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ASSEMBLY

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FILING OF INTERNATIONAL APPLICATIONS BY TELECOPIER

Memorandum of the International Bureau

1. At the request of the Japanese Patent Office, the International Bureau submits to the Assembly of the International Patent Cooperation Union (PCT Union) the question whether an international application which is received by the receiving Office through telecopier may be regarded as regularly filed under the Patent Cooperation Treaty (PCT).
2. It is recalled that the transmission of a document by telecopier allows texts and drawings to be transmitted by means of telecommunication from one place to another place, where they are received as a facsimile, namely, as an exact paper copy of the original.
3. In the opinion of the International Bureau, and for the reasons indicated below, an international application which is received by telecopier is to be regarded as regularly filed, but the receiving Office may consider that the application contains a formal defect albeit, fortunately, a correctable defect because of the absence of the original signature of the applicant or agent.

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4. An international application received by telecopier is to be accorded an international filing date if all the requirements listed in items (i) to (iii) of Article 11(1) of the PCT are complied with and there is no reason why they could not be complied with in such a case. If the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office, if the international application is in the prescribed language and if it contains an indication that it is intended as an international application, the designation of at least one Contracting State, the name of the applicant, a part which on the face of it appears to be a description and a part which on the face of it appears to be a claim or claims, the international filing date will be the date on which the facsimile reached the receiving Office, and the international application shall have the effect of a regular national application in each designated State as of that date (Article 11(3) of the PCT).

5. A question which then arises is whether the requirement relating to the signature of the international application (Article 14 (1) (a) (i) of the PCT and Rule 4.1(d) of the PCT Regulations) is complied with. Since the signature appearing on the facsimile is not an original signature but a copy thereof, the receiving Office may consider that the requirement is not complied with. If so, it must invite the applicant to furnish an original signature by submitting a replacement sheet for the last sheet of the request, where the signature appears (in Box No. VIII of the Form PCT/RO/101). The same would apply if an international application, filed by telecopier or in the traditional way, did not bear any signature, since lack of signature is one of the formal defects (Article 14(1)(a)(i)) that are correctable under Article 14(1)(b). In either case, the applicant will have to submit, in reply to the invitation of the receiving Office, a replacement sheet containing the original signature (Rule 26.4(a)).

6. It is to be noted that any application transmitted by telecopier may contain also other defects, namely the same kinds of defects as an international application filed in the traditional way, in particular, in respect of the required fitness for reproduction. All such formal defects may, under Article 14(1)(a), be corrected, upon invitation by the receiving Office, within a time limit fixed in the invitation to correct (Article 14(1) (b) and Rule 26.2). If such a defect is corrected within the said time limit, the international application continues to have the effect of a regular national application in each designated State as from the international filing date (Article 11(3)), which is not affected by the fact that a defect under Article 14 had to be corrected.

7. It is to be noted that the foregoing arguments are not based on Rule 92.4 since that Rule is expressly limited to the sending of documents “subsequent to the international application” (see paragraph (a) of that Rule) and does not deal with the filing of international applications.

8. *The Assembly is invited to give its opinion on the contents of this document.*

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