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COMMITTEE OF EXPERTS ON THE PATENT LAW TREATY

Fourth Session
Geneva, June 23 to 27, 1997

REPORT

adopted by the Committee of Experts

I. INTRODUCTION

1. The Committee of Experts on the Patent Law Treaty (hereinafter referred to as “the Committee of Experts”) held its fourth session in Geneva from June 23 to 27, 1997.
2. The following States members of WIPO and/or the Paris Union were represented at the session: Argentina, Australia, Austria, Belgium, Brazil, Burkina Faso, Canada, Cape Verde, Chile, China, Colombia, Côte d’Ivoire, Croatia, Denmark, Finland, France, Georgia, Germany, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Kazakstan, Kenya, Latvia, Lesotho, Mali, Malta, Mexico, Morocco, Netherlands, New Zealand, Norway, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Swaziland, Sweden, Switzerland, Thailand, Ukraine, United Arab Emirates, United Kingdom, United States of America and Viet Nam (58).
3. The following States members of the UN and/or Specialized Agencies were represented by observers: Belize and Kuwait (2).

4. Representatives of the World Trade Organization (WTO), the European Communities (EC), the European Patent Office (EPO) and the Organization of African Unity (OAU) took part in the session in an observer capacity.
5. Representatives of the following non-governmental organizations took part in the session in an observer capacity: American Bar Association (ABA), American Intellectual Property Law Association (AIPLA), Asian Patent Attorneys Association (APAA), Brazilian Association of Industrial Property (ABPI), Chartered Institute of Patent Agents (CIPA), Committee of National Institutes of Patent Agents (CNIPA), Compagnie nationale des conseils en propriété industrielle (CNCPI), Confederation of Indian Industry (CII), Federal Chamber of Patent Attorneys (Germany) (FCPA), Federation of German Industry (BDI), Institute of Professional Representatives before the European Patent Office (EPI), International Association for the Protection of Industrial Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), International League of Competition Law (LIDC), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), Korea Patent Attorneys Association (KPAA), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI), Trade Marks, Patents and Designs Federation (TMPDF), Union of European Practitioners in Industrial Property (UEPIP) and Union of Industrial and Employers' Confederations of Europe (UNICE) (21).
6. The list of participants is contained in the Annex to this report.
7. On behalf of the Director General of WIPO, Mr. François Curchod, Deputy Director General, opened the session and welcomed the participants.
8. The Committee of Experts unanimously elected Mr. Bruce I. Murray (Australia) as Chairman and Mr. Henry Soelistyo Budi (Indonesia) and Mr. Graham Jenkins (United Kingdom) as Vice-Chairmen. Mr. L. Baeumer (WIPO) acted as Secretary to the Committee of Experts.
9. Discussions were based on the following documents prepared by the International Bureau of WIPO: "Agenda" (document PLT/CE/IV/1), "Draft Patent Law Treaty and Draft Regulations" (document PLT/CE/IV/2) and "Notes" (document PLT/CE/IV/3). In this report, references to "the draft Treaty," as well as to any given "draft Article" or "Article," "draft Rule" or "Rule" or "Note" are references to the draft Treaty, to the given draft Article or Rule or to the given Note as contained in documents PLT/CE/IV/2 and PLT/CE/IV/3.
10. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions without reflecting all the observations made.

II. GENERAL DECLARATIONS

11. The Delegation of Germany was in favor of most of the provisions in the draft Treaty, but had the intention of raising a number of matters during the discussions. It further expressed the wish that the preparatory work should be completed at the earliest possible time in order to prepare for a diplomatic conference.

12. (a) The Delegation of the United States of America declared that, as it had already stated at the first, second and third sessions of the Committee of Experts, it was still not in a position to discuss substantive patent law harmonization. Accordingly, the Delegation considered that the distinction to be made between formal and substantive matters continued to be critically important for the ongoing discussions.

(b) The Delegation said that its concern that the current draft Treaty did not impinge upon substantive matters remained. For example, while the issue of unity of invention was not explicitly included in any of the Articles to be discussed during that week, its alleged implicit inclusion in the form or contents reference in Article 5 raised some concerns for the United States of America and might create an impediment to that country's full participation in the effort to harmonize formal matters. The Delegation recalled that it had consistently raised this concern in preceding sessions of the Committee of Experts and that it had not really heard a reason why unity of invention could not be excepted from the draft Treaty.

(c) The Delegation noted further that, in the course of the last three meetings of the Committee of Experts, there had been an additional shift towards substantive matters. In addition to Article 5, Article 6 dealing with validity of patents and revocation, Article 12 dealing with corrections of mistakes and Article 15 dealing with belated claiming of priority could, in the view of the Delegation, be regarded as moving towards a discussion of substantive matters.

(d) Furthermore, the Delegation continued to question the intent and expected results of the entire work of the Committee of Experts. It appeared that many of the provisions had been drafted in a manner to accommodate all currently existing systems. However, the Delegation was pleased to see that some of the Articles were moving away from that approach, tending to be simpler and not an accommodation for all systems, thereby actually making a harmonization effort. Unfortunately, the remaining Articles which attempted to accommodate all systems were not to promote uniformity, simplification or cost reduction, although those considerations were currently of paramount importance to those seeking patent protection throughout the world.

(e) Additionally, many of the proposed Articles and Rules were unduly complex, difficult and costly for national offices to administer. In addition, the Delegation was still not convinced that the subject matter dealt with by the Committee of Experts was treaty-level material. Much of what was addressed in many of the Articles of the draft Treaty dealt with matters that did not rise to a level above regulatory status. The Delegation believed that it would not be prudent to elevate the status of those matters to the level of treaty articles, as the practices involved in those articles would be subject to more frequent changes than it would be possible to accommodate if they were dealt with in the Treaty. Consequently, the Delegation

suggested that the Articles which should be included as articles in a treaty include most of the provisions that are found in Articles 1 to 6 and Articles 15 and 16. The remaining Articles, namely Articles 7 to 14 and paragraphs (2) and (3) of Article 4 and paragraphs (8) and (9) of Article 5 should be redrafted as rules or possibly be deleted, as appropriate.

(f) Notwithstanding those comments, however, the Delegation continued to view the harmonization of formalities to be a very laudable goal. The resultant ability to prepare an application in a single format, preferably in electronic form that would be accepted by all offices, a universal acceptance policy in other words, was eagerly sought by the users of its country and would be widely applauded.

(g) A first step on the road to achieving the goal of offering to its users a system in which they could prepare an application in a single format that would be accepted by all offices could simply be the mandated acceptance of a Patent Cooperation Treaty (PCT)-compliant filing as a national filing. In that regard the PCT could serve as a model for a system which would enable users to prepare an application in one format that would be acceptable to all offices. A second step would be to recognize the limitations of the current paper-based PCT and to seek improvements in that Treaty and associated rules in order to, among other things, accommodate electronic filing. The Delegation noted that there had been some effort in that direction in meetings that were held as recently as in the week preceding the meeting of the Committee of Experts. The Patent Law Treaty could then be subsumed in the modernization of the PCT in that a provision for mandating universal application acceptance for national filings, such as Articles 4 and 5, could be added to such a rejuvenated PCT.

(h) A key motivating factor for the Patent Law Treaty was the recognition that no office, when undergoing the complex and costly process of automation, desired to create two electronic systems, one for national and another for international applications. To that end, the Patent Law Treaty and the PCT needed to converge to the greatest extent practicable, so that offices intending to automate would be able to develop a system capable of handling both national and international applications. The Treaty would provide the same benefit to inventors, applicants and owners interacting with the offices through the world, for those customers likewise would greatly prefer to purchase or develop a single automated system for preparing applications suitable for filing as international applications and as national applications throughout the world.

(i) The Delegation of the United States of America then went on to propose a list of Patent Law Treaty principles that it thought were underlying the work of the Committee of Experts. The proposed Articles and Rules should be measured against those principles in order to reduce the number of necessary Articles and Rules. Examples of such principles could include simplicity in procedures since procedures in some of the Articles were becoming extremely complicated; avoidance of costly requirements that may not always be necessary such as, for example, in regard to translations and certifications; avoidance of the loss of patent rights by allowing late submissions; late revivals and reinstatements; provisions for electronic record management, including legally admissible documents for enforceability and the promotion of standards for electronic prosecution history; mutual recognition of the processing results by different offices; lastly, the creation of a single application, preferably in electronic form, that could be used multiple times by applicants filing in more than one national office.

(j) The Delegation reiterated its willingness to raise specific questions during the forthcoming meeting, including suggestions and comments on the various Articles, Rules and Notes that were scheduled for discussion. It also expressed its interest in listening to the many comments which were going to be offered by other members of the Committee of Experts and any elaboration that the International Bureau may have to advance the work of the Committee of Experts.

13. The Delegation of Japan said that, in the information age where documents or money were flowing in an electronic form, electronic processing of patent-related information tended to be more and more adopted. In particular, a flow of patent related documents usually consisted of filing an application with the office, clerical processing within the office, substantive examination, registration and dissemination. Dealing with the information by electronic means, from the input through the output, made processing more easily enhanced, efficiency and improved quality. In this regard, the Delegation considered it to be a step in the right direction that the draft Patent Law Treaty contained positive provisions relating to electronic means of communication. With regard to developments in the near future, due to which modern information technologies would be applied around the world, it hoped that those provisions would be more refined. The Delegation announced its readiness to make a contribution in rule-making in this area and to try, as a pioneer country, to undertake electronic processing from the input to the output. Furthermore, the Delegation said that it supported the idea to introduce user-friendliness into the interfaces between users and the office. It noted, however, that this concept did not work well without a sense of responsibility of the individual users, as well as well-functioning dispute settlement procedures between the parties. Furthermore, the Delegation supported the approach that the Patent Law Treaty provisions be in conformity with PCT provisions where appropriate. It supported this idea in the light of the growing importance of PCT and future harmonization of formalities. While recognizing the importance that harmonization of formalities be successfully concluded, the Delegation said that it continued to stress the significance of harmonizing substantive matters.

14. The Delegation of Chile expressed its support of the draft Treaty. It noted certain difficulties which would require some adaptation at the national level and mentioned that several provisions of the draft Treaty, namely Articles 2, 3 and part of Article 10, were flexible enough to allow for this. The Delegation stressed the importance of concluding a Treaty which would provide applicants with simple, flexible procedures at a low processing cost. It welcomed that the draft Treaty referred to the PCT provisions. It also favored the flexibility introduced in the draft Treaty with regard to the possibility of electronic filing in the future. Finally, it expressed its gratitude for WIPO's efforts to harmonize patent law and hoped that this would lead to a simple and user-friendly Treaty.

