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PATENT COOPERATION TREATY

INTERIM ADVISORY COMMITTEE FOR ADMINISTRATIVE QUESTIONS

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MODEL PROVISIONS FOR IMPLEMENTING THE
PATENT COOPERATION TREATY
PARTICULARLY AS FAR AS
THE BIRPI MODEL LAW FOR DEVELOPING COUNTRIES ON INVENTIONS
IS CONCERNED

Draft Document Prepared by the International Bureau

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Introduction

1. The PCT Interim Advisory Committee for Administrative Questions (hereinafter referred to as "the Interim Committee"), in its first session held at Geneva in February 1971, invited the International Bureau to prepare "a document containing draft provisions modifying the BIRPI Model Law for Developing Countries on Inventions so that it should contain also models of provisions for implementing the Patent Cooperation Treaty"* (document PCT/AAQ/I/4, paragraph 15(ii)) and decided to examine the said document and suggest amendments or otherwise comment on it (see paragraph 16 of the cited document).
2. This draft document was prepared in response to the said invitation.
3. The BIRPI Model Law for Developing Countries on Inventions was published in 1965 (BIRPI publication No. 801(E)). Hereinafter it will be referred to as "the 1965 Model Law." Its text is reproduced in Annex D of this document.
4. Section 6 of the 1965 Model Law provides that "the relevant provisions of international bilateral and multilateral conventions to which /the country/ is a party, which regulate the rights of nationals of States parties to such conventions and of persons assimilated to such nationals, shall be applicable by virtue of the present Law." The PCT is a multilateral treaty regulating, among other things, the rights of residents and nationals of the States parties to it, and it regulates them in such a way that the system which would result from the combination of the provisions of the 1965 Model Law and those of the PCT would, at least in theory, be a workable system even if the 1965 Model Law were not modified. Of course, countries whose constitution does not allow the direct application of treaties but requires that national laws, through their own provisions, produce the results provided for in treaties could not accept Section 6 of the 1965 Model Law and would have to repeat, or incorporate by reference, the provisions of the PCT in their national laws.
5. However, as a practical measure, provisions implementing the PCT are a necessity and thus the 1965 Model Law

* In this document called also "the Treaty" or "the PCT."

requires modification. The reasons for this necessity will become evident from the reasons given for the modifications proposed.

6. In order to allow full advantage to be taken of the possibilities offered by the PCT, modification of the 1965 Model Law seems to be necessary in three main areas. These areas--in the order of their importance--are the following:

(i) examination as to substance of applications for the grant of patents,

(ii) form and contents of such applications,

(iii) taking advantage of certain options offered by the PCT.

7. It is to be noted that, as in the PCT, references to patents and patent applications should always be understood as references also to inventors' certificates and applications for inventors' certificates.

Examination as to Substance

8. One of the dilemmas of every country, and particularly of developing countries, is whether patent applications should be examined as to substance, that is, as to whether the inventions claimed in them are truly inventions in the sense that, compared with what is known (in patent law parlance, "prior art"), they are new and are not obvious ("inventive step" or "inventive activity") and whether the said inventions are capable of industrial application (since inventions which are not industrially applicable are, traditionally, outside the realm of the patent system). Examination as to substance is the only means of ensuring that applications that should not lead to the grant of patents--because they do not really relate to inventions--will not in fact lead to such grant. On the other hand, examination as to substance is difficult to organize and relatively expensive to carry out because it requires the work of persons who are technically well qualified, persons with university degrees in science (electronics, chemistry, etc.) and preferably with a deep knowledge of their fields, as what they encounter in their daily work is quite the reverse of routine: it is the unusual, the new, the original, the "never heard of."

9. The PCT offers solutions which very considerably diminish the practical difficulties connected with examination as to substance, at least for countries which are prepared to take advantage of the existence of institutions having a long tradition of excellent examination. These institutions are--or, rather, will be, since the PCT is not yet in force--the International Searching Authorities and the International Preliminary Examining Authorities: the former entrusted with international "search," that is, the discovery of relevant prior art, the latter entrusted with international "preliminary examination," that is, the formulating of opinions on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable. The results of a search are reflected in a "search report" which cites the documents susceptible of "anticipating" the alleged invention or containing other relevant "prior art" and to which copies of such documents are attached on request. The results of a preliminary examination are reflected in a "preliminary examination report" which states, in respect of each claim concerning the alleged invention, whether it appears to satisfy the said criteria of novelty, inventive step (non-obviousness) and industrial applicability.

