (a); the publication of the international search report in the pamphlet shall, however, not be required to include the part of the international search report which contains only matter referred to in Rule 43 already appearing on the front page of the pamphlet,

...

Rule 48.3 Language

...

(c) If the international application is published in a language other than English, the international search report to the extent that it is published under Rule 48.2(a) (v), or the declaration referred to in Article 17 (2) (a), and the abstract shall be published both in that language and in English. The translations shall be prepared under the responsibility of the International Bureau.

Rule 57.2

57.2 Amount

(a) The amount of the handling fee shall be US \$48 or 96 Swiss francs augmented by as many times the same amount as the number of languages into which the international preliminary examination report must, in application of Article 36 (2), be translated by the International Bureau.

(b) Where, because of a later election or elections, the international preliminary examination report must, in application of Article 36 (2), be translated by the International Bureau into one or more additional languages, a supplement to the handling fee shall be payable and shall amount to US \$48 or 96 Swiss francs for each additional language.

Rule 74bis Notification of Withdrawal under Rule 32

Rule 74bis.1 Notification of the International Preliminary Examining Authority

If, at the time of the withdrawal of the international application or of the designation of all designated States under Rule 32.1, a demand for international preliminary examination has

Rule 74bis.1 (continued)

already been submitted and the international preliminary examination report, has not yet issued, the International Bureau shall promptly notify the fact of withdrawal, together with the date of receipt of the notice effecting withdrawal, to the International Preliminary Examining Authority.

Rule 86.3 and 86.4

Rule 86.3 Frequency

(a) Subject to paragraph (b), the Gazette shall be published once a week.

(b) For a transitional period after the entry into force of the Treaty terminating upon a date fixed by the Assembly, the Gazette may be published at such times as the Director General considers appropriate having regard to the number of international applications and the amount of other material required to be published.

Rule 86. Sale

(a) Subject to paragraph (b), the subscription and other sale prices of the Gazette shall be fixed in the Administrative Instructions.

(b) For a transitional period after the entry into force of the Treaty terminating upon a date fixed by the Assembly, the Gazette may be distributed on such terms as the Director General considers appropriate having regard to the number of international applications and the amount of other material published therein

[Annex IV follows]

## LEVEL OF FEES AND SALES PRICES

1. The Report of the Working Group on Budgetary Questions of the Patent Cooperation Treaty (hereinafter referred to as "the Budget Working Group"), adopted on March 4, 1977, states that "it was suggested that the International Bureau should study the possibility of fixing the fees for the initial period of the PCT at a specially low level in order to increase the attractiveness of the system for the users, at least during that period, provided lower fees would not have very significant budgetary implications. Lower fees could contribute in an important way to a more rapid growth of the number of international applications filed"
2. Hereinafter, the said "initial period" is considered as one year: seven months (from June 1) in 1978 and five months (until the end of May) in 1979.
3. According to the estimates on which the Budget Working Group based its considerations, the PCT would have become operational on July 1, 1978, rather than June 1, 1978. On that assumption, and on the basis of the level of fees and prices referred to in document PCT/PREP/I/2, the income (for six months) in 1978 would have been 502,000 Swiss francs and in 1979 (for 12 months) 1,560,000 Swiss francs. Taking 7/6 of the first amount (to cover seven months in 1978) and 5/12 of the second amount (to cover five months in 1979), the income would, for the first operational year, be 1,240,000 Swiss francs.
4. For the same period of the first year, the estimated expenditure, on the same basis, would be (7/6 of 1,831,000 + 5/12 of 3,808,000 =) 3,723,000 Swiss francs, reduced by 180,000 Swiss francs (i.e., one-third of the reduction in expenditure of 537,000 Swiss francs over the three-year period 1978-1980--see document PCT/WG/BUD/I/6, paragraph 52(ii)) Total expenditure would therefore be 3,543,000 Swiss francs. Thus the deficit would be (3,543,000 - 1,240,000 =) 2,303,000 Swiss francs.
5. If now the fees and prices were, for the first year, to be lowered by approximately 40%, the income would be (60% of 1,240,000 =) 744,000 Swiss francs. Consequently, the deficit would be (3,543,000 - 744,000 =) 2,799,000 Swiss francs. In other words, the deficit would increase by (1,240,000 - 744,000 =) 496,000 Swiss francs or by approximately 14% of the expected expenditure. (The said 496,000 Swiss francs represent 8% of the triennial (1978 to 1980) budget of the PCT.) Naturally, if the reduction of the fees and prices causes a substantial increase in the number of international applications filed and the number of copies of PCT publications sold, the deficit may be less.
6. Thus the change in the financial situation of the PCT Union caused by a lowering of 40% of the fees and prices during the first year of operations would be marginal, both in absolute figures and in percentages.
7. The increased deficit, should it really materialize, would be carried forward on the accounts of the subsequent year or years.
8. In the case of the lowering of the fees by 40% for the first operational year, the International Bureau would not ask for an increase in the contributions either for 1978 or for 1979.
9. The first session of the Assembly may wish to decide that it be convened in extraordinary session towards the end of the one-year period, and modify the fees, if desirable, in the light of the trend in the number of international applications filed and other factors which only experience will make it possible to discern.