15. The Delegation of the Republic of Korea expressed its hope that the efforts to harmonize the patent law requirements at the international level would result in an efficient harmonized treaty. In particular, several new draft Articles, for example, Article 2 (Special Feature of Certain Types of Applications and Certain Types of Patents), Article 3 (National Security) and Article 14 (Extension of a Time Limit Established by National Legislation or Regional Treaty) reflected the views expressed during the third session by various delegations. However, the Delegation expressed some concern about the contents of the draft Treaty. First, there seemed to be a provision in the draft Treaty obliging Contracting Parties to accept the electronic filing of applications. The Delegation said that this provision needed further discussions because currently only few countries had the capacity to comply with it. Secondly, some provisions in

the draft Treaty seemed to make a single request sufficient even where the changes related to more than one application or patent. In the view of the Delegation, these provisions would make it difficult for the Office of its country to determine the contents of a request with respect to an application or patent for which a separate request had not been furnished. In this connection, the Delegation announced that it would intervene during the discussion and that it would do its best to reach a consensus.

16. The Delegation of Canada expressed its continued support for the work of the Committee of Experts on the Patent Law Treaty. It said that it would very much prefer to be able to include in the discussions matters of greater substance such as, for example, providing a grace period. It further expressed its hope that it would be possible to resume discussions of substantive patent law harmonization in the not too distant future. In the meantime, however, the Delegation supported the work of the Committee of Experts on the more limited issues that were currently being dealt with since it felt that harmonization, even if only in respect of formalities issues, would still be of significant benefit for patent offices and users of the system. In general, the Delegation of Canada viewed favorably the proposals put forward by the International Bureau for this meeting; however, it was concerned that in some areas the approach taken was becoming overly complex. For example, although it supported the principle of aligning the formal requirements under the Patent Law Treaty and under the PCT, it found the currently proposed link between the Patent Law Treaty and the PCT to be less than completely transparent; admittedly this was due in a large measure to the tremendous complexity of the PCT and the Regulations under the PCT. As another example, although Canada had in the past and continued to strongly favor the inclusion of provisions allowing missed time limits to be remedied under certain conditions, the proposals in Articles 13 and 14 for this purpose appeared to be far too detailed and complex. Referring to the continued development of the Patent Law Treaty, the Delegation of Canada encouraged the International Bureau and the Committee of Experts to try to find approaches to harmonization that, as much as possible, were simple, straightforward and easily understandable.

17. The Delegation of China expressed its appreciation of contributions which the Japanese Patent Office (JPO), United States Patent and Trademark Office (USPTO) and European Patent Office (EPO) had made within the framework of a meeting of consultants held in February 1997 in Geneva in respect of questions relating to electronic filing and transmission of documents. Furthermore, the Delegation expressed its satisfaction about the fact that the revised documents reflected the results of the last session of the Committee of Experts. It considered Articles 1 to 5 to be much simpler than the former drafts and appreciated the fact that they aimed at being consistent with the PCT. The Delegation believed that all these efforts would guarantee the success of the present meeting, thereby facilitating the early conclusion of the Patent Law Treaty. It expressed its hope for further discussions in the meeting over issues of common concern and, especially, on how to facilitate the operations of the offices while at the same time being user-friendly, as, in the final analysis, the offices and the applicants shared a common interest.

18. The Delegation of Portugal stressed the importance of concluding a Patent Law Treaty that would contribute to harmonization at the worldwide level. However, it would have preferred a treaty with more substantive provisions. Being aware of the difficulties in that respect, it nevertheless expressed its support for the draft Treaty. It intended to submit observations on various Articles during the deliberations of the Committee of Experts and

pointed to the importance of achieving an international treaty that was clear, unambiguous and thus would avoid problems of interpretation after conclusion of the Treaty.

19. The Delegation of France welcomed the fact that the draft Treaty had been aligned wherever possible with the PCT as had been agreed at the third session of the Committee of Experts. It regretted that it had not always been possible to deal with the harmonization of substantive matters and noted that the issue would be discussed at the forthcoming meeting of the Governing Bodies. It noted that certain provisions, such as Article 15, had an effect on matters of substance and held that clarification as to the scope and field of application of the Treaty would be desirable. Although welcoming the increased flexibility of the rules for the benefit of applicants and of an increased conviviality between applicants and offices, it nevertheless wished that the simplification would be carried out with due account taken of third party rights and that it would not be to the detriment of comprehension of the Treaty provisions.

20. The Delegation of Switzerland stated that the draft Treaty as submitted contained numerous provisions of considerable usefulness for users and emphasized that as its main objective. It considered that the great majority of the proposed provisions should be included within the Treaty itself and repeated its wish to see the Treaty adopted as rapidly as possible. While acknowledging that the draft Treaty constituted an excellent basis for discussion, it stated its intention to make various observations during the detailed discussions, particularly as regards Articles 13 and 14, which could be simplified.

21. The Delegation of the United Kingdom declared that the working documents prepared by the International Bureau offered a very effective summary of the position the Committee of Experts had reached in its discussions so far, and noted with satisfaction that a number of the issues which had been raised in previous meetings of the Committee of Experts were dealt with in the documents. The Delegation commended progress so far and felt the present documents would contribute in a very effective manner. In the view of the Delegation, the Committee of Experts was concerned with, on the one hand, deregulation in favor of removing burdens on applicants and, on the other hand, with obviating problems of legal certainty relating to rights obtained when the patent was granted. The Delegation further noted that the International Bureau had made a strong attempt to relate the issues before the Committee of Experts to the changes and the discussions currently being undertaken within the framework of the PCT. However, the relationship between the provisions of the draft Patent Law Treaty and the Patent Cooperation Treaty would need to be investigated with some care and caution. Furthermore, the Delegation noted with satisfaction that the issue of electronic filing had been placed within the Regulations rather than in an Article in the Treaty. The Delegation announced that it would make further comments at the appropriate time during the discussions and concluded by reiterating that it was seeking effective harmonization on as many issues as it was possible to obtain agreement.

22. The Delegation of Belgium was favorable on the whole of the draft Treaty and welcomed the efforts undertaken to establish an electronic filing system. It stressed the importance of the link between the draft Treaty and the PCT. As for Article 7(2)(i) relating to mandatory representation for filing translations in the case of regional patents, it considered it useful to link that matter to the question of the certification of translations which was sometimes required. It further wished for various clarifications on the matter of evidence referred to in Articles 5, 8, 9, 10, 11, 12 and 13. The Delegation would like to see a transfer

of various provisions in the Treaty to the Regulations. Finally, it stressed the importance of maintaining the one-year priority period, which could involve a reservation with regard to Article 15 of the draft Treaty.

23. The Delegation of Australia stated that it supported the draft Treaty since it avoided unnecessary costs for applicants and reduced the risks for applicants in the various States to lose their rights. The Delegation said that it preferred simple provisions over complex provisions and that it supported any suggestion that went in that direction. Furthermore, it expressed its wish that substantive provisions would be contained in the draft Treaty under consideration.

24. The Delegation of Indonesia referred to the recommendations made at the third session of the Committee of Experts, in which the need that the format of a national or regional patent application should be in line with the PCT requirements had been clearly stated. In that context, the Delegation informed the meeting that Indonesia had recently ratified the PCT. Its national legislation was currently amended in order to apply the PCT as of September 1997. The Delegation stated that, as a result of the meeting of the Committee of Experts, it would be able to anticipate the features of the regulations and administrative matters to be dealt with by a national office under the PCT.

25. The Representative of the EPO stated that his organization was more or less content with the present draft of the Patent Law Treaty. He said that aligning the application requirements of the draft Patent Law Treaty with the PCT was an important step forward. This would largely avoid the introduction of additional formality standards, thus facilitating the acceptance of the draft Treaty. Although the EPO would like to see the Treaty to contain more provisions on substance, the Representative said that he believed that the draft before the Committee of Experts was a balanced package and a compromise on which the Committee should go forward.

26. The Representative of the Japan Intellectual Property Association (JIPA) expressed the support of his Organization for the draft Treaty prepared by the International Bureau. As a user of the patent systems, JIPA welcomed to newly introduced Articles relating to electronic filing because an electronic filing system would reduce a regional disparity between applicants. The Representative declared that the new draft Treaty had become more user-friendly since the requirements for an application in the new draft Treaty were fewer than the requirements under the PCT. The Representative of JIPA said that his organization believed that the new draft Treaty covering formalities had a great significance and that it hoped that the Patent Law Treaty covering formalities would be entered into at an early stage. Finally, he said that it was JIPA's position that the discussion of substantive issues of patent law harmonization should be continued.

27. (a) The Representative of the Japan Patent Attorneys Association (JPAA) identified three aspects of the Patent Law Treaty: first, particular provisions on the Patent Law Treaty; second, provisions on improvement of the PCT; and third, provisions on electronic applications.

(b) As regards the first category, the Representative said that it covered the provisions relating to representation and address for service, extension of a time limit and the belated claiming of priority. The JPAA supported the new Articles providing for an extension of time

limits and the belated claiming of priority, since those provisions were minimum requirements. The more flexible approach represented in those provisions was seen to be in favor of the basic principle of sufficient patent protection. As regards representation, the Representative of JPAA referred to the second and third sessions of the Committee of Experts, where JPAA had already stressed the importance of a high quality of a first application. Due to the barrier of language, professional knowledge of practice was considered to be essential in order to obtain sufficient patent protection when an application was filed abroad. The effective cooperation between the national patent offices and the qualified representatives served the maintenance of high quality of application and examination prosecution. From this point of view, Article 7 was acceptable for JPAA.

(c) Concerning the second category of provisions, the Representative said that the PCT had an important function. He expressed JPAA's belief that the PCT was a model of a system which would enable users to prepare an application in a single format. Therefore, maximum improvements in the PCT were considered to be acceptable.

(d) Thirdly, referring to the provisions on electronic applications, the Representative said that his organization had about seven years of experience in filing electronic applications. He considered electronic applications to be very effective for communications between the patent office and patent attorneys.

III. PROVISIONS OF THE DRAFT TREATY AND OF THE DRAFT REGULATIONS UNDER THE DRAFT TREATY

Draft Article 1: Abbreviated Expressions

28. *Item (i)*. This item was approved as proposed.

29. *Item (ii)*. Several delegations sought clarification as to the second part of this definition, namely, "other than an international application under the Patent Cooperation Treaty." The main question raised was whether this provision applied to both the international and the national phase of an international application. The International Bureau explained that, as the draft Patent Law Treaty now stood, it would not apply to international applications, whether in the international phase or in the national phase. Taking into account this explanation, the item was approved as proposed.

30. In response to a question raised with respect to the treatment of applications, under Japanese law, for patent term extension concerning pharmaceuticals, it was pointed out that such applications were not applications for the grant of patents so that the Treaty would not apply.

31. *Items (iii) and (iv)*. These items were approved as proposed.

