

Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs

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DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS AND OTHER MEANS OF TRANSMISSION OF CERTAIN TYPES OF DOCUMENTS UNDER RULE 7(5)(F) AND (G) OF THE COMMON REGULATIONS

Document prepared by the International Bureau

I. INTRODUCTION

1. New information technology-based innovations have been introduced in the administration of the Hague System for the International Registration of Industrial Designs (hereinafter referred to as the “Hague system”) in recent years¹. It is recalled that the technical developments in the administration of the system enabled the introduction of a weekly publication of the *International Designs Bulletin* (hereinafter referred to as “the Bulletin”) at the beginning of 2012. Furthermore, a new electronic filing interface (hereinafter referred to as “E-filing interface”) was made available on June 3, 2013 on the web site of the World Intellectual Property Organization (WIPO) at http://www.wipo.int/hague/en/forms/new_efiling.html. The new E-filing interface includes many improvements designed to facilitate the filing of international applications (see Information Notice 3/2013, available on the WIPO web site at <http://www.wipo.int/hague/en/notices/>). It is likely that future communications, on the one hand, between the International Bureau of WIPO and the applicant/holder and, on the other hand, between the International Bureau and the Office of a designated Contracting Party, will mainly take place electronically, through web-based communication services.

¹ Each year, the Assembly of the Hague Union takes note of the progress made regarding the program to modernize the IT-based administration of the Hague system (see document H/A/32/1, entitled “Information Technology Modernization Program (Hague International Registration System: Progress Report)”, available on the WIPO web site at http://www.wipo.int/meetings/en/details.jsp?meeting_id=29895).

2. At present, users filing international applications through the new E-filing interface have access through their user accounts to a personalized environment referred to as the “E-Filing Portfolio Manager”, where an application may be saved and edited and stored application data may be used as a template. At present, however, the submission of supporting documentation intended for designated Contracting Parties, such as declarations or statements referred to in Rule 7(5)(f) and (g) of the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement (hereinafter referred to as the “Common Regulations”), is not possible through the E-filing interface. The next step therefore consists in incorporating this feature into the E-filing interface and providing for a means of transmission of the said documents to the Offices of the Contracting Parties concerned. Furthermore, the planned Hague Portfolio Manager (hereinafter referred to as the “HPM”) would allow, among other things, for the electronic submission of supporting documentation to the International Bureau, also after the filing of an international application.

3. The purpose of this document is to elaborate ways of creating a modern and user-friendly environment to support the submission of supporting documentation to the International Bureau and the transmission thereof by the International Bureau to the Office concerned. In addition to those documents referred to in Rule 7(5)(f) and (g), it may be worth grasping the opportunity to also consider the submission and transmission of other types of documents via the new and planned IT tools, such as priority documents. In this regard, a responsive regulatory framework is needed to allow all stakeholders in the Hague system to take full advantage of the modern information technology.

II. SUBMISSION THROUGH THE INTERNATIONAL BUREAU OF DOCUMENTATION IN SUPPORT OF AN INTERNATIONAL APPLICATION

4. It is recalled that the mandatory contents of an international application, as prescribed by Article 5(1) of the 1999 Act of the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter referred to as the “1999 Act” and the “Hague Agreement”) and Rule 7(3) of the Common Regulations, consist of the information which must be contained in every international application or accompany it. The additional mandatory contents, as prescribed by Article 5(2) and Rule 7(4), consist of certain elements that may be notified by a Contracting Party and which must be included in an international application where such Contracting Party has been designated.

5. Moreover, in accordance with Article 5(3) of the 1999 Act and Rule 7(5) of the Common Regulations, a number of optional elements may also be provided by the applicant. In particular, pursuant to Rule 7(5)(f), an international application may contain any declaration, statement or other relevant indication as may be specified in the Administrative Instructions for the Application of the Hague Agreement (hereinafter referred to as the “Administrative Instructions”). Currently, only Section 407 of the Administrative Instructions specifies how to indicate a relation with a principal industrial design/application/registration in an international application.

6. Furthermore, Rule 7(5)(g) states that an international application may be accompanied by a statement that identifies information known by the applicant to be material to the eligibility for protection of the industrial design concerned. Such information could, for example, contain information on relevant prior art or of a disclosure during the grace period.