[Annex V follows]

DRAFT AMENDMENTS TO RULES 58 AND 61

(i) Add to Rule 58 the following:

58.2 Failure to Pay

(a) Where the preliminary examination fee fixed by the International Preliminary Examining Authority under Rule 58.1 (b) is not paid as required under that Rule, the International Preliminary Examining Authority shall invite the applicant to pay the fee or the missing part thereof within one month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the preliminary examination fee will be considered as if it had been paid on the due date.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the demand shall be considered as if it had not been submitted.

58.3 Refund

The International preliminary Examining Authorities shall inform the International Bureau of the extent if any to which and the conditions if any, under which, they will refund any amount paid as a preliminary examination fee where the demand is considered as if it had not been submitted under Rule 57.4(c) Rule 58.2(c) or Rule 60.1(c) and the International Bureau shall promptly publish such information.

(ii) In the second sentence of Rule 61.1(b), replace “Rules 57.4(c) or 60.1(c)” by “Rule 57.4(c), 58.2(c) or 60.1(c).”

[Annex VI follows]

DRAFT DECISIONS CONCERNING THE PCT COMMITTEE FOR  
TECHNICAL COOPERATION (PCT/CTC)

The Assembly of the PCT Union, at its first session held from April 10 to 14, 1978, adopts the following decisions:

1. With reference to PCT Article 56 (1) and (2), the Assembly hereby establishes the PCT Committee for Technical Cooperation (PCT/CTC) and appoints, in addition to the *ex-officio* members according to PCT Article 56 (2) (b), all States members of the PCT Union as members of the said Committee, it being understood that the appointment of any State which will become a member of the PCT Union in the future shall take effect on the date on which such State becomes a member of the PCT Union. Finally, the Assembly decides that once the number of States members of the PCT Union reaches 30, it will, in its session following such an event, reconsider the question of the composition of the said Committee.
2. With reference to PCT Article 56 (8), the Assembly decides that it will itself establish and, where necessary in the future, amend the Rules of Procedure of the PCT Committee for Technical Cooperation (PCT/CTC).
3. With reference to its decision under PCT Article 56 (8), the Assembly hereby establishes the Rules of Procedure of the PCT Committee for Technical Cooperation as set out in Annex VII.
4. With reference to the decision taken by the Executive Committee of the Paris Union and the WIPO Coordination Committee in their September 1977 sessions, establishing the WIPO Permanent Committee on Patent Information (WIPO/PCPI), in which it was agreed, *inter alia*, that the meetings of PCT/CTC “shall be joint” with those of WIPO/PCPI, “it being understood that the activities of the said Committees will be coordinated and it being further understood that, where decisions are made by [PCT/CTC] . . . , only the members of [PCT/CTC]. . . should vote” (AB/VIII/16, Annex B, Decision, paragraph 4), and recommending that the Assembly of the PCT Union “endorse the above measures,” the Assembly decides to endorse the measures in question.