32. *Item (v)*. It was suggested that, rather than referring to Article 5(1)(b), the definition should reproduce the contents of that Article and that oral statements should be explicitly excluded unless reduced to writing, it being understood that Contracting Parties would be free

to accept oral statements. Subject to an examination of this suggestion, this item was approved as proposed.

33. One delegation questioned whether the term “application,” appearing in this item, had to be included here. The International Bureau explained that this was necessary, in particular, for the purposes of Article 8, which used the term “communication” as comprising also an application.

34. *Item (vi)*. It was agreed that “data” should be replaced by “information.”

35. *Item (vii)*. This item was approved as proposed.

36. *Item (viii)*. The Delegation of Spain indicated that the Spanish text did not clearly reflect the English original “in whose name the application is,” and proposed that “en cuyo nombre se ha presentado la solicitud” be replaced by “a cuyo nombre figura la solicitud.”

37. *Items (viii) and (ix)*. The Delegation of the United States of America commented that these items may pose problems with the national legislation in its country; the definition of “applicant,” in item (viii) may be too broad since it was not limited to inventors, and the definition of “owner,” in item (ix) may be too narrow because it did not include owners of patent applications. In response, the International Bureau referred to Note 1.08, where these terms were explained. These items were approved as proposed, on the understanding that the above-mentioned problems would be re-examined by the International Bureau in consultation with the said Delegation.

38. *Item (x)*. Several delegations raised questions as to the terms “firm or partnership.” In particular, it was indicated that the French terms “cabinet d’avocats” and “cabinet de conseils en propriété industrielle” may not be as broad as the terms used in the English text. The International Bureau indicated that these terms were intended to be broad and that the French text might have to be reviewed. Subject to a possible amendment in the French text, this item was approved as proposed.

39. *Item (xi)*. This item was approved as proposed.

40. *Item (xii)*. A suggestion that the acronym “(PCT)” be included after the second appearance of the expression “Patent Cooperation Treaty” was accepted. Otherwise, this item was approved as proposed.

41. *Item (xiii)*. The Delegation of the United States of America indicated that the question of the status of the European Communities within the framework of the Treaty would require careful consideration.

Draft Rule 1: Abbreviated Expressions

42. This Rule was approved as proposed.

Draft Article 2: Special Features of Certain Types of Applications and Certain Types of Patents

43. The question of whether an article of this kind was needed was discussed in detail. Finally, it was agreed that Article 2 should be redrafted to the effect that nothing in the Treaty and the Regulations should limit the freedom of any Contracting Party to apply requirements necessary to accommodate the special features of certain types of applications and certain types of patents, where such types of applications, or where applications for such types of patents, would be applications not covered by Article 43 of the PCT. It was noted that Article 2 would apply, in particular, to provisional applications, to “reissue patents” and applications therefor, as well as to plant patents and applications therefor.

Draft Rule 2: Special Features of Certain Types of Applications Under Article 2

44. It was noted that the “conversion applications” referred to in paragraph (1)(iv) were actually “requests” for conversion (for example, of an application for a patent for invention into an application for a utility model) and not “applications” within the meaning of Article 1(ii) and consequently of Article 2.

45. In view of the agreement reached on Article 2, it was agreed that Rule 2 was no longer needed and thus should be omitted.

Draft Article 3: National Security

46. The Delegation of the United States of America expressed a concern as to the language of this Article and suggested the adoption of either a wording similar to Article 73 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) or the modification of “is intended to be construed as limiting” to “shall limit.” After some discussion, the second alternative was accepted. Subject to this change, this Article was approved as proposed.

Draft Article 4: Filing Date

47. The Delegation of Portugal stated that Article 4 would be difficult to accept in its present wording.

48. *Paragraph (1)(a), chapeau.* This was approved as proposed.

49. *Item (i).* A proposal by a delegation to delete the words “or parts of an application” because they could introduce uncertainty was approved. The International Bureau stated that it would review this matter, in particular, the explanation of this item in the Notes.

50. In response to a question by one delegation, and the representative of one non-governmental organization, the Chairman explained that, since paragraph (1)(a) did not refer to claims, it was not necessary for the application to contain claims for a filing date to be accorded.

51. In reply to a comment by two delegations that there could be uncertainty as to what constituted an “implicit indication to the effect that the elements are intended to be an application,” the International Bureau explained that, where the Office was satisfied that it was the applicant’s intention to apply for a patent, there appeared to be no good reason to refuse to accord a filing date.

52. *Item (ii)*. In response to a question by one delegation, the International Bureau explained that the words “or other person submitting the application” had been added in order to provide for the situation in which the application was filed in the United States of America by a company who was not the applicant/inventor.

53. A proposal by four delegations, that indications allowing the applicant or other person submitting the application to be contacted by the Office should not suffice for according a filing date, was opposed by six delegations, one intergovernmental organization and six non-governmental organizations. However, one of the latter delegations expressed the view that it was necessary to take into account the interest of third parties in the early publication of information as to the identity of the applicant. Two other delegations suggested that, in order to avoid delay, the time limit for furnishing any missing indications as to the identity of the applicant under Rule 5(2) should be a maximum of two or three weeks instead of the proposed minimum of two months.

54. One delegation, supported by another delegation, suggested that instead of referring to both “the applicant or other person submitting the application” it would be sufficient to refer only to “the person submitting the application.” However, it was observed that this would have the effect that, where an application was submitted by a person other than the applicant, the filing date would have to be refused if the identity of the applicant, and not that of the person submitting the application, was indicated.

55. In conclusion, it was agreed that this item should be retained but that the International Bureau would reconsider the wording of the item and of the corresponding Notes in the light of the views expressed.

56. *Item (iii)*. A proposal by three delegations and the representatives of two non-governmental organizations to replace “description” by “disclosure” so that a filing date would be accorded where the invention was disclosed only in a drawing was opposed by a number of delegations, the representative of one intergovernmental organization and the representatives of several non-governmental organizations. In the course of the discussions, the view was expressed that it was not in the interest of applicants to encourage the filing of applications without a description since any protection which would be obtained on the basis of a drawing alone would, of necessity, be very limited in many cases. In conclusion, this item was approved as proposed.

57. *Item (iv)*. This item was approved as proposed.

58. *Paragraph (1)(b)*. The Delegation of Spain stated that it was not in favor of permitting the description to be filed in any language for the purpose of according a filing date. In response to observations by one delegation, the representatives of one intergovernmental organization and one non-governmental organization, it was agreed that the International

Bureau should amplify the Notes to make it clear that the claims could be filed in any language, that, where the claims were not in a language of the Office, a translation would be required under Article 5(3), and that, even if such translation were not filed within the applicable time limit, the filing date would not be lost.

59. *Paragraphs (2) and (3)*. A proposal by one delegation that the content of these paragraphs be transferred to the Regulations was not approved.

60. *Paragraph (2)(a)*. In response to remarks by two delegations as to the meaning of the expression “unless it is impossible,” which also appeared in other provisions of the draft Treaty, the International Bureau explained that, as stated in Note 4.14, this covered the situation in which the application did not contain sufficient indications for a notification to be sent. It was agreed that the International Bureau would try to find a clearer wording. Subject to what is said in the preceding sentence, the paragraph was approved as proposed.

61. *Paragraphs (2)(b) and (3)(b)*. In response to a suggestion by three delegations that the omission of drawings did not merit special treatment and that accordingly paragraph (2)(b), and consequently also paragraph (3)(b), should be omitted, the International Bureau observed that PCT Article 14(2) also contained express provisions on the filing date in the case of missing drawings. After some discussion, during which the Representative of the EPO explained that similar existing provisions under the European Patent Convention were useful and had not caused problems, it was agreed that paragraphs (2)(b) and (3)(b) should be retained.

62. A suggestion by the representative of one non-governmental organization that paragraph (3)(b) should contain a mandatory requirement to accord the original filing date where the drawings did not contain new matter was not approved because non-examining offices would not be able to make the necessary determination. The International Bureau also commented that the standard applied by a Contracting Party in determining whether later furnished drawings contained new matter was a matter of substance.

63. *Paragraph (3)(a)*. The Delegation of the United States of America, supported by one other delegation, proposed that the word “shall” in the second sentence of the provision be amended to “may” in order to allow flexibility, for example, in applying different criteria to first filings and to filings with priority claims, and to allow a filing date to be accorded whenever the requirements of paragraph (1) were complied with. This proposal was opposed by a number of delegations and the representative of one intergovernmental organization. In the course of the discussion, it was noted that Rule 3.1 would permit a Contracting Party to prescribe a long period for compliance with the requirements of paragraph (1). It was also noted that, contrary to the explanation in Note 4.17, an applicant who re-filed the application might not have to pay new fees, and it was agreed that the International Bureau should revise that Note and review the wording of the last sentence of paragraph (3)(a), including the word “Otherwise” which could be replaced by a more precise expression.

64. *Paragraph (4)*. The suggestion in Note 4.19 that this paragraph appeared superfluous was supported by two delegations and the representative of one intergovernmental organization but opposed by eight delegations and the representatives of four non-governmental organizations. It was therefore agreed that this paragraph be retained without square brackets.

65. In response to a suggestion by one delegation that the application be accompanied by a copy of the earlier application, it was pointed out that this would undermine the purpose of the provision which was to allow incorporation of the description by reference.

66. A proposal by one delegation that the provisions of this paragraph should be made mandatory by changing “may” to “shall” in line 8 and deleting “only” in line 9 was approved.

67. Another delegation suggested that the words “or his predecessor in title” should be added after “applicant” in line 7 of this paragraph.

68. A suggestion that this paragraph should cover references to any earlier application, not merely to an application of which priority is claimed, was approved. It was noted that the reference to Article 5(6)(a) in item (ii) should be reviewed in consequence.

69. It was also agreed that the International Bureau should draft, for consideration by the fifth session of the Committee of Experts, a provision according to which, where priority is claimed in the application, the contents of the priority document would have to be taken into account in establishing whether correction by way of furnishing a missing sheet or drawing should be allowed without loss of filing date.

70. It was agreed that the International Bureau would consider the possible transfer of Note 4.22 to the Treaty or the Regulations.

Draft Rule 3: Details Concerning Filing Date Under Article 4

71. *Paragraph (1)*. This paragraph was approved as proposed.

72. *Paragraph (2)*. It was noted that the text of this paragraph should be reviewed by the International Bureau to take account of the amendments agreed to Article 4(4).

73. One delegation suggested that a Contracting Party should be permitted to require the title of the invention to be indicated in order to permit a national security check to be carried out. In the course of the discussion, the question was raised as to whether a title would be sufficient for this purpose.

74. In response to a question by one delegation and the representative of one non-governmental organization, the International Bureau explained that the purpose of the requirement in item (ii) to indicate the language of the earlier application was to enable the Office to determine whether a translation of the earlier application was required and, if so, to request such translation without having to wait for the certified copy of the earlier application to be furnished under Article 4(4)(ii). It was agreed that this requirement should be placed in square brackets for further consideration.