10. It is to be noted that, at the present time, the national Offices of Austria, Germany (Federal Republic), Japan, the Soviet Union, Sweden, and the United States of America, as well as the International Patent Institute, are prospective

International Searching Authorities, and that the same Offices and Institute, plus the Patent Office of the United Kingdom, are prospective International Preliminary Examining Authorities.

11. By becoming party to the PCT--only countries party to the Paris Convention may become party to the PCT--a country is assured that any international application reaching it will be accompanied by an international search report and that a certain proportion of such applications will also be accompanied by international preliminary examination reports. The proportion is uncertain since international preliminary examination reports will be prepared only on the express demand of the applicant at his (additional) expense.

12. National applications--as distinguished from international applications--that is, applications filed in the country either by nationals or foreigners, will not be accompanied by any of the said reports as a result of mere accession by that country to the PCT. But the PCT does offer the possibility of obtaining, in respect of any national application, reports identical in every respect (except their name) to international search reports (called "international-type search reports") (see PCT Article 15(5)(b)). All that is needed is that the (developing) country become party to the PCT and that its national law permit (or oblige) the national Office of or acting for such country to subject any national application filed with it to an international-type search. One of the modifications to the 1965 Model Law proposed in this draft document takes advantage of this possibility, as stated in the following paragraph.

13. It is proposed that the Model Law provide that all national applications be the subject of international-type search. See Annex A, Section 18.

14. It is to be noted that national applications, in order to be capable of being subjected to international-type search, must be in a language that the competent International Searching Authority can handle and must be in the form prescribed for international applications by the PCT (see PCT Article 15(5)(c)). If the language in which national applications must be filed is not a required language for international-type search, a translation will have to be filed too. To meet the requirement that national applications must be in the form prescribed for international applications, the following proposal is made.

15. It is proposed that the Model Law be harmonized with the PCT in so far as the form and contents of national patent applications are concerned. See Annex B, Sections 12 to 17.

16. Naturally, search entails costs for which the International Authorities carrying it out will have to be paid. These costs would have to be borne by the applicant and should be included in the national fee collected for each national application.* In view of the fact that in most countries the majority, and in all developing countries the vast majority, of the national applications are filed by foreigners, the increased national fee would mostly affect foreigners. Should it be found that the increased national fee is too high for all or some of the domestic applicants, ways could be found to assist them financially. For example, a fund could be established by inventors' associations and research institutions to pay part or all of the national fees in the case of domestic applicants or certain categories of them.

17. The foregoing considerations call for two further general observations.

18. Firstly, that the above considerations have been submitted with reference to developing countries and to the 1965 Model Law. However, there is nothing in the nature of these considerations which would make them inapplicable to developed countries--particularly if, at present, they have a patent system without examination as to substance--and to national laws (of both developed and developing countries) even if such laws fundamentally differ from the 1965 Model Law. Indeed, the desirability of having a system with examination as to substance is equally great as far as both developing and developed countries are concerned. And as to national laws, the changes necessary to enable advantage to be taken of international-type search relate only to the form and contents of national applications: that form and those

* The existence of compulsory international-type search for national applications in any country would probably persuade many applicants not to file national applications in that country but to seek patents there through international applications because then they would also enjoy all the advantages of the PCT (longer time limits, lower cost, etc.).

contents must be the same as those prescribed in the PCT for international applications or (which is the same) as those proposed for national applications in this draft document (Annex B).

19. Secondly, the above considerations have been presented in relation to national laws and national Offices. However, they apply equally to cases in which a regional Patent Office acts for several (developing) countries on the basis of a regional treaty and/or a number of national laws. The PCT itself is so constructed that national law also means regional treaty, and national Office also means regional Office. Thus, in particular, all that precedes fully applies and has special relevance to the countries party to the Libreville Agreement and the African and Malagasy Industrial Property Office (Yaoundé, Cameroon).* As part of the cooperation between OAMPI and WIPO, discussions started, in the spring of 1971, on the matters with which the present draft document deals. These discussions are expected to continue and result in proposals for the revision of the Libreville Agreement and/or its Annex containing the Uniform Patent Law of the 13 countries party to it.

