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AMENDMENTS TO THE PCT REGULATIONS (BASED ON THE EXPERIENCE OF
THE INTERNATIONAL BUREAU)

(ADDENDUM)

Memorandum prepared by the International Bureau

This document contains two additional proposals for amendments to the PCT Regulations. They are additional to the proposals contained in document PCT/A/V/5. They concern Rules 4.10(b) and 49.3(new).

* 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

Ad Rule 4.10(b)

A mistake sometimes made by applicants under the PCT is the accidental omission from the priority claim made in Box VI of the request form of an indication of the country in which the earlier application was filed (or if the earlier application is a regional application, at least one of the countries for which it was filed); see paragraph 6 of document PCT/A/V/6 Add. 2. As this Rule stands at present, such omission results in the priority claim being considered not to have been made “for the purposes of the procedure under the Treaty” (Rule 4.10(b) (i)). The same applies if the date of filing is omitted (Rule 4.10(b) (ii)) but in practice this occurs less frequently. It would seem that, even under the present rules, the question whether the priority claim will be considered for the purposes of the national (or regional) procedures in the designated Offices depends on the position taken by the national law in application of Article 4D(1), last sentence, of the Paris Convention for the Protection of Industrial Property.

There seems to be no good reason why any obvious error concerning the indication of the priority country or priority date should not be a correctible obvious error under Rule 91. Such errors would, in particular, be considered obvious where the (correct) indication of the country or date clearly results from the copy of the priority document furnished with the international application. The result would be that, where the correction is admitted, and assuming that there is a single priority claim, the priority date of the international application would correspond to the filing date of the earlier application (rather than the international filing date, as is the case under the Rule as it stands at present).

It is proposed that Rule 4.10(b) be amended accordingly.

Rule 4.10(b)

Add to the existing text: “except where the fact that the indication of the said country or the said date is missing or is erroneous results from an obvious error of transcription; whenever the identity or correct identity of the said country, or the said date or the correct date, may be established on the basis of the copy of the earlier application which the receiving Office receives before it transmits the record copy to the International Bureau, the error shall be considered as an obvious error.”

Ad Rule 49.3

In document PCT/A/V/6, paragraphs 21 to 25, the meaning of “international application” in Article 22 is discussed with a view to determining what translations the applicant must furnish to the designated Office. It was concluded that there should be no obligation to translate claims which have been replaced by amendments that this should be expressly stated in the Regulations and that Rule 49.3 should be cancelled. It is proposed to replace the present Rule 49.3 by a new Rule reflecting the above-mentioned conclusions.

RULE 49

LANGUAGES OF TRANSLATIONS AND AMOUNTS OF FEES UNDER
ARTICLE 22(1) AND (2); TRANSLATION OF AMENDMENTS

49.1 [No change]

49.2 [No change]

49.3 Translation of Amendments

Where the claims have been amended under Article 19(1), the claims as amended (but not the claims as filed) shall be translated.

[End of document]