75. *Paragraph (3)*. This paragraph was approved as proposed.

Draft Article 5: Application

76. *Paragraph (1)(a)*. One delegation suggested that the words “different from” should be replaced by “stricter than” in the third line. Subject to this comment, several delegations and representatives expressed support for the principle contained in this paragraph, which was approved.

77. In response to a statement by the Delegation of the United States of America that it could not accept any obligation in the Patent Law Treaty relating to unity of invention, it was noted that this could be subject to a reservation under the final clauses of the Treaty.

78. *Paragraph (1)(b)*. The Delegations of the United States of America, Japan and Denmark and the Representative of the EPO expressed support for this paragraph as proposed. However, a large number of delegations expressed the view that applicants should have the right to file applications in paper form and that no office should be obliged to accept electronic filings. In this connection, the Delegations of Burkina Faso and Mexico drew attention to the problems of offices and applicants in developing countries. After some discussion, it was agreed, on a proposal by the Delegation of Australia, that the second sentence of paragraph (1)(b) should be redrafted so that the Regulations could not oblige any Contracting Party to accept the electronic filing of applications with its Office, and that the contents of item (ii) of that sentence should be placed in square brackets for further consideration by the fifth session of the Committee of Experts.

79. Four delegations and the representative of one non-governmental organization suggested that the Regulations should make it clear what was meant by “electronic filing,” for example, as regards the use of floppy disks, the Internet and telefacsimile.

80. *Paragraph (1)(c)*. In reply to a comment by one delegation, that there was no antecedent in the draft Treaty for the term “the request part of the application” and a suggestion that this paragraph should therefore be deleted, the International Bureau explained that the antecedent for the term in question was incorporated in the draft Treaty by reference to the PCT and that the paragraph provided a guarantee that an application could be filed in paper form using the Model International Form prescribed in the Regulations.

81. On the understanding that the words “which has not excluded the filing of applications in writing on paper” might have to be reconsidered depending on the final decision concerning paragraph (1)(b), paragraph (1)(c) was approved as proposed.

82. *Paragraph (2)*. In response to a question by one delegation regarding the sanction under paragraph (9) in respect of non-compliance with the requirements of paragraph (2), the Delegation of Japan explained that, if an applicant did not furnish his registration number, the application could not be accepted. Following this explanation, this paragraph was approved as proposed.

83. *Paragraph (3)*. Following some discussion, it was agreed that the International Bureau should redraft this paragraph, as well as other provisions of the Treaty which used similar wording, along the lines of wording proposed by the Delegation of Canada, namely “any Contracting Party may require that the application be in any one language admitted by its Office.”

84. *Paragraph (4)*. Following observations by two delegations that the fees in their States were paid to the government instead of to the Office, it was agreed to delete the words “to its Office.” The International Bureau noted that the same amendment would be required in other Articles.

85. The Delegation of Japan observed that, in its country, fees relating to applications filed electronically could only be paid using a deposit account with the Office.

86. *Paragraph (5)*. Following some discussion, it was agreed that this paragraph should be omitted and that the Notes should make it clear that the requirements under the omitted paragraph were not requirements as to “the form and content” of “the application” for the purposes of Article 5(1)(a). It was also agreed that the Notes would make it clear that, by the same token, requirements for duty of disclosure under the law of the United States of America, and provisions for disclosure of search results on related applications and patents under the law of India, were also not requirements as to the “form and contents” of an application under Article 5(1)(a), and would thus not be restricted under the draft Treaty.

87. *Paragraph (6)(a)*. At the suggestion of the Delegation of Japan, it was agreed that the International Bureau should study whether it was necessary to state expressly that a certificate showing the date of filing of the earlier application as provided under Article 4 D(3) of the Paris Convention for the Protection of Industrial Property could be required.

88. The Delegation of the United States of America referred to the need to take account of developments which would enable an office to obtain a copy of an earlier application from the digital library of the Office with which that earlier application had been filed, so that it would no longer be necessary for the applicant to furnish the copy. The International Bureau observed that the paragraph as drafted was flexible in this respect since it did not prescribe who should provide the copy in question. It was agreed that the International Bureau should consider a suggestion by the Representative of the EPO that, after the words “which was filed with its Office,” the words “or is available to the Office by other means” be added to the last line of the paragraph, taking into account the problem of the access of third parties to the file of the application.

89. In response to a suggestion that the applicant should be protected against the loss of a priority claim for failure to furnish a copy of the earlier application within the applicable time limit because of a failure on the part of the Office of first filing, it was agreed that the International Bureau should consider whether the provisions of draft Article 14 would provide a sufficient remedy. If they did not, the International Bureau should draft a new provision which either imposed a time limit on the Office of first filing for the production of the copy of the earlier application or provided that the time limit for furnishing the copy of the earlier application would be satisfied where the applicant had made a timely request to the Office of first filing for that copy.

90. *Paragraph (6)(b)*. The provision to restrict the need for translations of the earlier applications to those cases where the priority claim was relevant to the determination of whether the invention concerned was patentable was opposed by one delegation and the representative of one non-governmental organization. This provision was, however, supported in principle by two delegations and by the representatives of several organizations.

91. Following a remark by the Representative of the EPO, it was agreed that the International Bureau should consider whether a Contracting Party should be permitted to require a translation of the priority document where the validity of the priority claim of the application was relevant to the determination of whether it was comprised in the state of the art with respect to another application.
92. In response to a suggestion that a translation could also be required where the question arose as to whether the application claiming priority contained the same subject-matter as the priority document, the International Bureau suggested that such a translation could be requested as evidence under paragraph (7). In conclusion, it was agreed that paragraph (6) should be retained and that the International Bureau should review the text in the light of the comments made.
93. *Paragraph (7)*. In response to a comment by one delegation and the representative of one non-governmental organization that the expression “may reasonably doubt” was subjective, the International Bureau explained that the same expression was used in the Trademark Law Treaty and suggested that the proposed wording should remain. As regards the corresponding Note 5.18, the Chairman suggested that, if a delegation or organization had any further examples which could be added by way of explanation, these should be communicated directly to the International Bureau. The International Bureau was invited to consider the possible introduction of a new Rule providing that any Contracting Party which required evidence should set forth an objective showing, preferably in the form of documentary evidence, as its basis for reasonably doubting the veracity of any matter. In conclusion, paragraph (7) was approved as proposed.
94. *Paragraph (8)*. The Delegation of the United States of America stated that, in its view, the provisions of this paragraph should be transferred to the Regulations. Subject to this comment, the paragraph was approved as proposed.
95. *Paragraph (9)*. The Delegation of the United States of America stated that, in its view, the provisions of this paragraph should be transferred to the Regulations.
96. The International Bureau stated that, in light of the comments made on paragraph (2), the words “subject to Article 4” should be added after “may” in the third line.
97. Subject to the above comment, paragraph (9) was approved as so amended.
- Draft Rule 4: Filing of Applications Under Article 5(1)(b)*
98. *Paragraph (1)*. It was agreed that this paragraph would not be needed because of the amendment in Article 5(1)(b), referred to in paragraph 78, above.
99. *Paragraph (2)(a)*. In response to a question, the International Bureau explained that the reference to language requirements was necessary because the electronic filing equipment in an Office would only be able to receive applications in the character-set for which it was adapted. This provision was approved as proposed.

100. *Paragraph (2)(b) and (c)*. These provisions were approved as proposed.

Draft Rule 5: Time Limits Concerning the Application Under Article 5

101. *Paragraph (1)(a)*. A proposal that the time limit referred to in Article 5(6)(a) should be 16 months from the earliest priority date, as under the PCT, was approved by a majority of the Committee, despite the comment by one delegation that, in the case of a regular national filing, the Office required a copy of the earlier document at an earlier stage than under the PCT.

102. *Paragraph (1)(b)*. This provision was approved as proposed.

103. *Paragraph (2)*. This paragraph was approved as proposed, it being understood that no text in this paragraph would appear within square brackets in view of the agreement to retain Article 4(4).

104. *Paragraph (3)*. This paragraph was approved as proposed.

Draft Rule 6: Receipt of Communications

105. This Rule was approved as proposed.

Draft Rule 7: Details Concerning Names and Addresses

106. *Paragraph (1)*. This paragraph was approved as proposed.

107. *Paragraph (2)(a)*. The representative of a non-governmental organization indicated that an agreement on a single address may be difficult where multiple oppositions were involved. Subject to a review by the International Bureau of this matter, this provision was approved as proposed.

108. *Paragraph (2)(b) to (g)*. These provisions were approved as proposed.

109. *Paragraph (3)*. A proposal that names and addresses may be required in the original script if that script was different from the script used by the Office was accepted. Subject to this modification, this paragraph was approved as proposed.

Draft Article 6: Validity of Patent; Revocation

110. *General*. At the suggestion of several delegations that judicial proceedings be expressly included under this Article, it was agreed that the International Bureau review and incorporate this suggestion in the Article.

111. *Paragraph (1)*. It was proposed that a portion of the explanation of Note 6.02 be explicitly included in this Article, and the Delegation of Canada suggested the following text:

“Paragraph (1) shall not prevent revocation or invalidation of a granted patent on a matter of substance, for example, where the non-compliance with the formal requirement has occurred as a result of a fraudulent intention or where the disclosure of invention is inadequate to permit a person skilled in the art to carry out the invention.”

Subject to a review of this text, which could be included as subparagraph (b) of this paragraph, this paragraph was approved as proposed.

112. In response to a question raised whether a patent granted in a non-admitted language could be revoked because the language requirement had not been met, it was pointed out that the Treaty could not impose the non-revocability of such a patent because this would amount to imposing the respect of a patent in a non-admitted language.

113. *Paragraph (2)*. The International Bureau indicated that the title of this paragraph was not fully reflected in its contents, which would be amended accordingly by adding in line 4, before “corrections,” the words “amendments and/or.”

114. It was pointed out that an inconsistency would be created in this paragraph if the scope of Article 6 was extended to judicial proceedings. For example, amendments or corrections were not always possible in court proceedings. It was agreed that this should be reviewed by the International Bureau.

115. The Delegation of the United States of America expressed the view that this paragraph would go beyond the mandate of this Committee of Experts to the extent that proceedings would deal with substantive matters. The Representative of ABA concurred with this view, whereas the Representative of the AIPLA disagreed since Article 6(2) only dealt with procedures.

Draft Article 7: Representation; Address for Service

116. *Paragraph (1)*. It was agreed that the International Bureau should consider the introduction of a provision permitting a Contracting Party to require that any representative provide an address for service on its territory.