* Four countries party to the Libreville Agreement (Madagascar, Ivory Cost, Togo and Senegal) signed the PCT. The Administrative Council of OAMPI has recommended that all OAMPI member States should ratify or accede to the PCT. The first country to deposit an instrument of ratification or accession was a member country of OAMPI, namely, the Central African Republic (instrument of accession deposited on September 14, 1971).

Form and Contents of National Patent Applications

20. It has been stated already that, for those countries which wish to avail themselves of the possibility offered by the PCT concerning international-type search, it is necessary that national applications should have the same form and contents as international applications. It has therefore been proposed that the Model Law be harmonized with the PCT in so far as the form and contents of national patent applications are concerned.

21. For at least three reasons, this proposal is valid also for countries which, although they have acceded to the PCT, do not wish to avail themselves of the possibility of introducing international-type search.

22. Firstly, because it would hardly be practical to have in the same country, as far as form and contents are concerned, two different kinds of applications (national and international) when both are intended to achieve the same result, namely, the grant of patents of that country. Such differences would only complicate the work of both the national Patent Office (in its capacity of receiving, designated or elected Office under the PCT, or in its capacity of receiver and processor of applications independent of the PCT) and the applicants.

23. Secondly, because the requirements of form and contents of applications provided for in the PCT represent the latest, most modern views on the subject, resulting from prolonged and careful international negotiations and containing some genuine improvements compared with the corresponding provisions of the 1965 Model Law.

24. Thirdly, because as soon as the PCT enters into force its provisions will have the prestige and endurance of international law, promising widespread uniformity among a great number of countries.

25. Consequently, the proposal for revising Sections 12 to 17 of the 1965 Model Law according to the drafts contained in Annex B is maintained even if some of the future parties to the PCT do not contemplate availing themselves of the possibility offered to them of introducing international-type search.

Taking Advantage of Certain Options Offered by the Patent Cooperation Treaty

26. In respect of certain questions, the PCT allows Contracting States to choose between different possible solutions. A separate draft document (PCT/AAQ/II/2) attempts to enumerate and explain them.

27. Two principal questions--one substantive, the other legal-formal--require examination in this connection.

28. The substantive question is which of the options should be incorporated in a model law for developing countries. In answering this question--in making the choices--it was assumed that, generally, the solution which is cheaper and simpler to implement, which confers more power on the national Office of or regional Office acting for a developing country, and which guarantees more security for the applicant and the public, will be the solution preferred by developing countries.

29. It is on this basis that it is proposed that the following options be adopted (they are simply mentioned here: they appear in full in Annex C) (the numbers in parentheses after each item refer to the paragraph in document PCT/AAQ/II/2 in which the option is discussed):

(a) as to the role of receiving Office:

(i) that the national Office be a receiving Office and that it collect a transmittal fee (40),

(ii) that the international application be filed in the language with which that Office is most familiar, unless it is fileable in the national language itself (39),

(iii) that applicants be notified by that Office when the fees are insufficient, and that there be a "period of grace" for paying fees to that Office (42);

(b) as to the role of designated Office or State:

(i) that the said Office be entitled to a translation into the national language of the international application (8),

(ii) that that Office have the right to disregard unsearched parts of the international application (9),

(iii) that "provisional protection" be subject to the maximum requirements as to translation into the national language, etc., allowed by the PCT (11),

(iv) that the applicant, unless he has an agent in the country, be required to have an address for service in the country (23);

(c) as to the role of elected Office or State:

(i) that the said Office have the right to disregard unexamined parts of the international application (28),

(ii) that the international preliminary examination report, unless it is established in an official language of that Office, be required to be translated into (30),

(iii) that the widest possible circle of applicants be entitled to elect the State of the said Office (33).

