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PROPOSED RECOMMENDATION ON THE APPLICATION, IN THE CASE OF
INTERNATIONAL APPLICATIONS, OF NATIONAL REMEDIES PRESERVING THE
RIGHTS OF APPLICATIONS

Proposal submitted by the Royal Patent and Registration Office of Sweden

1. The Director General of the Royal Patent and Registration Office of Sweden has submitted the proposal set out in the Annex to this document.
2. The International Bureau will, if so requested by the Assembly, submit a draft of a resolution giving effect to the said proposal.

[Annex follows]

* 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

ANNEX

PROPOSAL SUBMITTED BY THE ROYAL PATENT AND
REGISTRATION OFFICE OF SWEDEN

1. The PCT system has received an encouraging acceptance since the start of PCT operations in 1978, and with increased experience of the system on the part of the users, and of the authorities involved further progress will no doubt be achieved.
2. In order to ensure the continued use of the PCT by those who have already acknowledged its utility and to encourage its acceptance by the many more potential users, it is of the utmost importance that the system functions in a reliable manner. It is essential, in particular, that the applicant who entrusts his invention to the system has every reason for confidence in its reliability. One of the essential prerequisites for such confidence is that the rights of the applicant should not be affected by errors or omissions arising from events not to be foreseen by him or beyond his control. In the view of the Swedish Patent Office, the PCT gives less express assurance than is desirable with respect to errors or omissions to which what might be termed official mistakes have contributed.
3. The past experience of the Swedish Patent Office has shown that errors or omissions by one of the authorities may occur in the execution of their tasks which may affect the rights of the applicant. Unless these omissions and errors can be rectified and the applicant be put in a position as if the error or omission had not occurred, the further development of the PCT could be seriously prejudiced.
4. Most of the authorities acting under the PCT system apply a procedure under the national law which allows the correction of the consequences of errors or omissions made by the authority and the restoration of whatever rights may have been affected. As a minimum, these procedures should be applied not only in the case of national applications but also for international applications processed before the authority. Indeed, the PCT probably requires this to be done at least where the result of the error or omission (as is most often the case) is the missing of a time limit (see Article 48(2)).
5. However, the procedure under the PCT system necessarily involves action with respect to one and the same application by several authorities. The action performed by one authority in compliance with its tasks has effect for the other authorities involved in the processing of a given international application. Whilst such an effect is provided in the Treaty, no specific provisions exist for the case, admittedly rare; where an error or omission made by one authority may have effect in the processing of an international application before another authority. The interdependence of the PCT authorities should require that an erroneous action taken by one of the authorities in executing its functions under the PCT should be treated by the other authorities as if the error or omission had occurred during its own processing of the international application.
6. It follows that the procedural remedies that exist for errors or omissions committed by an authority in its own processing of patent applications should be applied, with the aim of restoring the rights of the applicant, also to errors or omissions committed in the processing of international applications by other authorities. Where the applicant's failure to meet a requirement can be attributed to such error or omission, his failure should be excused.

7. In order to take at least a first step towards resolving the problems canvassed above, I request that the PCT Assembly be asked to adopt a resolution recommending that, where a PCT authority has committed an error or omission during the processing of an international application which has affected the rights of the applicant, that authority and any other PCT authority and the designated and elected Offices should apply to the international application, in the same manner as to national applications, whatever remedies exist for the applicant under the national law or practice applicable before such authority or Office.

[End of Annex and of document]