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INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

PCT COMMITTEE FOR TECHNICAL COOPERATION

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PCT MINIMUM DOCUMENTATION

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1. Article 56(3) of the Patent Cooperation Treaty (PCT) states, *inter alia*, that “[t]he aim of the [Committee for Technical Cooperation (“the PCT/CTC”)] shall be to contribute, by advice and recommendations: [...] (ii) to the securing, so long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports.”
2. PCT Article 15(4) states that “[t]he International Searching Authority [...] shall endeavor to discover as much of the relevant prior art as its facilities permit, and shall, in any case, consult the documentations specified in the Regulations.” PCT Rule 34 (“Minimum Documentation”) contains the definition of the documentation referred to in Article 15(4).
3. Recent developments in two areas have an impact on the definition of the PCT minimum documentation and may require consideration by the PCT/CTC. These developments concern first, traditional knowledge-related periodicals and databases, and, secondly, the use of databases in certain technical fields, as a supplement to paper-based non-patent literature specified in the PCT minimum documentation.

Traditional knowledge -related periodicals and databases

4. There have been a number of highly publicized incidents in which it has been alleged that patents have been granted to inventions which have been anticipated in traditional knowledge systems. Such traditional knowledge systems include both formal, recorded systems and informal systems in which knowledge is held and passed on within a particular community and often subject to customary protocols within that community.

5. Several efforts are underway to attempt to create a better interface between the patent system and traditional knowledge systems in order to ensure that the principle of universal novelty, which forms the basis of the international patent system, is fully respected. One such effort is taking place within the framework of the Special Union for the International Patent Classification (IPC Union), where the IPCC Committee of Experts has established a Task Force on Classification of Traditional Knowledge responsible for the investigation of existing classification tools for traditional knowledge and their relationship to the IPC. The Task Force has, in a preliminary report to the Committee of Experts, recommended that the most efficient way of developing classification tools for traditional knowledge would be their integration into the IPC. At its thirty-first session (February 25 to March 1, 2002), the Committee of Experts endorsed this recommendation and instructed the Task Force to continue its work and to prepare, by the end of 2002, an IPC revision proposal regarding classification of traditional knowledge documentation (see document IPC/CE/31/8, paragraphs 36 to 40).

6. A second effort has emerged in the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the IGC"), which, at its first session (April 30 to May 3, 2001), expressed support for a work program comprising, *inter alia*, the following items (see document WIPO/GRTKF/IC/1/3, paragraphs 1, 2 and 80):

1.1 Examination of the ways in which traditional knowledge -related documentation that was already disclosed and available to the public may be more effectively integrated into searchable prior art, in particular into classified, searchable sources of non-patent literature.

1.2 "Task B.3: The Member States may wish to consider revising existing criteria and developing new criteria which would allow the effective integration of traditional knowledge documentation into searchable prior art."

7. At its second session (December 10 to 14, 2001), the IGC:

(i) considered a Progress Report on the Status of Traditional Knowledge as Prior Art (see document WIPO/GRTKF/IC/2/6, paragraph 80) and, *inter alia* :

(ii) expressed support for the compilation of an inventory of existing traditional knowledge-related periodicals and agreed that, once such an inventory had been compiled, it might recommend that certain of those periodicals be considered by the International Searching Authorities for integration, as non-patent literature, into the minimum documentation list under the Patent Cooperation Treaty (PCT) (see document WIPO/GRTKF/IC/2/16, paragraph 154);

(iii) expressed support for a study on the feasibility of electronic exchange of traditional knowledge documentation data, including through the establishment of international online traditional knowledge databases and digital libraries (Activity 4, Task B.3) (see document WIPO/GRTKF/IC/2/16, paragraph 157).

8. At its third session (June 13 to 21, 2002), the IGChas confirmed the above and noted that the inventories in question have been compiled and are ready for submission onto the PCT/CTC; these inventories are the “Non-Exhaustive Inventory of Traditional Knowledge-Related Periodicals” and the “Non-Exhaustive Inventory of Traditional Knowledge-Related Databases” (for background, see documents WIPO/GRTKF/IC/3/5 (in particular, paragraphs 9 and 21) and 6).

Certain databases in various technical fields

9. If the PCT/CTC is considering the revision of the content of the PCT minimum documentation, it may wish to take advantage of the opportunity also to examine the growing use of certain databases by patent examiners. Such databases offer one means of contributing to the improvement of the quality of international searches, a subject that has been considered to be of great importance within the context of the ongoing reform of the PCT. Indeed, with the wider availability of the Internet in general in industrial property Offices and the availability of certain technical documents only on the Internet, it has become essential to address the issue of the composition of the non-patent literature part of the PCT minimum documentation as currently defined in PCT Rule 34.

10. It is proposed that the PCT/CTC recommend to the Assembly of the PCT Union that the Meeting of International Authorities under the PCT (PCT/MIA), comprising all International Searching Authorities and International Preliminary Examining Authorities, study this matter at its next sessions, the first of which is expected to be held in December 2002, and give a recommendation to the PCT/CTC on proposed modifications of PCT Rule 34 and proposed mechanisms for reviewing and maintaining the non-patent literature part of the PCT minimum documentation.

11. The PCT/CTC is invited to note the contents of this document and to consider the proposed recommendation contained in paragraph 10, above.

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