30. Inspired by the same principles and, for the reasons stated in parentheses after each item, certain options were not recommended for adoption and consequently:

(a) as to the role of receiving Office:

(i) request forms for international applications will be furnished by the national Office rather than the International Bureau (convenience of applicants) (37),

(ii) the transmittal of the record copy will follow the procedure of PCT Rule 22.1 rather than PCT Rule 22.2 (simpler for the Office, more secure for the applicant) (41);

(b) as to the role of designated Office or State:

(i) the time limits under PCT Article 22 will expire 20 months from the priority date and not later (more rapid disposal of the matters) (10),

(ii) the time limits for amendments will follow the model prescribed in the PCT Rules rather than be different from such model (simplicity) (12),

(iii) amendments going beyond the disclosure will not be admitted (simplicity, security for the public) (19),

(iv) international publication after 18 months from the priority date will not be liable to possible delays (simplicity, security for the public) (24),

(v) the prior art effect will not be delayed (simplicity, security of the applicant) (25)

(vi) application of Chapter II will not be excluded (convenience of the national Office, of the applicant and of the public) (27);

(c) as to the role of elected Office or State:

(i) the time limits under PCT Article 39 will expire 25 months from the priority date and not later (more rapid disposal of the matter) (29),

(ii) the time limits for amendments will follow the model prescribed in the PCT Rules rather than be different from such model (simplicity) (31),

(iii) amendments going beyond the disclosure will not be admitted (simplicity, security for the public) (35),

(iv) withdrawal of the demand or the election will not transform the election into a designation irrespective of when it was effected and without any condition (simplicity, security) (32),

(v) elected States will not be entitled to publish the application earlier than 25 months after the priority date (simplicity) (34).

31. It is recalled that document PCT/AAQ/II/2 contains a fuller statement of all the options.

32. The legal-formal question is in what legal form the options chosen should be expressed in the Model Law.

33. It is believed that the matters open to option in the PCT are of such a nature as to require that they be provided for in the Rules under the Model Law rather than in the Model Law itself. However, to be on the safe side, it is proposed that an enabling clause be inserted in the Model Law. A proposed draft of such clause appears as paragraph (2) of Section 6 in Annex B. It reads as follows: "As far as the application of the Patent Cooperation Treaty is concerned, the Rules under the Model Law shall provide further details, including provisions on questions on which that Treaty allows for certain options open to Contracting States."

34. A draft formulation of the said Rules appear in Annex C.

35. It is to be noted that the 1965 Model Law, although frequently referring to Rules thereunder, contains no such

Rules. Those Rules which are proposed in Annex C are the first to have been drafted. The Rules referred to under the Model Law, if drafted one day, would, of course, be considerably augmented. The drafting of those Rules would be greatly facilitated now that the PCT Regulations exist since the latter contain all the necessary details concerning the form and contents of applications and important details on a number of other matters (representation, procedure as to correcting defects, methods of payment of fees, processing of applications, contacts with the applicant, etc.).

36. A last general observation on both the substantive and the legal-formal questions. The above considerations have been submitted with reference to the 1965 Model Law for Developing Countries. However, there is no reason why the said considerations, as well as Annex C, should not be taken into account also in connection with any existing national law, whether of a developing or of a developed country. In fact, like the PCT itself, they are equally relevant to both kinds of countries and apply to any kind of national law.

Task of the Interim Committee

37. The 1965 Model Law for Developing Countries on Inventions was adopted by an international Committee of Experts, whose sole members were representatives of developing countries. Before submitting the draft prepared by the International Bureau for the meeting of the Committee of Experts to that Committee, the International Bureau communicated it to all members of the Paris Union. In the meeting of the Committee of Experts, representatives of international organizations took part as observers.

38. The BIRPI/WIPO Model Laws on Trademarks and Industrial Designs were prepared in the same manner.

39. It is the intention of the International Bureau that any definitive revision of the 1965 Model Law should follow the same procedure, in particular that amendments should be voted upon solely by representatives of developing countries (whether members or not of the Paris Union).

40. Thus, by submitting the present draft document to the Interim Committee, the International Bureau is merely seeking advice in the course of a procedure which, possibly after discussions in further meetings of the Interim Committee, should eventually lead to the convening of a committee of experts similar in composition to that which adopted the 1965 Model Law.

41. However, as repeatedly stated in this draft document, the questions and suggested solutions mentioned here are also of interest to developed countries and to countries (developed or developing) which have or intend to have national laws differing substantially from the 1965 Model Law or its proposed revision.