[Annex VII follows]

DRAFT RULES OF PROCEDURE OF THE PCT COMMITTEE  
FOR TECHNICAL COOPERATION (PCT/CTC)

Rule 1: Application of the General Rules of Procedure

The PCT Committee for Technical Cooperation (PCT/CTC, hereinafter referred to as “the Committee”), being, within the meaning of Rule 12 of the General Rules of Procedure of WIPO, a subsidiary body of the PCT Assembly, the provisions of the said General Rules of Procedure shall be the Rules of Procedure of the Committee, supplemented and amended by the provisions set forth hereinafter.

Rule 2: Special Observers

(1) States and intergovernmental authorities not members of the Committee which have the status of special observer in the PCT Assembly shall be invited as “special observers” to all sessions of the Committee.

(2) Special observers shall have the same rights in the sessions of the Committee as States members of the Committee, except the right to vote.

Rule 3: Joint Meetings with the WIPO Permanent Committee on Patent Information

The meetings of the Committee shall be joint with those of the WIPO Permanent Committee on Patent Information, it being understood that the activities of the two Committees shall be coordinated and that, where decisions are made by the Committee, only the members of the Committee shall vote.

[Annex VIII follows]

DRAFT DECISIONS CONCERNING THE PCT COMMITTEE FOR  
TECHNICAL ASSISTANCE (PCT/CTA)

The Assembly of the PCT Union, at its first session held from April 10 to 14, 1978, adopts the following decisions:

1. With reference to PCT Article 51 (1) and (2) (a), the Assembly hereby establishes the PCT Committee for Technical Assistance (PCT/CTA) and elects all States members of the PCT Union as members of the said Committee, it being understood that the election of any State which will become a member of the PCT Union in the future shall take effect on the date on which such State becomes a member of the PCT Union. Finally, the Assembly decides that once the number of States members of the PCT Union reaches 30, it will, in its session following such an event, reconsider the question of the composition of the said Committee.
2. With reference to PCT Article 51 (5), the Assembly decides that it will itself establish and, where necessary in the future, amend the Rules of Procedure of the PCT Committee for Technical Assistance (PCT/CTA).
3. With reference to its decision under PCT Article 51 (5), the Assembly hereby establishes the Rules of Procedure of the PCT Committee for Technical Assistance as set out in Annex IX.
4. With reference to the decision taken by the Executive Committee of the Paris Union and the WIPO Coordination Committee in their September 1977 sessions, establishing the WIPO Permanent Committee on Patent Information (WIPO/PCPI), in which it was agreed, *inter alia*, that the meetings of PCT/CTA “shall be joint” with those of the WIPO Permanent Committee for Development Cooperation Related to Industrial Property, “it being understood that the activities of the said Committees will be coordinated and it being further understood that, where decisions are made by [PCT/CTA] . . ., only the members of [PCT/CTA] . . . should vote” (AB/VIII/16, Annex B, Decision, paragraph 41, and recommending that the Assembly of the PCT Union “endorse the above measures,” the Assembly decides to endorse the measures in question.

[Annex IX follows]



DRAFT RULES OF PROCEDURE OF THE PCT COMMITTEE FOR  
TECHNICAL ASSISTANCE (PCT/CTA)

Rule 1: Application of the General Rules of Procedure

The PCT Committee for Technical Assistance (PCT/CTA, hereinafter referred to as “the Committee”), being, within the meaning of Rule 12 of the General Rules of Procedure of WIPO, a subsidiary body of the PCT Assembly, the provisions of the said General Rules of Procedure shall be the Rules of Procedure of the Committee, supplemented and amended by the provisions set forth hereinafter.

Rule 2: Special Observers

(1) States not members of the Committee which have the status of special observer in the PCT Assembly, as well as intergovernmental authorities which have such a status, shall be invited as “special observers” to all sessions of the Committee.

(2) Special observers shall have the same rights in the sessions of the Committee as States members of the Committee, except the right to vote.

Rule 3: Observers

The Director General shall, on his own initiative or at the request of the Committee, invite representatives of interested international non-governmental organizations to attend the sessions of the Committee in an observer capacity.

Rule 4: Joint Meetings with the WIPO Permanent Committee for Development Cooperation Related to Industrial Property

The meetings of the Committee shall be joint with those of the WIPO Permanent Committee for Development Cooperation Related to Industrial Property, it being understood that the activities of the two Committees shall be coordinated and that, where decisions are made by the Committee, only the members of the Committee shall vote.

