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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

ASSEMBLY

Fifth Session (3rd Extraordinary)*
Geneva, June 9 to 16, 1980

DEVELOPMENT OF THE PCT UNION

Memorandum prepared by the International Bureau

INTRODUCTION

1. Membership of the PCT by the greatest possible number of States eligible to ratify or accede to the Treaty is but one aspect of the development of the PCT Union questions concerning which are entrusted to the Assembly under Article 53(2) (a) (i) of the PCT. Still, at a stage when the PCT has 29 Contracting States and the number of States eligible to be members of the PCT Union ("eligible States") is 90 (since any State party to the Paris Convention for the Protection of Industrial Property may become a member of the PCT), it is almost inescapable that membership of the PCT (and the closely related question of acceptance of Chapter II of the PCT) should be regarded as the priority question which the Assembly should consider in relation to the development of the PCT Union.

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MEMBERSHIP OF THE PCT UNION

2. The following thirteen States were bound by the PCT upon its entry into force on January 24, 1978: Cameroon, Central African Republic, Chad, Congo, Gabon, Germany (Federal Republic of), Madagascar, Malawi, Senegal, Switzerland, Togo, United Kingdom, United States of America.
3. By the end of 1978, the following seven States had also become bound by the PCT (in chronological order of the entry into force of the Treaty for the said States): France, Soviet Union, Brazil, Luxembourg, Sweden, Japan, and Denmark.
4. Of the 20 States which by the end of 1978 had become bound by the PCT, fifteen had accepted Chapter II of the PCT while the following five had made reservations excluding the operation of Chapter II: Denmark, France, Luxembourg, Switzerland, and United States of America.
5. In 1979, the following four States had also become bound by the PCT (in chronological order of the entry into force of the Treaty for the said States): Austria, Monaco, Netherlands, and Romania.
6. None of the said four States made a reservation excluding the operation of Chapter II of the PCT.
7. In 1980 three more States had become bound by the PCT up to the time of writing the present document and two further States had deposited instruments of ratification or accession by virtue of which they would become bound by the PCT in 1980 upon elapse of the period specified in Article 63(2). These States (in chronological order of entry into force of the Treaty for the said States) are: Norway, Liechtenstein, Australia, Hungary, (entry into force on June 27, 1980) and the Democratic People's Republic of Korea (entry into force on July 8, 1980).
8. Of the five States mentioned in the preceding paragraph two, Norway and Liechtenstein made a reservation excluding the operation of Chapter II of the PCT.
9. In summary, twenty-nine States have so far become bound, or taken all steps necessary to become bound, by the PCT of which seven States have made reservations excluding the operation of Chapter II of the Treaty.

PROMOTION OF RATIFICATION OF, OR ACCESSION TO, THE PCT

10. The Assembly has already recognized the need to promote acceptance of the PCT and has taken positive and concrete steps in that regard by providing funds in the PCT budget for the International Bureau to plan and carry out activities, to make contacts and to publish documents which will "encourage as many countries as possible [from among the 90 States members of the Paris Union] to ratify or accede to the PCT" (see document AB/X/2, activity REG 01). The International Bureau will continue, within the limits of its budgetary means, pursuing actively with prospective member States questions related to their ratification of or accession to the PCT and making contacts and publishing documents promoting acceptance of the Treaty.

11. On occasions it is appropriate, and even desirable that the International Bureau should take the initiative, on behalf of and in the interests of the PCT Union, in seeking ratification of, or accession to, the PCT by an eligible State. In the view of the International Bureau, an expression of the interest of the States members of the PCT Union in as many as possible eligible States becoming party to the PCT by means of a resolution to that effect which the International Bureau would also be requested to bring to the notice of eligible States on appropriate occasions would assist with regard to contacts with States with a view to their becoming party to the PCT. The draft of such a possible resolution is set out in the Annex to this document.

12. The Assembly is invited to consider, and if it sees fit to adopt, the resolution set out in the Annex.

REGIONAL TREATIES

13. Certain States members of the PCT Union are parties to regional patent treaties, namely, the European Patent Convention, the Libreville Agreement and the Switzerland-Liechtenstein patent treaty. In the case of States party to the European Patent Convention, an international application may be used to obtain either a European patent (granted by the European Patent Office) or a national patent, except in the case of France for which only a European patent (granted by the European Patent Office) can be obtained through an international application; in the case of States party to the Libreville Agreement, only an OAPI patent (granted by the African Intellectual Property Organization) can be obtained through an international application; in the case of the two States party to the Switzerland-Liechtenstein patent treaty, only a patent for both States (granted either by the European Patent Office or by the Swiss Intellectual Property Office) can be obtained through an international application.