42. The Interim Committee, in examining this draft document, is urged to take these circumstances into account: its cooperation is sought not only for developing countries with present or future national laws based on the Model Law, but for all countries with any kind of national laws.

43. The Interim Committee is invited to examine this draft document and suggest amendments or otherwise comment on it.

[Annex A follows]



ANNEX A

PROPOSALS FOR AMENDING
SECTION 18 (ALL ALTERNATIVES)
OF THE 1965 MODEL LAW

This Annex contains proposed drafts for Sections 18 and 18bis. They appear on pages with odd numbers. Opposite (on pages with even numbers) appear notes explaining the proposed drafts.

The said two Sections are intended to replace Alternatives A, B and C of Section 18 as appearing in the 1965 Model Law.

Notes concerning Section 18

In General: This Section, together with Section 18bis, parallels Section 18, Alternative B, of the 1965 Model Law. That Section provided for the grant of a patent after examination of the substance of the application. In particular, subsection (4) of that Section provided as follows: "The Rules shall determine whether the examination shall be carried out by the Patent Office itself or whether the Patent Office shall base its decisions on an opinion of the International Patent Institute or on reports or patents of another Patent Office, either national or regional." The proposed draft implements one of the possibilities mentioned in the quoted provision since it provides for the use of a report (the report resulting from the international-type search) of an International Searching Authority, which may be an intergovernmental organization (e.g., the International Patent Institute) or a national Patent Office.

Subsection (1): The first part of this provision ("Unless the application is rejected under Section 17") has the same effect as the first part of Section 18, Alternative B, of the 1965 Model Law ("When the examination referred to in Section 17 shows that the application satisfies the requirements of Sections 12, 14 and 16"). The rest of this provision makes use of the system of international-type search provided for in PCT Article 15 (5) (b) and (c) and in PCT Rule 41. The "Rules under this Law" would have to repeat, or incorporate by reference, subject to the appropriate modifications, those provisions of the PCT and the PCT Regulations which relate to the international search.

Subsection (2): Items (i) to (iii) of this subsection parallel items (a) to (c) of subsection (1) of Section 18, Alternative B, of the 1965 Model Law, whereas item (iv) of this subsection parallels subsection (3), first sentence, of the said Section. The alternative of item (iii), given in a footnote, makes the basis for rejection somewhat broader than does item (iii) as appearing in the main text: it includes everything that is disclosed and not only that which is patented.

Section 18: Examination as to Substance After International-Type Search

(1) Unless the application is rejected under Section 17, it shall be the subject of an international-type search by the competent International Searching Authority as provided in the Patent Cooperation Treaty, the Regulations under that Treaty, and the Rules under this Law.

(2) Once the report on the international-type search is available, the Patent Office shall examine:

(i) whether the requirements of Section 13 and the Rules thereunder have been complied with;

(ii) whether the subject of the application is patentable within the terms of Sections 1 to 5;

(iii) whether, for the same invention as that which is the subject of the application, no patent has been granted in the country on the basis of an application whose filing date or whose priority date is earlier than the filing date or the validly claimed priority date of the application under examination;*

(iv) whether, where relevant, any priority claim found to be in conformity with Section 15 is justified as to substance, particularly whether the earlier application invoked therein relates to the same invention as the application under examination.

* Alternative: (iii) whether no application or patent the contents of which would constitute state of the art under Section 2(1), had it been published prior to the filing date or validly claimed priority date of the application under examination, has been published, as such, after the said date but has a filing date, or validly claimed priority date, earlier than that of the application under examination;

Notes concerning Section 18, continued

Subsection (3)(a): This provision incorporates the essence of PCT Article 28(1) and (2).

Subsection (3)(b) and (c): These provisions implement the ideas underlying subsection (7) of Section 18, Alternative B, of the 1965 Model Law.

Subsection (4): This provision parallels subsection (8) of Section 18, Alternative B, of the 1965 Model Law.

Notes concerning Section 18bis

In General: Under the proposed system, search would be an act performed by an Authority other than the Patent Office. The search report would facilitate decision but the decision itself would lie with the Patent Office. In order to underline the difference in the action taken (advice versus decision) and the Authorities, a separate Section on the decision phase (grant of patent or refusal of the application), which is the sole responsibility of the Patent Office, seemed to be logical. That is the reason for the present separate Section (18bis).