7. The documents accompanying an international application may sometimes be voluminous. It may happen that, at the time of filing the international application, the applicant does not have all the documentation available. In that case, instead of printing and sending the documents in several sets, the electronic environment of the Hague system could allow the submission of documents to the International Bureau at a later stage, even after the publication of the international registration. However, the Offices of the designated Contracting Parties should be ready to receive such documentation from the International Bureau and make the required operational and technical changes to their IT systems.

8. Furthermore, in accordance with Article 6(1)(a) of the 1999 Act, priority of an earlier filing made in any State party to the Paris Convention or member of the World Trade Organization (WTO) may be claimed in an international application. Where an international application contains such a claim, the priority document should not be submitted to the International Bureau as the latter simply confines itself to establishing that the required data have been included. However, the Office of the designated Contracting Party may, in any particular case, request the applicant to furnish the priority document to it directly. In this context, and subject to considerations relating to transmission raised in Chapter III, below, it could become advantageous to users that the submission of priority documents be provided for through the E-filing interface and the planned HPM.

III. TRANSMISSION OF SUPPORTING DOCUMENTATION TO THE OFFICE CONCERNED

9. It is recalled that, pursuant to Rule 26(1) of the Common Regulations, international registrations and relevant data relating to international registrations are officially notified to the Offices of designated Contracting Parties through their publication in the Bulletin. The said data may be downloaded by the Offices from the International Bureau's FTP (file transfer protocol) server.

10. Furthermore, secure distribution of tailored data or documents to the Offices concerned is ensured through the International Bureau's SFTP (secure file transfer protocol) server, as will also be the case in future via the Hague Office Portal². The introduction of the portal would also allow interaction between the Offices and the International Bureau, for example in the form of notifications of refusals or statements of grant of protection³.

11. Access to the SFTP data would be tailored for each Office and would consist only of international registrations designating the Contracting Party concerned. The service would allow for the automatic downloading of the data and documents into the IT system of that Office. The data format for the supporting documentation would be the same as that being used for the published international registrations and subsequent modifications thereof. An additional consideration arises in respect of priority documents, since Offices concerned would not be receiving the original document but a digital copy thereof as provided by the applicant himself. The Working Group is therefore invited to comment on whether authentication would then become a concern and to note that the WIPO Digital Access Service for Priority Documents (hereinafter referred to as "DAS"), which it is more generally invited to consider as part of the next Chapter, would circumvent that problem entirely.

² See document H/LD/WG/3/6, entitled "Informing Offices of Designated Contracting Parties of Events Recorded in Respect of an International Registration before its Publication".

³ See document H/LD/WG/3/5, entitled "Public Availability of Information Relating to Amendments to an Industrial Design that is the Subject of an International Registration Following a Procedure before an Office".

IV. TRANSMISSION OF PRIORITY DOCUMENTS THROUGH THE DIGITAL ACCESS SERVICE

12. In addition to electronic tools envisaged for the administration of the Hague system, it is recalled that DAS, which is available on the WIPO web site at <http://www.wipo.int/das/en/>, has been operational since 2008⁴. DAS is an electronic system that enables the secure exchange of priority documents and similar documents between participating Offices⁵.

13. DAS allows applicants to simply request the first office (known as the depositing Office or Office of first filing) to upload their priority documents to the DAS digital library. The applicant can then ask other Offices (known as accessing Offices or Offices of second filing) to retrieve those documents by providing them with a DAS access code, which is used by accessing Offices to retrieve the priority document concerned from the DAS digital library. The exchange of documents then takes place electronically between the Offices and the authenticity of the priority is ensured. At present, DAS is used only for priority documents relating to patent applications. It is planned to extend it to other industrial property rights, such as industrial designs and trademarks, once the participating offices have made the necessary operational and technical changes. The revised framework provisions for DAS, in force from July 1, 2012, are contained in the Annex to the present document.

14. Within the Hague system, DAS could be potentially used in two situations. The first one is where an international application contains a priority claim from an earlier filing, as described in the previous chapter, and the Office of first filing as well as the Office of the designated Contracting Party are DAS participating Offices. The second one results from the fact that an international application may be a *first* application and thus serve as a basis for claiming priority with regard to a subsequent national or regional application outside the realm of the Hague system. In those circumstances, the international application itself could be uploaded into the DAS digital library.