117. *Paragraph (2)(a)*. A number of delegations and the representatives of one intergovernmental organization and several non-governmental organizations expressed support for the principle contained in this provision. Several of those delegations and the representatives of that intergovernmental organization and those non-governmental organizations also proposed that the exceptions in this provision be extended to include, in particular, the filing of any translation.

118. The Delegations of Belgium, the Netherlands and Austria reserved their position as regards the exception under item (i) pending a decision on the matter in respect of the European Patent Convention by the Administrative Council of the EPO.

119. The Representative of the Compagnie nationale des conseils en propriété industrielle (CNCPI) opposed the inclusion of item (i) on the grounds that in many cases the translation was made by the representative.

120. The Delegation of Portugal, supported by the Delegations of Burkina Faso and Argentina and the Representatives of the Union of European Practitioners in Industrial Property (UEPIP) and the International Federation of Industrial Property Attorneys (FICPI) opposed the inclusion of all of the exceptions under items (i) to (iv), and proposed that these items be deleted and the end of the third line amended to read "... other than as provided for under applicable national law." In this connection, the Delegation of Burkina Faso, supported by the Representative of the International Association for the Protection of Industrial Property (AIPPI), referred to the need in developing countries to support the patent profession and provide assurances for applicants. In addition, the Representative of AIPPI, supported by the Delegation of Peru, suggested that the Diplomatic Conference should adopt a Resolution that those States which did not have a body of qualified representatives should be encouraged to create such a body. The Representative of UEPIP reiterated the view that paragraph (2)(a)(i) was a political matter to be decided by the Contracting States to the European Patent Convention, whereas the Delegation of Australia drew attention to the fact that applicants from any country in the world were concerned by this provision.

121. The Delegation of China reserved its position on item (iii).

122. The Delegation of Switzerland expressed the view that the payment of a fee under item (iii) was not a procedure before the Office.

123. In conclusion, it was agreed that the provision should be retained with item (i) amended to include the filing of any translation and that the International Bureau should review the wording of the paragraph in the light of the above comments.

124. *Paragraph (2)(b)*. The Delegation of the United States of America suggested that a new provision be introduced, in accordance with proposed United States of America legislation regulating invention development firms, which would permit a Contracting Party to require an applicant who was not represented to provide indications regarding any assistance he had received in making his application.

125. In response to a proposal by the Delegation of Mexico that the exclusion of "a procedure referred to in subparagraph (a)(i) to (iv)" be deleted and a question by the Delegation of Sweden as to the reason for this exclusion, the International Bureau explained that the advantages of not having to use a representative for the procedures in question under paragraph (2)(a) could be undermined if the applicant was then required to provide an address for service in the territory of each Contracting Party in respect of which, for example, a translation was filed or fees were paid without representation.

126. *Paragraph (3)(a)*. In response to a question, the Chairman explained that this provision obliged a Contracting Party to accept the appointment of a representative in the prescribed manner but did not prohibit a Contracting Party from permitting such appointment in any other manner. Subject to those comments, this provision was approved as proposed.

127. *Paragraph (3)(b)*. It was suggested that, in the situation contemplated by that provision, a Contracting Party could require a copy of the power of attorney for each application or patent concerned. This provision was approved as proposed.

128. *Paragraph (3)(c)*. This provision was approved as proposed.

129. *Paragraph (3)(d)*. It was suggested that general powers of attorney should not be allowed to contain limitations of the powers of the representative in order to avoid the need for the Office to check the contents of the general power of attorney on the occasion of each action. This provision was approved as proposed.

130. *Paragraph (3)(e) and (f)*. These provisions were approved as proposed.

131. *Paragraph (4)*. This provision was approved as proposed.

132. *Paragraph (5)*. In response to a question, the International Bureau explained that the PCT currently provided for an office to require that a copy of the general power of attorney be furnished but that it was proposed to delete this requirement. Another delegation proposed that provision should be made for the reference number of the representative to be furnished. A further delegation observed that there appeared to be an inconsistency between the wording of this paragraph and that of paragraph (3)(a), which did not require the appointment to be made in a power of attorney. In conclusion, it was agreed that the International Bureau should review the wording of the paragraph in the light of the above comments.

133. *Paragraph (6)*. This paragraph was approved as proposed.

134. *Paragraph (7)*. In reply to a question, the International Bureau explained that the purpose of this paragraph was to prohibit a Contracting Party from systematically requiring evidence and did not reverse any burden of proof on the applicant. This paragraph was approved as proposed.

135. *Paragraph (8)(a)*. One delegation proposed that the Office should be free to choose whether to notify the representative under item (i) or the person to be represented under item (ii). A number of other delegations suggested that only the representative or a person who refers to himself as a representative should be notified in accordance with item (i) and that item (ii) should be deleted. It was pointed out that the notification of the person to be represented was necessary to avoid any disadvantages for that person, for example, because of inaction of the representative.

136. Following an explanation by the Chairman that, where an application was filed by a person who was not represented and who had not provided an address for service in the territory of the Contracting Party, the Office would be obliged to notify that applicant at his address in a foreign country of the requirement to appoint a representative or provide an address for service in that territory, the Delegation of Mexico stated that it reserved its position on this provision.

137. In response to a question by one delegation, the International Bureau confirmed that this provision did not exclude any particular form of notification, for example, oral notification.

138. In conclusion, it was agreed to retain the requirement for notification under both items (i) and (ii), and, subject to the reservation referred to in paragraph 136, above, this provision was approved as proposed.

139. *Paragraph (8)(b)*. This provision was approved as proposed.

140. *Paragraph (9)*. This paragraph was approved, subject to an amendment proposed by the International Bureau that the words “subject to Article 4” be included after the word “may” in line 3 of the paragraph in order to ensure that the filing date of an application was retained in the event of non-compliance with the requirements referred to in this paragraph.

141. *Further provision*. The Delegation of Germany proposed that a further provision should be included stating that, where a representative was appointed, the Office should send any communication to that representative.

Draft Rule 8: Details Concerning Representation and Address for Service Under Article 7

142. This Rule was approved as proposed.

Draft Article 8: Signature

143. *Paragraph (1)*. In reply to a question, the International Bureau explained that in item (iii) the nationality of the person who signed was included to take account of the requirements under Japanese law in respect of the use of seals. Following this explanation, this paragraph was approved as proposed.

144. *Paragraph (2)*. This paragraph was approved as proposed.

145. *Paragraph (3)*. Following an observation that certification of signatures may be required in the case of electronic filing, it was agreed to restrict this paragraph to filings in writing on paper.

146. *Paragraph (4)(a)*. This provision was approved as proposed.

147. *Paragraph (4)(b)*. In response to a question, the International Bureau explained that this provision was intended to prevent the provisions of paragraph (3) being circumvented by a requirement for evidence under paragraph (4)(a). Following this explanation, the paragraph was approved as proposed.

Draft Rule 9: Details Concerning Signature Under Article 8

148. This Rule was approved as proposed.

Draft Article 9: Request for Recordal of Change in Name or Address

149. *Paragraph (1)(a) to (e)*. These provisions were approved as proposed.

150. *Paragraph (1)(f)*. It was agreed during the discussion of Article 5(4) that “to the Office” be deleted. Otherwise, this provision was approved as proposed.

151. *Paragraph (1)(g)*. The Delegation of the United States of America indicated that, where a request concerned multiple applications, multiple copies should be permitted to be required and that the same should be true also for Articles 10(1)(j), 11(1)(g) and 12(1)(g). In this regard, an alternative was proposed by the representative of a non-governmental organization that the Office could make multiple copies and charge appropriate fees. Subject to these statements, this provision was approved as proposed.

152. *Paragraphs (2) and (3)*. These paragraphs were approved as proposed.

153. *Paragraphs (4) and (5)*. In response to a suggestion that the evidence requirement of paragraph (5) should be included under the prohibition of paragraph (4), the International Bureau stated that this matter would be reviewed. Subject to this review, these paragraphs were approved as proposed.

154. *Paragraphs (6) and (7)*. These paragraphs were approved as proposed.

Draft Rule 10: Details Concerning Request for Recordal of Change in Name or Address Under Article 9

155. This Rule was approved as proposed.

Draft Article 10: Request for Recordal of Change in Ownership [or Change in Inventor]

156. *Paragraphs (1) to (7)*. The Delegation of the United States of America stated that the particular consideration concerning inventors applied to these paragraphs. It was agreed that Article (10), including its paragraph (8), would be reviewed by the International Bureau with the assistance of the United States of America for the next session.

157. *Paragraph (1)(a) to (c)*. Subject to paragraph 156, above, these provisions were approved as proposed.

158. *Paragraph (1)(d)*. In response to a suggestion by one delegation that “as far as applicable national law permits” be inserted in item (i), the International Bureau pointed out that it would be desirable that the national laws which did not presently allow representatives admitted to practice before the Office to give the certification in question be amended to allow for that.

159. The Delegations of the Russian Federation and the Republic of Korea suggested that this paragraph be extended to requests made by a previous applicant or owner. The International Bureau explained that this was unnecessary because, as the holder of rights, the previous applicant or owner did not need to provide evidence that he transferred his rights and the fact that the request came from him was sufficient. The Delegation of the Russian Federation also suggested that the words “, at the option of the requesting party,” should be deleted. In conclusion, this provision was, subject to paragraph 156, above, approved as proposed.

160. *Paragraph (1)(e)*. In response to a request that additional documents showing the attribution of the rights should be permitted to be required in the case of division of legal entities, the International Bureau stated that this issue would be reviewed. Subject to this review and paragraph 156, above, this provision was approved as proposed.

161. *Paragraph (1)(f) to (h)*. Subject to paragraph 156, above, these provisions were approved as proposed.

162. *Paragraph (1)(i)*. It was agreed during the discussion of Article 5(4) that “to the Office” be deleted. Subject to this change and paragraph 156, above, this provision was approved as proposed.

163. *Paragraph (1)(j)*. Subject to paragraphs 151 and 156, above, this provision was approved as proposed.

164. *Paragraph (2)*. According to the agreement reached during the discussion of Article 5(3), this paragraph would use the wording “in any one language admitted by the Office.” Subject to this change and paragraph 156, above, this paragraph was approved as proposed.

165. *Paragraphs (3) to (7)*. Subject to paragraph 156, above, these paragraphs were approved as proposed.

166. *Paragraph (8)*. A suggestion by the Delegation of the Russian Federation, supported by another delegation, that this paragraph should be deleted was not approved. In response to a suggestion by a further delegation, it was agreed the International Bureau would study whether the case of the addition of an inventor should be put on the same footing as the case of the deletion of an inventor. Subject to this change, this paragraph was approved as proposed.

Draft Rule 11: Details Concerning Request for Recordal of Change in Ownership [or Change in Inventor] Under Article 10

167. This Rule was approved as proposed.

Draft Article 11: Request for Recordal of a Licensing Agreement or Security Interest

168. *Paragraph (1)*. In response to the suggestion that the situation of multiple applicants or owners be included in this paragraph, the International Bureau stated that a provision along the lines of Article 10(1)(f) would be incorporated in Article 11.