[Annex X follows]

DRAFT DECISIONS CONCERNING THE PCT COMMITTEE FOR  
ADMINISTRATIVE AND LEGAL MATTERS (PCT/CAL)

The Assembly of the PCT Union, at its first session held from April 10 to 14, 1978, adopts the following decisions:

1. With reference to PCT Article 53(2) (a) (viii), the Assembly hereby establishes the PCT Committee for Administrative and Legal Matters (PCT/CAL) and appoints all States members of the PCT Union and the International Searching and Preliminary Examining Authorities as members, it being understood that, where any such Authority is the national Office of a State member of the PCT Union, that State shall not be additionally represented on the Committee. It is also understood that the appointment of any State which will become a member in the future shall take effect on the date on which such State becomes a member of the PCT Union.
2. The Assembly decides that it will itself establish and, where necessary in the future, amend the Rules of Procedure of the PCT Committee for Administrative and Legal Matters (PCT/CAL).
3. With reference to its decision concerning the establishment and amendment of the Rules of Procedure of the PCT Committee for Administrative and Legal Matters, the Assembly hereby establishes those Rules of Procedure as set out in Annex XI.

[Annex XI follows]

DRAFT RULES OF PROCEDURE OF THE PCT COMMITTEE FOR  
ADMINISTRATIVE AND LEGAL MATTERS (PCT/CAL)

Rule 1: Composition

The PCT Committee for Administrative and Legal Matters (PCT/CAL, hereinafter referred to as “the Committee”) shall have as members the States members of the PCT Union and the International Searching and Preliminary Examining Authorities, it being understood that, where any such Authority is the national Office of a State member of the PCT Union, that State shall not be additionally represented on the Committee.

Rule 2: Terms of Reference

The Committee shall deal with matters concerning

(i) the relationship between the International Bureau on the one hand and the applicants, the receiving Offices, the designated Offices, the elected Offices, the International Searching Authorities and the International Preliminary Examining Authorities on the other hand,

(ii) the relationship between the applicants on the one hand and the receiving Offices, the designated Offices, the elected Offices, the International Searching Authorities and the International Preliminary Examining Authorities on the other hand,

(iii) the relationship between the receiving Offices, the designated Offices and the elected Offices on the one hand and the International Searching Authorities and the International Preliminary Examining Authorities on the other hand,

(iv) fees, forms, procedures and publications under the PCT,

(v) other administrative and legal questions concerning the application of the PCT.

Rule 3: Application of the General Rules of Procedure

The Committee, being, within the meaning of Rule 12 of the General Rules of Procedure of WIPO, a subsidiary body of the PCT Assembly, the provisions of the said General Rules of Procedure shall be the Rules of Procedure of the Committee, supplemented and amended by the provisions set forth hereinafter.

(1) States not members of the Committee which have the status of special observer in the PCT Assembly, as well as intergovernmental authorities which have such a status and which are not members of the Committee, shall be invited as “special observers” to all sessions of the Committee.

(2) Special observers shall have the same rights in the sessions of the Committee as members of the Committee, except the right to vote.

Rule 5: Observers

The Director General shall, on his own initiative or at the request of the Committee, invite representatives of interested organizations to attend the sessions of the Committee in an observer capacity.

Rule 6: Working Groups

The Committee may, with the approval of the Assembly, set up working groups for the purposes of dealing with specific questions. It shall decide their composition, terms of reference, duration and rules of procedure.