CLAIMING PRIORITY FROM AN EARLIER FILING IN AN INTERNATIONAL APPLICATION

15. As explained above, DAS could be used within the Hague system for the exchange of priority documents, in individual cases, from the Office of first filing to the Office of a designated Contracting Party. In that case, the holder of the international registration would request the Office of first filing to upload the documents into the DAS digital library and provide him with a DAS access code. Whilst the exact procedure remains to be discussed, the holder would then be provided with the ability to indicate that code in relation to the priority claim contained in his international application and the International Bureau would then transmit the said code to the Offices of designated Contracting Parties. The Offices would then use the code to retrieve the priority documents from the DAS digital library. This would avoid the need for multiple copies of the priority documents to be supplied by the holder of the international registration directly to the

⁴ Pursuant to Article 4D(3) of the Paris Convention for Protection of Industrial Property, the countries of the Paris Union may require any person claiming the priority of a previous application to produce a copy of the application previously filed (i.e. the priority document) certified as correct by the authority which received such application. The agreed statement of the Assemblies of the Paris Union and PCT Union of 2004, allows for the issuing Office to determine the form of certification and that certification may be in electronic form (see document A/40/6, entitled "Certification of Priority Documents: Agreed Application of Article 4D(3) of the Paris Convention for the Protection of Industrial Property"). One way of achieving this is to use the WIPO DAS service, although any form of electronic exchange and certification that is acceptable to the parties may be used.

⁵ At present, 11 Offices are participating in DAS. See WIPO web site: http://www.wipo.int/das/en/participating_offices.html.

various Offices having requested them. After the introduction of the HPM, the code could be submitted to the International Bureau even after the filing of an international application. It is recalled that participation in DAS by both the users of the Hague system and the Offices would be voluntary.

16. Therefore, the Working Group may wish to consider and comment on whether the Offices of the Contracting Parties could commit themselves to the uploading and retrieval of priority documents via DAS, once they are technically and operationally ready.

INTERNATIONAL APPLICATION AS A FIRST FILING

17. As already mentioned in the present document, an international application may also be a first filing. However, this situation normally arises outside the Hague system. In practice, the E-filing interface and the planned HPM would allow the holder to request the International Bureau to upload the international application into the digital library and supply him with a DAS access code. Where the subsequent application claiming priority from the international application is filed at the Office of a country which is not a Contracting Party to the Hague Agreement but is a DAS participating office, that Office may retrieve the priority document via DAS once it has received the code from the applicant.

V. UPDATING THE LEGAL FRAMEWORK

18. As provided for in Rule 7(5)(f) of the Common Regulations, an international application may contain any declaration, statement or other relevant indication as may be specified in the Administrative Instructions. It would be useful to have a clear understanding of what kind of indications may be relevant to the Offices when carrying out the examination of the industrial design under their national/regional laws. It is understood that these indications should not be requested systematically but only in particular cases.

19. Furthermore, Rule 7(5)(g) of the Common Regulations states that an international application may be accompanied by a statement that identifies information known by the applicant to be material to the eligibility for protection of the industrial design concerned. Such information could, for example, contain information on relevant prior art or on a disclosure during the grace period.

20. Finally, document H/A/32/2, entitled "Matters Concerning the Legal Development of the Hague System", submitted to the Hague Union Assembly in 2013, available on the WIPO web site at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=243389, contains a proposal for amendments to Rules 7(4)(c) and 8 of the Common Regulations. According to proposed Rule 7(4)(c), an international application shall, as applicable, contain indications concerning the identity of the creator of the industrial design and be accompanied by any relevant statement, document, oath or declaration referred to in Rule 8. At the time of preparing the present document, the Assembly has not yet been convened and so the outcome of the discussion at the Assembly is not known.

21. To conclude, it may be useful to specify in the Administrative Instructions the types of statement, document, oath, declaration or other indication which could be required in support of a designation, as provided for under Rule 7(5)(f) and (g). For that purpose, the Working Group may wish to exchange views on what kind of documents are allowed or required by the Offices

of the current/prospective Contracting Parties, and how they should be integrated in the international application procedure. In doing so, the Working Group may also wish to explore, in particular, whether users of the system should be offered the possibility of submitting certain documents at a later stage through the E-filing interface or through the HPM.