14. Certain disadvantages flow from the fact that two States party to the European Patent Convention, Belgium and Italy are not party to the PCT; the other nine States party to the European Patent Convention, Austria, France Germany (Federal Republic of), Liechtenstein, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom are also party to the PCT. An applicant wishing to obtain a European patent for a number of States including Belgium and Ital, can only obtain such a patent for some of them by filing an international application under the PCT; for Belgium and Italy a separate (direct) European patent application must be filed.

15. The desirability of all States party to the European Patent Convention also being party to the PCT was recognized in a Declaration* made by the Governments of States members of

* DECLARATION ON THE RATIFICATION OF THE PATENT COOPERATION TREATY
THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC
COMMUNITY,

Upon signature of the Community Patent Convention,

Desiring to promote the initial entry into force of the Patent Cooperation Treaty at an early date and preferably at the same time as that of the European Patent Convention,

[Footnote continued on next page]

the European Economic Community at the time of the signature of the Community Patent Convention (Belgium and Italy being included amongst such States).

16. It would seem that the same disadvantage does not exist in the case of the Switzerland-Liechtenstein patent treaty or the Libreville Agreement even though 5 of the 11 States party to the latter Agreement, Dahomey, Ivory Coast, Mauritania, Nigeria and Upper Volta are not yet party to the PCT.

17. Under the Libreville Agreement, a unitary OAPI patent effective in all of the Contracting States is granted; consequently, the fact that certain Contracting States are not party to the PCT does not have any consequence as far as concerns applicants seeking an OAPI patent for those States. Of course, nationals and residents of those States may be denied the faculty of filing an international application so that the adherence of those States to the PCT is nevertheless desirable.

18. The Assembly is invited to note the particular desirability of all States party to the European Patent Convention and the Libreville Agreement being party to the PCT. As regards the States party to the Declaration on the Ratification of the Patent Cooperation Treaty made upon signature of the Community Patent Convention, which have not yet ratified the PCT, the Assembly is invited to express the interest of the PCT Union in such ratifications being effected at an early date, without waiting for the entry into effect of the Community Patent Convention.

CHAPTER II OF THE PCT

19. It has been noted in paragraphs 4, 6, 8 and 9 above that seven of the twenty-nine Contracting States party to the PCT have made a reservation under Article 64(1) of the Treaty excluding the operation as far as those States are concerned of Chapter II.

20. It is understood that, as regards Contracting States making this reservation which are party also to the European Patent Convention (France, Liechtenstein, Luxembourg and Switzerland), the initial limitation on the technical fields open for examination in the European Patent Office (which Office would be expected to be the competent International

[Footnote continued from previous page]

DECLARE that each intends to deposit its instrument of ratification of the Patent Cooperation Treaty at the same time as its instrument of ratification of the European Patent Convention or as soon as possible thereafter,

DECLARE further that they intend to consult, as necessary, with each other in this matter, in particular on the content of any declarations to be made by them under Article 64 of the Patent Cooperation Treaty.

Preliminary Examining Authority in the event that those States would be bound by Chapter II) was the reason for which this reservation was made. Consequently, it would seem to be logical, and it is hoped, that these reservations will be lifted considering the removal by the European Patent Office on December 1, 1979, of any limitations on international preliminary examination by reference to technical fields.

21. With regard to the reservation made by the United States of America under Article 64(1), it is also hoped that this reservation will be withdrawn having regard to the study of this question being undertaken by the competent national authorities in the United States of America (see document PR/PIC/II/13, paragraph 88).

22. *The Assembly is invited*

(i) *to note the present state of acceptance of Chapter II of the Treaty;*

(ii) *to express its interest in the possibility of acceptance of Chapter II by the Contracting States referred to in paragraphs 20 and 21.*

[Annex follows]

PCT/A/V/9

ANNEX

RESOLUTION

THE ASSEMBLY OF THE INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

Noting that the membership in the PCT Union is open to the States which are members of the Paris Union for the Protection of Industrial Property,

Being convinced that the participation in the PCT Union of as many States as possible of the Paris Union is in the interests of those States and their industries,

Resolves to:

- (1) Invite those States members of the Paris Union which are not members of the PCT Union to take, at an early date, the steps necessary to become members of the PCT Union;
- (2) Request the International Bureau, on occasions when it appears appropriate to do so, to bring this resolution to the notice of States members of the Paris Union which are not members of the PCT Union.

[End of Annex and of document]