

# WIPO



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(PCT UNION)

ASSEMBLY

**Fifth Session (3<sup>rd</sup> Extraordinary)\***  
**Geneva, June 9 to 16, 1980**

PROPOSAL FOR AMENDMENT TO THE PCT REGULATIONS

*Made by the International Bureau*

The following new text of Rule 16bis (replacing that contained in documents PCT/A/V/4, page 35 and PCT/A/V/13) is proposed by the International Bureau:

Rule 16bis

Advancing Fees by the International Bureau

*16bis.1 Guarantee by International Bureau*

(a) Where, by the time they are due under Rule 14.1(b), Rule 15.4(a) or (c) and Rule 16.1(f), the receiving Office finds that in respect of an international application no fees were paid to it by the applicant, or that the amount paid to it by the applicant is less than what is necessary to cover the transmittal fee, the basic fee and the search fee, the receiving Office shall charge the amount required to cover those fees, or the missing part thereof, to the International Bureau and shall consider the said amount as if it had been paid by the applicant at the due time.

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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)

(b) Where, by the time, it or they are due under Rule 15.4(b) or (c), the receiving Office finds that in respect of an international application the payment made by the applicant is insufficient to cover the designation fees necessary to cover all the designations, the receiving Office shall charge the amount required to cover those fees to the International Bureau and shall consider that amount as if it had been paid by the applicant at the due time.\*

(c) The International Bureau shall transfer from time to time to each receiving Office an amount which is expected to be necessary for covering any charges that the receiving Office has to make under paragraphs (a) and (b). The amount and the time of such transfers shall be determined by each receiving Office according to its own wish. The charging of any amount under paragraphs (a) and (b) shall not require any advance notice to, or any agreement by, the International Bureau.

(d) Each month, the receiving Office shall inform the International Bureau of the charges made under paragraphs (a) and (b).

#### *16bis.2 Obligations of the Applicant, etc.*

(a) The International Bureau shall notify the applicant of any amount by which it was charged under Rule 16bis.1 (a) and (b) and shall invite him to pay to it, within one month from the date of the notification, the said amount augmented by a surcharge of 50%, provided that the surcharge will not be less, and will not be more, than the amounts indicated in the Schedule of Fees.\*\* The notification may refer to the charges made both under Rule 16bis.1 (a) and (b) or, at the discretion of the International Bureau, there may be two separate notifications, one referring to charges made under Rule 16bis.1(a), the other referring to charges made under Rule 16bis.1(b).

(b) If the applicant fails to pay, within the said time limit, to the International Bureau the amount claimed, or pays less than what is needed to cover the transmittal fee, the basic fee, the search fee, one designation fee and the surcharge, the International Bureau shall notify the receiving Office accordingly and the receiving Office shall declare the international application withdrawn, and the receiving Office and the International Bureau shall proceed as provided in Rule 29.

(c) If the applicant pays, within the said time limit, to the International Bureau an amount which is more than what is needed to cover the fees and surcharge referred to in paragraph (b) but less than what is needed to cover all the designations maintained, the International Bureau shall notify the receiving Office accordingly and the receiving Office shall apply the amount paid in excess of what is needed to cover the fees and surcharge referred to in paragraph (b) in the order provided for in Rule 15.5(b) (i) to (iii).

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\* Where the applicant has indicated one or more (but not all) designations under Rule 15.5(b) (i), this paragraph applies only in respect of the designations covered by that indication.

\*\* The Schedule of Fees will provide, under Rule 16bis.2(b), for 200 Swiss francs (the minimum) and 500 Swiss francs (the maximum).

(d) The receiving Office shall not return to the International Bureau any amount that it has charged to that Bureau for covering the transmittal fee.

(e) Where the international application is considered withdrawn, any amount charged to the International Bureau, other than the amount needed to cover the transmittal fee and the search fee transferred by the receiving Office to the Searching Authority, shall be returned by the receiving Office to the International Bureau.

(f) Where the international application is considered withdrawn, any search fee charged by the receiving Office and transferred to the Searching Authority shall be transferred by that Authority to the International Bureau unless the said Authority has already started the international search.

(g) Where paragraph (c) applies, the amount charged by the receiving Office to the International Bureau for designations which, as a consequence of the application of the order provided in Rule 15.5(b) (i) to (iii) are not maintained, shall be returned to the International Bureau by the receiving Office.

Delete Rule 15.5(a)

*Comment by the International Bureau*

The proposed text of Rule 16bis provides for a system which guarantees to the receiving Office the timely payment of all international fees, thus preventing any loss of rights of applicants due to failure to pay the prescribed fees without having been invited to effect the payment of any missing fee or part thereof.

The receiving Office shall automatically, where the applicant did not pay the required fees in full or in part, charge the International Bureau with the missing amount. For this purpose, the International Bureau shall open and maintain in each receiving Office a deposit account from which the receiving Office shall draw any amount not paid by the applicant within the prescribed time limit. The deposit account shall be adjusted promptly by the International Bureau on receipt of a notification from the receiving Office whenever the amount deposited is deemed, by the receiving Office, to be insufficient to cover its expected needs during the following month.

It is expected that the mechanism provided for in, this Rule will be applied very infrequently because of the cost it represents for the applicant. The International Bureau carries no risk except in respect to the transmittal fee which will not be reimbursed to it, and in respect to the search fee which will be reimbursed to it only if the search has not yet started. Any losses resulting from such risk as well as the administrative expenses should be amply covered by the surcharge of 50 % provided for. This prediction will be verified after one or two years of experience, and if it proves to be too optimistic, the mechanism provided for in the new Rule may be abolished, or the surcharges increased, or the Rule otherwise modified.

The International Bureau will report on its experience and the costs and receipts at least once a year to the Assembly of the PCT Union.

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