22. The Working Group is invited to comment on whether it would consider favorably the incorporation of a new section into the Administrative Instructions concerning the submission and transmission of documents that could be required in support of a designation of a Contracting Party, in accordance with Rule 7(5)(f) and (g) of the Common Regulations, and to indicate the types of such documents, taking into consideration in particular the issue of authentication in relation to priority documents, as raised in paragraph 11, above.

23. With respect particularly to the issue of priority documents, the Working Group is further invited to comment on whether the Offices of the Contracting Parties could commit themselves to the uploading and retrieval of priority documents via DAS, once they are technically and operationally ready.

24. The Working Group is further invited to comment on whether users should be offered the possibility of submitting certain documents in support of a designation of a Contracting Party at a later stage, after the filing of an international application.

[Annex follows]

FRAMEWORK PROVISIONS FOR THE
DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS¹

established on March 31, 2009 and modified on July 1, 2012

Digital Access Service

1. These provisions are established by the International Bureau in accordance with a decision of the Paris Union Assembly, the PLT Assembly and the PCT Union Assembly and the recommendations of the Working Group on the Digital Access Service for Priority Documents (“the Working Group”)².
2. The digital access service for priority documents (“the service”) operates in accordance with these provisions and having regard to the general principles and system architecture recommended by the Working Group³.
3. The aim of the service is to provide applicants and Offices with a simple and secure option whereby priority documents may be furnished for the purposes of the applicable law, having regard to relevant international agreements and understandings⁴.
4. The implementation of these provisions by Offices is a matter for the applicable law⁵.
5. These provisions come into effect from the date of their publication by the International Bureau on the WIPO website (DAS portal); until then, the service will continue its practical operations under the framework provisions as established on March 31, 2009⁶.
6. Words and expressions used in these provisions are to be understood with reference to paragraph 25.

Participating Digital Libraries

7. A digital library participates for the purposes of these provisions (“participating digital library”):
 - (i) if it is so designated by the International Bureau when these provisions come into effect⁷;
 - (ii) if, upon request by an Office, it is so designated by the International Bureau at a later time after consultation with the Consultative Group.
8. The criteria referred to in paragraph 22 apply to all participating digital libraries.
9. The giving by an Office of a notification under paragraph 12 does not give rise to any obligation on the part of that Office to accept a participating digital library for the purposes of Rule 4(3) of the Regulations under the PLT⁸.

Depositing Offices and Availability of Priority Documents Via the Service

10. An Office acting as a “depositing Office” may notify the International Bureau that copies of applications deposited by it in a participating digital library⁹ are to be made available via the service as priority documents in accordance with these provisions. The notification also informs the International Bureau of relevant operating procedures and technical requirements referred to in paragraph 22, including any specification of options from among those available. An Office may specify that it will only deposit certain types of application in a digital library and may notify different operating procedures and different technical requirements for different types of application.
11. The applicant may submit a priority document to the International Bureau, or to an Office that is prepared to receive priority documents for the purpose, together with a request that it be deposited in a participating digital library and made available via the service.

Accessing Offices

12. An Office acting as an “accessing Office” may notify the International Bureau that, for the purposes of the applicable law¹⁰ and subject to paragraphs 13 to 15, the Office treats a priority document that is available to it via the service as though it had been furnished to it by the applicant. The notification also informs the International Bureau of relevant operating procedures and technical requirements referred to in paragraph 22, including any specification of options from among those available¹¹. An Office may specify in its notification that it will act as an accessing Office only for certain types of application but it shall accept for use with those types of application any priority document available via the service which is of a type from which priority may validly be claimed for those types of application¹².
13. A certificate by the International Bureau that a priority document is available via the service to accessing Offices, including bibliographic details¹³ and the date on which the priority document became available, is made available via the service to the applicant and the Office¹⁴. The certificate is, subject to paragraphs 14 and 15, accepted by the Office for the purposes of the applicable law as proof of the matters it contains.