169. *Paragraph (1)(a) to (c)*. These provisions were approved as proposed.

170. *Paragraph (1)(d)*. The Delegation of the Russian Federation commented that the situation under Article 11 was the same as that under Article 10 and suggested that documents certifying the existence of a license agreement be permitted to be required also where the recordal was requested by the licensor, and that the words “, at the option of the requesting

party,” should be deleted. It was agreed that the former suggestion should be reviewed by the International Bureau. Subject to this review, paragraph (1)(d) was approved as proposed.

171. *Paragraph (1)(e)*. This provision was approved as proposed.

172. *Paragraph (1)(f)*. It was agreed during the discussion of Article 5(4) that “to the Office” be deleted. Otherwise, this provision was approved as proposed.

173. *Paragraph (1)(g)*. Subject to paragraph 151, above, this provision was approved as proposed.

174. *Paragraph (2)*. According to the agreement reached during the discussion of Article 5(3), this paragraph would also use the wording “in any one language admitted by the Office.” Subject to this change, this paragraph was approved as proposed.

175. *Paragraphs (3) to (8)*. These paragraphs were approved as proposed.

Draft Rule 12: Details Concerning Request for Recordal of a Licensing Agreement or Security Interest Under Article 11

176. This Rule was approved as proposed.

Draft Article 12: Request for Correction of a Mistake

177. *Paragraph (1)(a)*. In response to a proposal by the Delegations of the United States of America and New Zealand that requests for correction of mistakes be limited to formal mistakes, the International Bureau explained that this Article concerned the formalities of a request for correction and not the types of mistakes. It was agreed, however, that the wording of paragraph (1)(a) would be reviewed by the International Bureau to take into account the concerns expressed. Subject to this review, this provision was approved as proposed.

178. *Paragraph (1)(b) to (d)*. These provisions were approved as proposed.

179. *Paragraph (1)(e)*. According to the agreement reached during the discussion of Article 5(3), this provision would also use the wording “in any one language admitted by the Office.” Subject to this change, this provision was approved as proposed.

180. *Paragraph (1)(f)*. It was agreed during the discussion of Article 5(4) that “to the Office” be deleted. Otherwise, this provision was approved as proposed.

181. *Paragraph (1)(g)*. Subject to paragraph 151, above, this provision was approved as proposed.

182. *Paragraph (1)(h)*. This provision was approved as proposed.

183. *Paragraph (1)(i)*. The question was raised whether a mistake could be made in “bad faith” and how the requirement of evidence under paragraph (4) would be applied in such a case. This provision was approved as proposed.

184. *Paragraph (1)(j)*. It was suggested that the term “without undue delay” be replaced by “without intentional delay.” Subject to a review of this suggestion, this provision was approved as proposed.

185. *Paragraphs (2) to (7)*. These paragraphs were approved as proposed.

Draft Rule 13: Details Concerning Request for Correction of a Mistake Under Article 12

186. This Rule was approved as proposed.

Draft Article 13: Extension of a Time Limit Established by the Office

187. *Paragraph (1)(a)*. After some discussion, it was agreed that the reference to “a third party concerned” should be deleted but that the Notes should explain that a Contracting Party would be permitted to provide for an extension at the request of a third party. Otherwise, this provision was approved as proposed.

188. *Paragraph (1)(b)*. After some discussion, it was agreed that this provision should be deleted, with the consequence that the word “a first” in line two of subparagraph (a) had to be replaced by the word “the.”

189. *Paragraph (2)*. After some discussion, it was agreed that this paragraph related to restoration, not extension, and should be transferred to Article 14. It was also agreed that, in line with the amendment agreed to paragraph (1)(a), the references to “a third party” in subparagraphs (a) and (b) should be deleted.

190. A proposal by the Delegation of the United States of America that the concept “in spite of due care required by the circumstances” be replaced by the concept “the failure to comply was unintentional” was approved. This change had to be made throughout in Articles 13, 14 and 15.

191. The representative of a non-governmental organization suggested that consideration should be given as to whether the revised provision would apply to the payment of maintenance fees.

192. *Paragraph (3)*. After some discussion, it was agreed that this paragraph could be deleted, particularly if the words “a declaration or” were added before the word “evidence” in paragraph (2)(b).

193. *Paragraph (4)(a)*. It was agreed that, in line with the amendment agreed to Article 5(4), the words “to its Office” should be deleted.

194. *Paragraph (4)(b)*. The Delegation of the Russian Federation suggested that this provision should also cover the loss of a communication. Subject to consideration of this suggestion, and with the amendment referred to in paragraph 191, above, the provision was approved as proposed.

195. *Paragraph (5)*. The representative of a non-governmental organization suggested that a Contracting Party should be required to notify the party concerned that a time limit had not been complied with. Subject to this comment, this paragraph was approved as proposed.

196. *Paragraph (6)*. After some discussion, it was agreed that this paragraph should be deleted in consequence of the transfer of paragraph (2) to Article 14.

197. *Paragraph (6)(a)*. The following observations were made in respect of this provision and would have to be taken into account in respect of Article 14(5)(a). One delegation suggested that the words “any Contracting Party may prescribe” be inserted after the reference to “paragraph (2).” The representative of one non-governmental organization, supported by one delegation, suggested that there should be no intervening rights where there had been no reliance on the loss of the patent application. The representative of another non-governmental organization suggested that the period referred to in paragraph (6)(a) should terminate on the date on which the public was informed that the patent application had been restored.

198. *Paragraph (6)(b)*. The following observations were made in respect of this provision and would have to be taken into account in respect of Article 14(5)(b). One delegation suggested that no compensation should be payable where the use of the invention ceased before the patent application was restored. The representative of a non-governmental organization, supported by one delegation suggested that no compensation should be payable where the person who used the invention, or had made preparations, did not have good reasons to think that the application had been abandoned.

Draft Rule 14: Details Concerning Extension Under Article 13 of a Time Limit Established by the Office

199. *Paragraph (1)(a)*. The Delegation of the United States of America explained that it would prefer a one-month period since it levied fees on the basis of one-month increments and did not wish to charge a person concerned a two-month fee if he required only a one-month extension. The Delegation of Australia also proposed one month. Following some discussion, during which the Representatives of AIPLA and ABA stated that a one-month minimum would be troublesome and a two-month minimum was required, and the Representative of AIPPI suggested three months, this provision was approved as proposed.

200. *Paragraph (1)(b)*. It was noted that this provision should be deleted in consequence of the deletion of Article 13(1)(b).

201. *Paragraph (2)*. One delegation suggested that the time limit referred to in this paragraph should be calculated from the date on which the person concerned realized that he had not observed the time limit for the action before the Office but should not be longer than a certain number of months after the expiration of the latter time limit. Subject to an examination of this suggestion, the contents of this paragraph were approved as proposed.

Draft Article 14: Extension of a Time Limit Established by National Legislation or Regional Treaty

202. *Paragraph (1)(a)*. The Committee of Experts approved a proposal by the Representative of the EPO, supported by three delegations, that “further processing” should generally be permitted on the mere basis of a request and the payment of a fee. However, a Contracting Party should be permitted in its national law to except from “further processing” certain specific procedures for which restoration of rights would be available but only where the person concerned established that the failure to meet the time limit was unintentional.
203. *Paragraph (1)(b)*. It was agreed that this provision should be deleted.
204. *Paragraph (2), chapeau*. It was noted that the term “an extension” had to be replaced by “a restoration.”
205. *Paragraph (2), item (i)*. One delegation suggested that this item be broadened to read “a time limit for action before a board of appeal, tribunal, or other disputes body constituted by the Office.” Subject to an examination of this suggestion, this item was approved as proposed.
206. *Item (ii)*. One delegation proposed that this item be deleted. It was however agreed to retain it as proposed.
207. *Item (iii)*. This item was approved as proposed.
208. *Item (iv)*. One delegation suggested that this item should cover all procedures relating to opposition proceedings.
209. *Item (v)*. One delegation suggested that this item be deleted. It was however agreed to retain it as proposed.
210. *Additional items*. The Delegation of Belgium suggested that an exception should also be made under paragraph (2) for the filing of translations of regional patents. The Delegation of the Russian Federation suggested that an exception should also be made under paragraph (2) for the submission of a request for restoration.
211. *Paragraph (3)*. It was agreed that the words “to its Office” should be deleted in line with the amendment agreed to Article 5(4). With this amendment, this paragraph was approved.
212. *Paragraph (4)*. This paragraph was approved as proposed.
213. *Paragraph (5)*. It was noted that the interventions on Article 13(6)(a) and (b) (see paragraphs 197 and 198, above) would apply to this paragraph as a consequence of the transfer of the provisions of Article 13(2) to Article 14.
214. A proposal by one delegation that the period referred to in subparagraph (a) should commence six months after the expiration of the time limit for the action before the Office and

terminate six months after the restoration of the right was opposed by the representative of a non-governmental organization.

215. In response to a comment by the Delegation of Chile that the last two lines of the Spanish text of subparagraph (a) did not appear to be in agreement with the English text, it was agreed that the International Bureau should review that text.

Draft Rule 15: Details Concerning Extension Under Article 14 of a Time Limit Established by National Legislation or Regional Treaty

216. This Rule was approved as proposed.

Draft Article 15: Belated Claiming of Priority

217. *Paragraph (1)*. This paragraph was approved as proposed.

218. *Paragraph (2)(a)*. The Delegation of France asked whether, under this provision, the priority period would be extended to 14 months or would remain a 12-month period subject to possible restoration and, in the latter case, whether third party rights would be recognized. The International Bureau replied that the priority period would remain a 12-month period and that third party rights would not be recognized in case of restoration. Consequently, Note 15.06 would have to be reviewed.

219. The representative of a non-governmental organization, supported by one delegation, suggested that the proposed limitation regarding technical preparations was unnecessary. The International Bureau explained that a proposal for a similar provision would be submitted to the PCT Assembly in September 1997.

220. It was agreed that the International Bureau should revise this paragraph in accordance with the decision of the PCT Assembly.

221. *Paragraph (2)(b)*. This provision was approved as proposed.

222. *Paragraph (3)*. It was agreed that the words “to its Office” should be deleted in line with the amendment agreed to Article 5(4). With this amendment, this paragraph was approved.

Draft Rule 16: Details Concerning Belated Claiming of Priority Under Article 15

223. The Delegations of Russian Federation and Japan supported the text as proposed with a two-month time limit under item (i). However, the Delegation of Australia, supported by the Delegation of the United States of America and the Representative of AIPLA, suggested a time limit of 16 months as under item (ii) in all cases, and the Delegation of Canada suggested a fixed time limit of 16 months.