[Annex XII follows]

COPYRIGHT IN PCT PUBLICATIONS  
*Memorandum by the International Bureau*<sup>†</sup>

1. The Working Group on Budgetary Questions established by the PCT Interim Advisory Committee for Administrative Questions (hereinafter referred to as “the Interim Committee”) in its session held from February 28 to March 4, 1977, asked the International Bureau to survey the Copyright situation of the future PCT publications --mainly the pamphlets containing the international applications and the PCT Gazette (hereinafter referred to as “the pamphlets” and “the Gazette, Irrespectively) --particularly in those countries which could be expected to be most interested in such publications, in order to assess the possibilities of preventing the unauthorized reproduction and subsequent distribution of the said publications (see document PCT/WG/BUD/I/6, paragraph 33).
2. International applications are works according to the definition given by copyright laws to the concept of “work” in that they are original writings. Copyright in any international application originally vests in its author, that is, normally the applicant. It is less clear whether, when filing his international application, the applicant transfers the entire copyright in it to WIPO or merely gives an exclusive (or non-exclusive?) license to WIPO for those purposes which are provided for in the PCT (reproduction, abstracting, publication, distribution without charge, sale).
3. Once the pamphlet is made up by WIPO, it contains, in addition to the international application, a title page with various new data, an abstract which will frequently be different from the one written by the applicant, and the international search report. Some of these new elements will not be the work of WIPO and, where they are not, questions arise that are similar to those indicated in the preceding paragraph in connection with the international application *stricto sensu*.
4. In any case, the pamphlet itself - - including in particular its front page (both as to its content and as to its layout) --is what is called in copyright terminology a “compilation,” with most of its components derived from the works of others but, in itself and taken as a whole, it is a further work in which the copyright vests in the compiler - author, that is, WIPO. The same is true in respect of the Gazette.
5. Protocol 2 of the Universal Copyright Convention (hereinafter referred to as “the Protocol” stipulates that “the protection provided for in Article ++(1) of [Universal Copyright] Convention shall apply to works published for the first time by the united Nations, by the Specialized Agencies in relationship therewith ... “(paragraph 1.(a)), whereas it follows from Article II (1) of the said Convention that the protection to be granted is the same protection as that which any State party to the Convention “accords to works of its nationals first published in its own territory.” The World Intellectual Property Organization (WIPO) being a Specialized Agency in relationship with the United Nations, and the pamphlets and the Gazette being works published for the first time by such an Agency, the protection provided for by the Protocol will apply to the said pamphlets and the said Gazette.
6. It seems to be irrelevant in this connection that some of the States party to the Universal Copyright Convention deny, in their national laws, copyright protection to Government

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<sup>†</sup> WIPO document PCT/AAQ/VIII/4

publications in general or to some Government publications in particular, and among the latter, to patent applications or patents published by their national Patent Office and to the official Gazette of such an Office. Such denial is usually motivated by the consideration that publications produced "at the expense of the taxpayer" should not be burdened by copyright. Such a consideration is, naturally, valid only where the national Patent Office is totally or heavily subsidized "by the taxpayer." In any case, whatever the reasons of any State may be for denying copyright protection to the publications of its own Government and even if such reasons could be extended by analogy to publications of intergovernmental organizations, they will be overridden by the Protocol, which does not allow any extension, by analogy, of any national regime concerning Government publications to intergovernmental publications but, on the contrary, expressly and clearly obliges all States which have ratified, accepted or acceded to the Protocol to protect the publications of, inter alia, WIPO.

7. The States which, at the present time, are bound by the Protocol are the following 57: Andorra, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Chile, Costa Rica, Cuba, Czechoslovakia, Democratic Kampuchea, Denmark, Ecuador, Finland, France, Germany (Federal Republic of), Ghana, Greece, Guatemala, Haiti, Holy See, Hungary, India, Ireland, Israel, Italy, Japan, Kenya, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Senegal, Spain, Sweden, Switzerland, Tunisia, United Kingdom, United States of America, Venezuela, Yugoslavia (list of countries taken from Unesco Copyright bulletin, Volume XI, No.1, 1977).

8. As can be seen from the above list, practically all States (with the possible exception of Canada) in which the pamphlets and the Gazette published by WIPO under the PCT will be of interest --and in which anyone might be tempted to reproduce and sell them--are bound by the Protocol. Consequently, any use in those countries of the pamphlets and the Gazette protected by the copyright laws of those countries will require the authorization of WIPO.

9. What are such uses? One can confidently say that in all the 57 countries they comprise reproduction, irrespective of the process applied (by setting new type, by photographic means, in the form of paper copies or microfilms, etc. ) and the distribution free of charge or the sale of the copies so reproduced. In the majority of States, however, reproduction for personal use is permitted without the authorization of the owner of the copyright and without any payment to him.