Opportunity to Comply

14. (a) Where a certificate referred to in paragraph 13 states that a priority document became available via the service to an accessing Office on a date which is on or before the date (“the relevant date”) by which the priority document is required to be furnished under the applicable law, but the Office finds, whether before, on or after the relevant date, that the priority document is in fact not available to it, the Office so notifies the applicant, giving the opportunity to furnish the priority document to it, or to ensure that the priority document is made available to it via the service, within a time limit of not less than two months from the date of the notification¹⁵.
- (b) Where the priority document is furnished or becomes available to the Office within that time limit, it is treated as though it had been available on the date stated in the certificate. Where the priority document is not furnished or does not become available to the Office within that time limit, the consequences provided by the applicable law apply¹⁵.

15. (a) Paragraph 14 does not apply to an accessing Office whose applicable law provides that it shall notify the applicant where the priority document is not available to it on the date by which it is required to be furnished under that law, giving the opportunity to furnish the priority document to it, or to ensure that the priority document is made available to it via the service, within a time limit of not less than two months from the date of the notification. Where the priority document is not furnished or does not become available to the Office within that time limit, the consequences provided by the applicable law apply¹⁵.
- (b) An accessing Office need not apply paragraph 14 where, under the applicable law:
- (i) there is no fixed date, calculated from either the filing or the priority date, by which the priority document must be received by or made available to the Office;
 - (ii) it is required that the priority document be received by or made available to the Office before grant; and
 - (iii) the Office provides an online file inspection service enabling the applicant to monitor whether the priority document has been received by or made available to the Office¹⁵.

Priority Documents Becoming Available Via the Service

16. Subject to paragraph 17, a priority document available to the service from a participating digital library is available via the service only the Offices by which access is authorized by the applicant in accordance with the operating procedures and technical requirements referred to in paragraph 22.
17. A trademark priority document available to the service from a participating digital library at the request of the applicant (to the relevant depositing Office) is available to any accessing Office.

Translations of Priority Documents

18. The International Bureau may establish procedures, after consultation with the Consultative Group, to enable translations of priority documents to be deposited and made available under the service¹⁶.

Publication of Information

19. The International Bureau publishes on WIPO's website information relating to the service, including:
- (i) the establishment of these provisions, any subsequent modifications of them and any transitional arrangements;
 - (ii) the commencement of practical operations of the service;
 - (iii) participating digital libraries¹⁷;
 - (iv) notifications and information received from Offices¹⁸ under paragraphs 10 and 12;
 - (v) operating procedures and technical requirements referred to in paragraph 22.

Consultative Group

20. The Consultative Group consists of:
- (i) Offices from which the International Bureau receives a notification under paragraph 10 or 12;
 - (ii) as observers, any other Offices and interested organizations invited to meetings of the Working Group that notify the International Bureau that they wish to participate in the Consultative Group.
21. The proceedings of the Consultative Group take place primarily through correspondence and an electronic forum on WIPO's website.

Operating Procedures and Technical Requirements

22. The International Bureau may, after consultation with the Consultative Group, establish and modify operating procedures and technical requirements useful for the operation of the service, including criteria for the participating digital libraries¹⁹ under paragraph 7 and the means by which applicants authorize access²⁰ for the purpose of paragraph 16. Such operating procedures may include the establishment of service level agreements to be adhered to by the International Bureau and by depositing Offices.

Modification

23. These provisions may be modified by the International Bureau in accordance with recommendations of the Working Group or after consultation with all of the members of the Working Group.

Languages

24. These provisions are established in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic²¹.

Meanings of Words and Expressions

25. In these provisions:
- (i) "applicable law" means the national law or regional legal enactments under which an Office operates;
 - (ii) "applicant" means a person who appears as applicant in the records of the Office with which an application was filed, and includes a representative of the applicant recognized under the applicable law;
 - (iii) "application" means an application for the grant of a patent, for the grant of a utility model, for the registration or grant of an industrial design, or for the registration of a trademark (including a collective mark or a certification mark)²².
 - (iv) "certified" means certified for the purposes of these provisions and Article 4D(3) of the Paris Convention, whether by the Office with which the application concerned was filed or by the International Bureau in connection with access via the service, and having regard to the agreed understanding of the Paris Union Assembly and the PCT Union Assembly concerning certification of priority documents²³;
 - (v) "Consultative Group" means the Consultative Group referred to in paragraph 20;