Draft Rule 17: Manner of Identification of an Application Without its Application Number

224. This Rule was approved as proposed.

Draft Article 16: Regulations

225. This Article was approved as proposed.

IV. FUTURE WORK

226. The International Bureau indicated that the fifth session of the Committee of Experts was tentatively scheduled to take place from December 15 to 19, 1997. Proposals for decisions on the date and agenda of the diplomatic conference for the adoption of the Patent Law Treaty and on the convening of a preparatory meeting dealing with procedural aspects of the diplomatic conference would be submitted to the General Assembly of WIPO after the fifth session of the Committee of Experts, on the basis of the results of that session and taking into account the possible need for a sixth session of the Committee of Experts.

227. This report was unanimously adopted by the Committee of Experts on June 27, 1997.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS MEMBRES/MEMBER STATES

(dans l'ordre alphabétique des noms français des États)
(in the alphabetical order of the names in French of the States)

AFRIQUE DU SUD/SOUTH AFRICA

Craig John BURTON-DURHAM, Acting Registrar of Patents, Trade Marks, Copyright and Designs, South African Patent Office, Department of Trade and Industry, Pretoria

Bongiwe QWABE (Ms.), Second Secretary, Permanent Mission, Geneva

ALLEMAGNE/GERMANY

Peter MÜHLENS, First Counsellor, Federal Ministry of Justice, Bonn

Swantje WEBER-CLUDIUS (Mrs.), Federal Ministry of Economics, Bonn

Lutz VAN RADEN, Head, Legal Division, German Patent Office, Munich

Klaus MÜLLNER, Head, Patent Division, German Patent Office, Munich

Heinz BARDEHLE, Patent Attorney, Munich

ARGENTINE/ARGENTINA

Luis María NOGUES, Comisario de la Administración Nacional de Patentes, Instituto Nacional de la Propiedad Industrial (INPI), Buenos Aires

AUSTRALIE/AUSTRALIA

Bruce I. MURRAY, Commissioner of Patents, Australian Industrial Property Organisation, Woden

AUTRICHE/AUSTRIA

Christoph ZEILER, Legal Officer, Austrian Patent Office, Federal Ministry for Economic Affairs, Vienna

BELGIQUE/BELGIUM

Paul LAURENT, conseiller adjoint, Office de la propriété industrielle, Ministère des affaires économiques, Bruxelles

BRÉSIL/BRAZIL

Maria Margarida MITTELBAACH (Mrs.), Director of Patents, National Institute of Industrial Property, Rio de Janeiro

Carlos Pazos RODRIGUEZ, Head, Administrative Section of Patents, National Institute of Industrial Property, Rio de Janeiro

BURKINA FASO

Mathieu HIEN, chef du Service de la propriété industrielle, Direction générale du développement industriel, Ministère du commerce, de l'industrie et de l'artisanat, Ouagadougou

CANADA

Alan TROICUK, Legal Counsel to the Canadian Intellectual Property Office, Industry Canada Legal Services, Hull

Pierre TRÉPANIÉ, Deputy Director, Patent Branch, Canadian Intellectual Property Office, Hull

CAP-VERT/CAPE VERDE

Luis José LANDIM, directeur général, Registres du notariat et de l'identification, Ministère de la justice et de l'administration interne, Praia

CHILI/CHILE

Iván VRSALOVIĆ OSTOJIC, Conservador de Patentes de Invención, Ministerio de Economía, Fomento y Reconstrucción, Departamento de Propiedad Industrial, Santiago

CHINE/CHINA

WEN Xikai (Mrs.), Deputy Director General, Law and Treaty Department, Chinese Patent Office, Beijing

COLOMBIE/COLOMBIA

Alix CÉSPÉDES DE VERGEL (Sra.), Jefe, División de Nuevas Creaciones, Superintendencia de Industria y Comercio, Santafé de Bogotá, D.C.

CÔTE D'IVOIRE

Cécile ESSIS LEZOU (Mme), chargée d'études en matière de propriété industrielle, Ministère chargé du plan et du développement industriel, Abidjan

Marc Georges SERY-KORE, conseiller, Mission permanente, Genève

CROATIE/CROATIA

Mirjana PUŠKARIĆ (Ms.), Legal Expert, State Intellectual Property Office of the Republic of Croatia, Zagreb

Jasminka ADAMOVIĆ (Mrs.), Legal Expert, State Intellectual Property Office of the Republic of Croatia, Zagreb

DANEMARK/DENMARK

Anne Rejnhold JØRGENSEN (Mrs.), Head, Legal Department, Danish Patent Office, Taastrup

Bente SKOVGAARD KRISTENSEN (Mrs.), Specialist in Intellectual Property, Danish Patent Office, Taastrup

ÉMIRATS ARABES UNIS/UNITED ARAB EMIRATES

Ali AL SHAMSI, First Secretary, Permanent Mission, Geneva

ESPAGNE/SPAIN

Miguel HIDALGO LLAMAS, Consejero Técnico, Departamento de Patentes y Modelos, Oficina Española de Patentes y Marcas, Madrid

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Lee SCHROEDER, Senior Counsellor, Office of Legislative and International Affairs, Patent and Trademark Office, Department of Commerce, Washington, D.C.

Lois BOLAND (Mrs.), Attorney-Adviser, Office of Legislative and International Affairs, Patent and Trademark Office, Department of Commerce, Washington, D.C.

Stephen G. KUNIN, Deputy Assistant Commissioner for Patent Policy and Projects, Patent and Trademark Office, Department of Commerce, Washington, D.C.

Jeffrey P. KUSHAN, Attaché, Office of the United States Trade Representative, United States Mission, Geneva

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Nikolai BOGDANOV, Deputy Director, International Cooperation Department, Russian Agency for Patents and Trademarks (ROSPATENT), Moscow

FINLANDE/FINLAND

Maarit LÖYTÖMÄKI (Mrs.), Deputy Director, National Board of Patents and Registration of Finland, Helsinki

Marjo AALTO-SETÄLÄ (Ms.), Coordinator of International Affairs, National Board of Patents and Registration of Finland, Helsinki

FRANCE

Denis CROZE, chef du Service des affaires multilatérales, Institut national de la propriété industrielle, Paris

Martine PLANCHE (Mme), chef du Département des brevets, Institut national de la propriété industrielle, Paris

GÉORGIE/GEORGIA

Marina CHKHITUNIDZE (Mrs.), Head, Section for Methodological and Normative Provision of Inventions, Georgian Patent Office, Tbilisi

GUATEMALA

Federico URRUELA PRADO, Embajador, Representante Permanente, Misión Permanente, Ginebra

Beatriz MÉNDEZ DE LA HOZ (Sra.), Tercer Secretario, Misión Permanente, Ginebra

HONGRIE/HUNGARY

Judit HAJDÚ (Mrs.), Head, Patent Department for Mechanics and Electricity, Hungarian Patent Office, Budapest

Dóra SILI (Mrs.), Lawyer, Hungarian Patent Office, Budapest

INDE/INDIA

Taruvai Radhakrishnan SUBRAMANIAN, Controller General of Patents, Designs and Trademarks, Office of the Controller General of Patents, Designs and Trademarks, Mumbai

Dilip SINHA, Counsellor, Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Henry SOELISTYO BUDI, Head, Intellectual Property Division, Bureau of Law and Legislation, Cabinet Secretariat, Jakarta

Bambang HIENDRASTO, First Secretary, Permanent Mission, Geneva

Bebek DJUNDJUNAN, Third Secretary, Permanent Mission, Geneva

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Hashem REZAEI, Deputy Director General, Registration Office for Companies and Industrial Property, State Registration Organization of Deeds and Properties, Tehran

Reza ABDOLHAMIDI, Director of the Office of the Head of the State Registration Organization of Deeds and Properties, Tehran

Mohammad Hossein MOAYEDODDIN, Senior Legal Expert, Legal Department, Ministry of Foreign Affairs, Tehran

IRLANDE/IRELAND

Enda Patrick FOLEY, Head, Patent Examination Section, Department of Enterprise and Employment, Patents Office, Dublin

ITALIE/ITALY

Pasquale IANNANTUONO, conseiller juridique, Service des accords pour la propriété intellectuelle, Ministère des affaires étrangères, Rome

Corrado MILESI-FERRETTI, premier conseiller, Mission permanente, Genève

JAPON/JAPAN

Yasuji KURAMOCHI, Director, Formality Examination Standards Office, General Administration Division, General Administration Department, Japanese Patent Office, Tokyo

Seiichi AKAGAWA, Deputy Director, Electronic Data Processing, Administration Division, General Administration Department, Japanese Patent Office, Tokyo

Nobuyuki MONNA, Section Chief, International Affairs Division, General Administration Department, Japanese Patent Office, Tokyo

Kazuhiro ITAYA, Assistant Director, First International Organizations Division, Economic Affairs Bureau, Ministry of Foreign Affairs, Tokyo

Satoshi MORIYASU, First Secretary, Permanent Mission, Geneva

KAZAKSTAN

Raushan ALSHIMBAEVA (Mrs.), Deputy Chairman, National Patent Office, Almaty

Saoulé TLEVLESSOVA (Mrs.), Second Secretary, Permanent Mission, Geneva

KENYA

Esther Mshai TOLLE (Ms.), Ambassador, Permanent Representative, Permanent Mission, Geneva

John MUCHAE, Deputy Director, Kenya Industrial Property Office, Ministry of Research, Technical Training and Technology, Nairobi

Alex Kiptanui CHEPSIROR, Counsellor (Legal), Permanent Mission, Geneva

LESOTHO

Mantaote LEUTA (Mrs.), Assistant Registrar-General, Ministry of Law and Constitutional Affairs, Maseru

Kojang Constance LIKOTI (Mrs.), Patents Examiner, Ministry of Law and Constitutional Affairs, Maseru

LETONIE/LATVIA

Guntis RAMANS, Head, Department of Examination of Inventions, Patent Office of the Republic of Latvia, Riga

MALI

Issouf Oumar MAIGA, conseiller des affaires étrangères, Direction des affaires juridiques et consulaires, Ministère des affaires étrangères et des maliens de l'extérieur, Bamako

MALTE/MALTA

Anthony CAMENZULI, Comptroller of Industrial Property, Industrial Property Office, Ministry of Finance and Commerce, Valletta

MAROC/MOROCCO

Abdellah BEN MELLOUK, premier secrétaire, Mission permanente, Genève

MEXIQUE/MEXICO

José Germán CAVAZOS-TREVIÑO, Director Divisional de Patentes, Instituto Mexicano de la Propiedad Industrial, México