10. Would the protection based on the Protocol be dependent on the use of the copyright notice (the symbol © accompanied by the name of the copyright proprietor and the year of first publication) provided for in Article III (1) of the Universal Copyright Convention? With the possible exception of the United States of America and a few Latin American countries, it would not. Prudence would counsel affixing a copyright notice at least on each issue of the Gazette but preferably also on each pamphlet. The Interim Committee may wish to express its view on the desirability of affixing the said notice. Ultimately, the decision on the question should be taken by the PCT Assembly.

[Anne XIII Follows]

REPORT OF THE EIGHTH SESSION OF THE PCT INTERIM ADVISORY COMMITTEE  
FOR ADMINISTRATIVE QUESTIONS  
(WIPO document PCT/AAQ/VII/21 of October 17, 1977)

Excerpt

Copyright protection of PCT publications

45. Discussions were based on document PCT/AAQ/VIII/4.
46. Several Delegations questioned whether copyright protection of PCT publications could be maintained having regard to the philosophy of the patent system in general and of the PCT itself, and also having regard to certain national laws which did not give protection to official publications.
47. The Delegation of the United States of America indicated that a distinction could be made between copyright protection for the pamphlet and for the other WIPO publications. It was noted that, since WIPO actually prepared only a small amount of the entire text of the pamphlet, adequate copyright protection thereof may be difficult to achieve.
43. The Director General, in response to those questions, emphasized that the system of protection relevant for PCT publications was a special system applicable under the Universal Copyright Convention to publications of Organizations within the family of the United Nations. Therefore the considerations relating to national patent publications could not be applied. For the PCT, the protection of its publications had serious budgetary implications which ultimately meant implications for the member States. From a legal viewpoint, one should not draw an analogy between the approach which national legislations take towards their own official publications and the protection of the publications of an international organization. Protocol 2 to the Universal Copyright Convention had been established specifically for the protection of the publications of the United Nations and its Specialized Agencies. This underlined the different legal obligations which attached to such publications even in those countries which did not protect their own official publications.
49. The Delegations of the United Kingdom, Sweden, France, Brazil and Japan referred to various national practices involving the copying of patent documents in response to various national needs and particularly within their Patent Offices either for internal purposes or for the needs of the public, especially through their Patent Office libraries. The Delegation of the United Kingdom, recognizing the paramount importance of revenue deriving from the sale of PCT publications, stressed the desirability of defining the limitations, if any, that should be placed on the copying of those publications by Patent Office libraries from the viewpoint both of PCT budgetary considerations and of avoiding undue administrative costs by the Patent Offices in the event that they should have to monitor copying of PCT publications. The Delegation noted that copying by its Patent Office Library was on a non-profit basis. The Delegation of Brazil expressed the special interest of developing countries in free access to patent documents.
50. The Director General observed that, if unrestricted copying were to take place, there would be no practical difference, as regards the ultimate consequences, between copying by Patent Offices or their libraries and copying on a commercial basis. What could be needed were individual arrangements with the national Patent Offices.
51. The Representative of the Interim Committee of the EPO questioned whether International Searching Authorities and International Preliminary Examining Authorities would be expected to pay fees for making copies of PCT pamphlets cited in international

search and international preliminary examination reports. The Director General said in reply that possibly such Authorities and the national Offices should enter into an agreement with the International Bureau on the conditions and limits under which copying of PCT publications could take place.

52. In response to a suggestion, by the Delegation of the Netherlands that prices of pamphlets should be lowered in order to make copying uninteresting, the International Bureau said that, due to the low cost of making copies and the budgetary requirements of the PCT, it would not be possible to lower the price to an extent which would prevent copying by this means.

53. The Delegation of Japan expressed the opinion that the revenue from PCT publications should constitute an essential part of the income of the International Bureau and that it was also vital to secure income from PCT publications in order to have a reliable source of revenue which was required for the effective implementation of the PCT and, therefore, that Delegation was ready to recognize copyright in PCT publications in Japan. The Delegation stressed, however, that such copyright protection should not extend to the sphere which was recognized as being outside the scope of the said protection, such as facilitating public inspection of PCT publications and using such publications as examination material for the Patent Office examiners. In this connection, the Delegation of Japan asked whether its Office would be allowed to reproduce the PCT publications as part of the Japanese Patent Office Gazette in order to make known the legal effects of such publications.