- (vi) “digital library” means a digital library of patent, trademark, industrial design or utility model applications;
- (vii) “International Bureau” means the International Bureau of WIPO;
- (viii) “Office” means an authority entrusted with the granting of patents or utility models, the registration of trademarks, the granting or registration of industrial designs or the processing of patent applications, trademark applications, industrial design applications or utility model applications by a State that is party to the Paris Convention or is a member of WIPO or by an intergovernmental organization at least one of whose member States is party to the Paris Convention or a member of WIPO²⁴;
- (ix) “Paris Convention” means the Paris Convention for the Protection of Industrial Property;
- (x) “Paris Union” means the Paris Union for the Protection of Industrial Property;
- (xi) “PCT” means the Patent Cooperation Treaty;
- (xii) “PCT Union” means the International Patent Cooperation Union;
- (xiii) “PLT” means the Patent Law Treaty;
- (xiv) “priority document” means a certified copy of an application²⁵;
- (xv) “WIPO” means the World Intellectual Property Organization.

EXPLANATORY NOTES

1. The framework provisions are supplemented by these notes, prepared by the International Bureau for explanatory purposes, which do not form part of the framework provisions themselves but were approved by the Working Group together with the framework provisions (see document WIPO/DAS/PD/WG/3/7, paragraph 15). The explanatory notes may be modified by the International Bureau after consultation, on changes of substance, with the Consultative Group.
2. For the Assemblies' decision that the service be established according to the recommendations of the Working Group, see their report, adopted on October 3, 2006, document A/42/14, paragraph 220. For the recommendations of the Working Group, see its report, adopted on July 14, 2011, document WIPO/DAS/PD/WG/3/7.
3. See document WIPO/DAS/PD/WG/2/4, paragraphs 23 and 35 and Annexes I and II and WIPO/DAS/PD/WG/3/3.
4. The relevant international agreements and understandings include, in particular:
 - (i) the Agreed Statement by the Diplomatic Conference for the Adoption of the PLT, adopted on June 1, 2000, urging WIPO to expedite the creation of a digital library system for priority documents and noting that such a system would be of benefit to patent owners and others wanting access to priority documents (see Agreed Statement No. 3 appearing in document PT/DC/47 and in WIPO Publication No. 258);
 - (ii) the provisions of the Paris Convention, the PLT and the PCT concerning declarations of priority and priority documents (see, in particular: Paris Convention, Article 4D; PLT Article 6 and Rule 4; and PCT Article 8 and Rule 17);
 - (iii) the agreed understanding adopted by the Paris Union Assembly and the PCT Union Assembly on October 5, 2004, concerning the certification of priority documents provided, stored and disseminated in electronic form (see document A/40/7, paragraph 173, referring to document A/40/6, paragraph 9);
 - (iv) the obligations of Members of the World Trade Organization that are not party to the Paris Convention to recognize priority rights, for which purpose priority documents may also be deposited and accessed via the service.
5. The framework provisions do not create international treaty-style obligations for participating Offices. The provisions are intended to facilitate the furnishing of priority documents for the purposes of the Paris Convention but do not affect the basic rights and obligations established by that Convention, the PLT, the Trademark Law Treaty (TLT) or the Singapore Treaty on the Law of Trademarks (Singapore Treaty) or give rise to any new obligation under the Paris Convention, the PLT, the TLT or the Singapore Treaty; see, in particular, paragraph 9 of the framework provisions.

[Endnote continued from previous page]