Dolores JIMÉNEZ HERNÁNDEZ (Sra.), Consejero, Misión Permanente, Ginebra

NORVÈGE/NORWAY

Inger NÆSGAARD (Ms.), Chief Engineer, Norwegian Patent Office, Oslo

Hildegun RAA (Mrs.), Senior Executive Officer, Norwegian Patent Office, Oslo

NOUVELLE-ZÉLANDE/NEW ZEALAND

Natalie Joan GRAY (Ms.), Assistant Commissioner of Patents, New Zealand Patent Office,
Wellington

PAYS-BAS/NETHERLANDS

Willem NEERVOORT, Vice President, Bureau for Industrial Property, Rijswijk

PÉROU/PERU

Olga Begoña VENERO AGUIRRE (Sra.), Jefe, Oficina de Invenciones y Nuevas Tecnologías,
Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual
(INDECOPI), Lima

PHILIPPINES

Cesar Jorge SANDIEGO, Assistant Director, Bureau of Patents, Trademarks and Technology
Transfer, Department of Trade and Industry, Manila

PORTUGAL

José MOTA MAIA, président, Institut national de la propriété industrielle, Ministère de
l'économie, Lisbonne

Isabel AFONSO (Mme), directeur de Services, Institut national de la propriété industrielle,
Ministère de l'économie, Lisbonne

José Sérgio DE CALHEIROS DA GAMA, conseiller juridique, Mission permanente, Genève

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

Jin-Gyun SHIN, Senior Examiner, Examination Coordination Division, Korean Industrial
Property Office, Ministry of Trade, Industry and Energy, Seoul

Joon-Kyu KIM, Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Ion DANILIUC, Deputy Director General, State Agency on Industrial Property Protection,
Kishinev

ROUMANIE/ROMANIA

Liviu BULGÁR, chef du Service juridique et relations internationales, Office d'État pour les inventions et les marques, Bucarest

Valeriu ERHAN, chef du Service de l'examen des inventions et topographies, Office d'État pour les inventions et les marques, Bucarest

Viorel PORDEA, chef du Service de l'examen préliminaire, Office d'État pour les inventions et les marques, Bucarest

ROYAUME-UNI/UNITED KINGDOM

Graham JENKINS, Head, Intellectual Property Policy Directorate, The Patent Office, Newport

Frank MILES, Senior Patent Examiner, Legal Division, The Patent Office, Newport

Nicki CURTIS, Patent Examiner, Intellectual Property Policy Directorate, Newport

Richard FAWCETT, Patent Consultant, London

SÉNÉGAL/SENEGAL

Doudou SAGNA, chef du Bureau des signes distinctifs, Service de la propriété industrielle et de la technologie, Ministère de l'énergie, des mines et de l'industrie, Dakar

SLOVAQUIE/SLOVAKIA

Eugen ZÁTHURECKÝ, Director, Legislation and Law Department, Industrial Property Office of the Slovak Republic, Banská Bystrica

Lůdmila HLADKÁ (Mrs.), Deputy Director of International Affairs, EI and PCT, Industrial Property Office of the Slovak Republic, Banská Bystrica

SLOVÉNIE/SLOVENIA

Bojan PRETNAR, Director, Slovenian Intellectual Property Office, Ljubljana

SUÈDE/SWEDEN

Per HOLMSTRAND, Chief Legal Counsel, Swedish Patent and Registration Office, Stockholm

Marie ERIKSSON (Ms.), Head, Legal Division, Patent Department, Swedish Patent and Registration Office, Stockholm

SUISSE/SWITZERLAND

Philippe BAECHTOLD, chef du Service juridique des brevets, Division des brevets, Institut fédéral de la propriété intellectuelle, Berne

SWAZILAND

Queen MATSEBULA (Ms.), Acting Assistant Registrar General, Registrar General's Office, Mbabane

THAÏLANDE/THAILAND

Chumpon SIRIVUNNABOOD, Deputy-Director, Examination Division 1, Department of Intellectual Property, Ministry of Commerce, Bangkok

UKRAINE

Leonid NIKOLAYENKO, Vice-Chairman, State Patent Office of Ukraine, Kyiv

Nellja MOVA (Mrs.), Director, Industrial Property Economics Department, State Patent Office of Ukraine, Kyiv

Volodymyr RADOMSKYIY, Deputy Head, Legislation and Patent Policy Department, State Patent Office of Ukraine, Kyiv

VIET NAM

Phi Anh PHAM, Director, Inventions and Utility Solutions Department, National Office of Industrial Property of Viet Nam, Hanoi

II. ÉTATS OBSERVATEURS/OBSERVER STATES

BELIZE

Jean F. TAMER, ambassadeur, représentant permanent, Mission permanente, Genève

KOWEÏT/KUWAIT

Rasheed AL-TABTABAIIE, Assistant Undersecretary for Commercial Affairs, Ministry of Commerce and Industry, Safat

Nefal AL-DOESARI, Director of Commercial Registration, Ministry of Commerce and Industry, Safat

Naser AL-BAGHLI, Commercial Attaché, Permanent Mission, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/ INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE ORGANIZATION (WTO)

Matthijs GEUZE, Counsellor, Intellectual Property and Investment Division, Geneva

COMMUNAUTÉS EUROPÉENNES (CE)/EUROPEAN COMMUNITIES (EC)

Jonathon STOODLEY, Counsellor, Permanent Delegation of the Commission of the European Communities, Geneva

OFFICE EUROPÉEN DES BREVETS (OEB)/EUROPEAN PATENT OFFICE (EPO)

Eugen STOHR, Lawyer, Directorate International Legal Affairs, Munich

Robert CRAMER, Lawyer, Directorate Patent Law, Munich

ORGANISATION DE L'UNITÉ AFRICAINE (OUA)/ORGANIZATION OF AFRICAN UNITY (OAU)

Venant WEGE-NZOMWITA, observateur permanent adjoint, Délégation permanente, Genève

Mustapha CHATTI, attaché, Délégation permanente, Genève

IV. ORGANISATIONS NON GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

American Bar Association (ABA): George R. CLARK (Past Chairman, Intellectual Property Law Section, Chicago)

American Intellectual Property Law Association (AIPLA): Michael KIRK (Executive Director, Arlington); Michael J. PANTULIANO (Chairman, Harmonization Committee, New York)

Association asiatique d'experts juridiques en brevets (APAA)/Asian Patent Attorneys Association (APAA): Nobuo OGAWA (Member of the Patent Committee, Tokyo); Hideo TANAKA (Member of the Patent Committee, Tokyo)

Association brésilienne de la propriété industrielle (ABPI)/Brazilian Association of Industrial Property (ABPI): Raul HEY (Lawyer, Rio de Janeiro)

Association internationale pour la protection de la propriété industrielle (AIPPI)/International Association for the Protection of Industrial Property (AIPPI): Michel DE BEAUMONT (conseil en propriété industrielle, Grenoble)

Chambre fédérale des conseils en brevets (PAK)/Federal Chamber of Patent Attorneys (FCPA): Gerhard SCHMITT-NILSON (Member of Patent Law Committee, Munich)

Chartered Institute of Patent Agents (CIPA): John David BROWN (Member of Patents Committee, London)

Committee of National Institutes of Patent Agents (CNIPA): Enrique ARMIJO (Patent Attorney, Madrid); John David BROWN (Chartered Institute of Patent Agents Delegate, Munich); Patrice VIDON (membre du bureau de la CNCPI, Rennes)

Compagnie nationale des conseils en propriété industrielle (CNCPI): Patrice VIDON (membre du bureau, Rennes)

Confederation of Indian Industry (CII): Chandrasekhar SARMA (Deputy Director, New Delhi)

Fédération de l'industrie allemande (BDI)/Federation of German Industry (BDI): Hans-Jürgen SCHULZE-STEINEN (former Deputy Head, Patent and License Department, Hoechst AG, Frankfurt)

Fédération internationale des conseils en propriété industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI): Gerhard SCHMITT-NILSON (Chairman, Group for International Matters, Munich)

Institut des mandataires agréés près l'Office européen des brevets (EPI)/Institute of Professional Representatives before the European Patent Office (EPI): John David BROWN (Member of Harmonisation Committee, Munich); Félix A. JENNY (Board Member and Chairman of the Harmonisation Committee, Basle)

Institut Max Planck de droit étranger et international en matière de brevets, de droit d'auteur et de la concurrence (MPI)/Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI): Thomas ADAM (Researcher, Munich)

Japan Intellectual Property Association (JIPA): Hiroshi KATSUYAMA (Vice-Chairman, International Committee, Tokyo); Toshihiro SHINOHARA (Group Manager, Toshiba Corporation, Tokyo)

Japan Patent Attorneys Association (JPAA): Kazuaki TAKAMI (Vice Chairman, International Activities Committee, Tokyo); Takaaki KIMURA (Member, International Activities Committee, Tokyo); Sadaaki KAMBARA (Member, Patent Committee, Tokyo)

Korea Patent Attorneys Association (KPAA): Jong-Yoon KIM (Director, International Affairs, Seoul)

Ligue internationale du droit de la concurrence (LIDC)/International League of Competition Law (LIDC): Jean-François LÉGER (membre du Groupe suisse, Genève)

Trade Marks, Patents and Designs Federation (TMPDF): John David BROWN (Chartered Patent Attorney, London)

Union des confédérations de l'industrie et des employeurs d'Europe (UNICE)/Union of Industrial and Employers' Confederations of Europe (UNICE): Félix A. JENNY (Company Affairs Department, Basel)

Union des praticiens européens en propriété industrielle (UPEPI)/Union of European Practitioners in Industrial Property (UEPIP): Enrique ARMIJO (Patent Attorney, Madrid); Bo-Göran WALLIN (Patent Attorney, Malmö)

V. BUREAU/OFFICERS

Président/Chairman: Bruce I. MURRAY (Australie/Australia)

Vice-présidents/Vice-Chairmen: Henry SOELISTYO BUDI (Indonésie/Indonesia)
Graham JENKINS (Royaume-Uni/United Kingdom)

Secrétaire/Secretary: Ludwig BAEUMER (OMPI/WIPO)

VI. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE
DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/
INTERNATIONAL BUREAU OF THE
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

François CURCHOD, vice-directeur général/Deputy Director General

Département du droit de la propriété industrielle/Industrial Property Law Department:
Ludwig BAEUMER (directeur/Director); Marcus HÖPPERGER (juriste principal, Section du
droit des marques et des dessins et modèles industriels/Senior Legal Officer, Trademark and
Industrial Design Law Section); Yolanda HUERTA (Ms.) (juriste adjointe/Assistant Legal
Officer); Leslie LEWIS (Consultant); Karen LEE (Ms.) (Consultant)

Secteur du PCT (Traité de coopération en matière de brevets)/PCT (Patent Cooperation
Treaty) Sector: Busso BARTELS (directeur/Director); Philip THOMAS (directeur de la
Division juridique/Director, Legal Division)

[Fin de l'annexe et du document/
End of Annex and of document]