54. Upon being asked whether the International Bureau was prepared to undertake a study of the situation existing in relation to copying on the national level, the Director General indicated his willingness to do so, it being understood that the national Offices would be prepared to respond to a questionnaire seeking statistical and other factual information.

55. The Interim Committee agreed that a study be undertaken by the International Bureau on this basis.

[Annex XIV follows]

NUMBER OF COPIES OF PATENTS DOCUMENTS  
MADE IN NATIONAL OFFICES; PRICE OF SUCH COPIES

PCT STATES	MONTHLY NUMBER OF COPIES		PRICES IN SWISS FRANCS PER				NOTES
	National documents	Foreign documents	A4-page	8-UP/Card	Document	Other	
1. Brazil	4,900	600	0.282		6.51 1.26		Foreign request plus mailing National request up to 50 pages per page over 50 if national request
2. France	31,200 pages (copies from printed docs) 455 to 3640 pages (copies from 8-UP cards) 1,430 pages on microfilm	16,800 pages (copies from printed docs) 245 to 1960 pages (copies from 8-UP cards) 770 pages on microfilm	0.78	2.23		2.70 minimum up to 10 pages, 0.18 per extra page 1.34 minimum up to 30 pages, 0.045 per extra page, 98.34 per 30m roll 2.01 minimum up to 30 pages, 0.07 per extra page, 44.7 per 30m roll	lump sum per print-out of 1 to 8 pages on negative microfilm with flow camera film to film copy
3. Germany (Federal Republic of)	184,750	24,750	0.9	-	4.05		by the Patent Office, including non-patent literature by private firms
4. Luxembourg	15	zero	0.74	-			
5. Soviet Union	restricted number only		-	-			further data will follow
6. Sweden	7,000		0.68	-		Printed Swedish Patent = 4.55	
7. Switzerland	10,000 printed	900 copies	0.30 (min.3.-)		2,60 (SOSwitz.) 2,70 (SOForeign) 3.00 (UPI)		Stand.order Switzerland Stand.order foreign Unit price individual order



PCT STATES	MONTHLY NUMBER OF COPIES		PRICES IN SWISS FRANCS PER				NOTES
	National documents	Foreign documents	A4-page	8-UP/Card	Document	Other	
8. United Kingdom	53,000 printed 12,000 copies 900 copies	20,250	0.24 0.36	-	3.75 3.75	while-you-wait postal service	UKPO Sales Branch " " Library "
9. United States of America	300,000	1,000	0.65 (Foreign documents)		1.08 (National documents)		

NON-PCT STATES	MONTHLY NUMBER OF COPIES		PRICES IN SWISS FRANCS PER				Document	Other	NOTES
	National documents	Foreign documents	A4-page	8-UP/Card	Document	Other			
10. Argentina	2,000	100	0.184	-	-	-	-	-	
11. Australia	150	250	-	3.29	-	-	-	printed documents other documents or out of print documents	
12. Belgium		30,000 copies 4,500 8-UP Cards	0.465	0.62	-	-	-	CA patents (after 1948)	
13. Canada	10,500	500	0.49	-	1.96	-	-	foreign patents and CA before 1948 follow 1.25 Danish kroner	
14. Denmark	1,070	2,400	0.43	-	-	-	-		
15. Finland	3,000	12,000	0.53	-	-	-	-		
16. Hungary	33,000 copies 400 microfilms 500 print outs	900 copies 24x36	0.52	-	-	0.21/MF 24x36 0.83	-	Microfilm Print outs	
17. Ireland		750	0.20	-	-	-	-		
18. Israel	300	100	0.43	-	-	-	-		
19. Japan		*	*	*	*	*	*	*	
20. Netherlands	22,000	22,800	-	2.26 A 1.81 C	3.62	-	-	A unexamined applications C patents	
21. Norway	1,000	800	-	-	3.2	-	-	-	

\* Information not yet received.

[End of Annexes]  
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