6. This will enable the service to continue its operations without interruption until the time when the modified framework provisions come into effect.
7. The International Bureau envisages that the initial designation of participating digital libraries will be of those Offices that are already in practice exchanging priority documents in electronic form via the WIPO Digital Access Service on the date of publication of the modified framework provisions, namely, July 1, 2012.
8. While a participating Patent Office would not be obliged to accept a participating digital library for the purposes of PLT Rule 4(3), it would of course be free to accept such a digital library for that purpose if it so wished.
9. An Office may notify the International Bureau that it will act as a depositing Office only with respect to priority documents relating to patents or trademarks or industrial designs or utility models or any combination thereof. An Office which is not able, or does not wish, to establish and maintain its own digital library (either of patent, trademark, industrial design or utility model priority documents) may make arrangements with the International Bureau, or with another Office that is prepared to handle such deposits, to deposit priority documents in the digital library maintained by the International Bureau or that other Office. The International Bureau is prepared for this purpose to receive such documents in electronic form or to scan them if received in paper form. The arrangements made would need to provide for certain technical matters such as the use of an appropriate data format.
10. See notes 4 and 5, above, as to the way in which the provisions operate in the context of the applicable law and the provisions of the Paris Convention and other international agreements and understandings.
11. An Office may notify the International Bureau that it will act as an accessing Office only with respect to priority documents relating to patents and utility models or to trademarks or to industrial designs and utility models or any combination thereof.
12. For example, an accessing Office may notify that it will access the service only to retrieve priority documents for industrial design applications. However, in this case it must accept priority documents based on earlier utility model applications as well as earlier industrial design applications. Offices which have previously participated in the system as accessing Offices for patent applications would similarly be expected to accept priority documents based on earlier utility model applications.
13. Which bibliographic details would be included is a matter to be addressed by the Consultative Group, having regard, for example, to requirements under applicable laws as to maintaining the confidentiality of unpublished applications.
14. Certificates would be available to the applicant and the Office concerned (but not to others) for viewing on-line or by transmission on request.
15. The purpose of paragraph 14 of the framework provisions is to assure applicants that, if they make use of the service complying with the requirements of the provisions, their priority rights will be protected in a case where the priority document concerned is found not to be available to an accessing Office via the service. The time limit of two months referred to in paragraph 14(a) is consistent with the time limit prescribed in PLT Rule 6(1). An Office which follows in general the practice of sending notifications referred to in paragraph 14(a) before the relevant date may of course do so whether or not the priority document in question is the subject of a certificate referred to in paragraph 13. Paragraph 14 does not apply to an accessing Office whose procedures provide for safeguards of the kind set out in paragraph 15(a), such as the European Patent Office, and need not be applied by an accessing Office whose procedures provide for safeguards of the kind set out in paragraph 15(b), such as the United States Patent and Trademark Office. Notifications by accessing Offices given to the International Bureau under paragraph 12, and published under paragraph 20(iv), include details of the applicable procedures under paragraphs 14 and 15.

[Endnote continued on next page]

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16. Operating procedures and technical requirements providing for the deposit of and access to translations would need to be established under paragraph 22 of the framework provisions before a date could be determined under paragraph 18. The framework provisions do not address or limit the kind of certification, etc., that accessing Offices are entitled to require in the case of translations, and do not assure that a translation submitted under the services would satisfy the needs of any particular accessing Office; those matters would be left to the applicable law in each Office. It is to be hoped, however, that future work might achieve a degree of commonality of approach on the matter, with the result that a single translation might be able to be accepted by a number of accessing Offices.
17. Published details concerning participating digital libraries would include, for example, the date on which a digital library is to commence operations under the service, document format requirements, etc.
18. The publication of up-to-date details of notifications and Office requirements, and changes therein, is of course vital to applicants wishing to rely on the service as a secure means of satisfying requirements for the provision of priority documents. As an example, it will be important to publish details of which possible routes for entry of priority documents into the service (see document WIPO/DAS/PD/WG/3/3) are available in a particular Office of first filing.
19. It is envisaged that the criteria for participating digital libraries might include, for example, criteria as to giving access and ensuring confidentiality and a requirement that arrangements be in place for deposited priority documents to be stored for a specified period from the priority date. By way of comparison, it is noted that files relating to international applications under the PCT must be kept by the International Bureau for 30 years from the date of receipt of the record copy; see PCT Rule 93.2(a).
20. As explained in document WIPO/DAS/PD/WG/3/6, paragraphs 18 to 39, the applicant's authorization of access is by means of an "access code" which is generated by the Office of first filing or the International Bureau and provided by the applicant to the Office of second filing.
21. The working languages of the service in its practical operations are Chinese, English, French, Japanese, Korean and Spanish. The International Bureau will seek to add any other language of publication of the PCT when an Office for whose users that language would be of benefit indicates a definite intention to join the system.
22. This includes international applications filed under the PCT and under the Hague Agreement for the International Registration of Industrial Designs.
23. See note 4(iii), above. This agreed understanding applies to priority documents relating to patents, trademarks, industrial designs and utility models.
24. See also Note 4(iv), above.
25. See also the definition of "certified" in paragraph 25(iv) of the framework provisions.

[End of Annex and of document]