Subsection (1)(a): This provision parallels subsection (2), of Section 18, Alternative B, in the 1965 Model Law.

Subsection (1)(b): This provision parallels subsection (3), last sentence, of Section 18, Alternative B, in the 1965 Model Law.

Subsection (2): This provision is identical with subsection (9) of Section 18, Alternative B, in the 1965 Model Law.

Section 18, continued

(3)(a) Before the examination under subsection (2) is completed, the applicant shall be given at least one opportunity to amend the claims, the description, and the drawings, provided that the amendments do not go beyond the disclosure in the application as filed.

(b) Unless the Patent Office is prepared to grant the patent according to the application and, if amendments have been made, according to the most recent amendments, the applicant shall be given an opportunity to be heard by that Office.

(c) The details of the procedure under (a) and (b) shall be fixed by the Rules.

(4) The Rules may provide for the possibility of opposition to the grant of a patent, after publication of the application, by third parties. The Rules shall ensure that, before a decision on the grant of a patent is made, the applicant shall be given the opportunity to comment on any opposition, and the party having lodged the opposition shall be given the opportunity to reply to the comments of the applicant.

Section 18bis: Grant of Patent

(1)(a) Unless the application has been rejected under Section 17(2), a patent shall be granted by the Patent Office where the latter finds that, in respect of that application or, if it has been amended, that application as last amended, the answers to the questions under Section 18(2)(i), (ii), (iii), and (iv), are in the affirmative and that, in the case of amendments, the application as last amended does not go beyond the disclosure in the application as filed.

(b) Unless the priority claim has been disregarded under Section 17(2) or the answer to the question under Section 18(2)(iv) is in the negative, that claim shall be mentioned in the patent.

(2) Patents are granted at the risk of the patentee and without guarantee as to their validity.

Annex B follows



ANNEX B

PROPOSALS FOR AMENDING SECTIONS 6, 12 TO 17, AND 49, OF
THE 1965 MODEL LAW

This Annex contains proposed drafts for Sections 6, 12, 13, 14, 15, 16, 17, 17bis and 49. They appear on pages with odd numbers. Opposite (on pages with even numbers) appear notes explaining the proposed drafts.

The said Sections are intended to replace Sections 6, 12 to 17, and 49, of the 1965 Model Law and to add to it a new Section (17bis).

Notes concerning Section 6

Subsection (1): This subsection is the same as in the 1965 Model Law, although the wording could be improved upon. It could, for example, read as follows: "The provisions of any treaty concerning matters relating to patents to which /the country/ is a party shall apply by virtue of the present Law /and whenever the provisions of any such treaty and those of the present Law are in conflict, the former shall apply/.

Subsection (2): This subsection refers to the Rules which appear in Annex C, below. There are some provisions in the PCT which allow Contracting States to avail themselves of certain options. They are the subject of document PCT/AAQ/II/2. Several of them, for the reasons stated in paragraph 26, above, have been chosen and incorporated in the said Rules. However, the Interim Committee is particularly invited to examine all the available options and thus be able to form an independent opinion on the question of their suitability for adoption for the purposes of the Model Law.

Notes concerning Section 12

In General: This Section is intended to make the form and contents of national applications under the Model Law the same as those of international applications under the PCT. The only significant differences between the requirements of the 1965 Model Law and the proposed draft are that, whereas the 1965 Model Law did not, expressis verbis, require that the application contain either a part called a "request" or an abstract, the proposed draft requires both.

Subsection (1): The proposed draft requires the specifying of the language or languages in which applications may be made. The 1965 Model Law contained no such provision, presumably because it was assumed that the reply to the question went without saying. The five elements of the application (request, description, claims, drawings, abstract) are the same as for the international application (see PCT Article 3(2)).

Subsection (2)(a): This subsection parallels PCT Article 4(1).

Subsection (2)(b): In the 1965 Model Law, the requirement of an address for service is provided for in Section 12(1)(a). In the PCT, it is expressly authorized in Article 27(7). It is now made conditional on the absence of a local agent since, where there is one, service may be made upon him within the country.

Section 6: Applicability of International Conventions

(1) The relevant provisions of international bilateral or multilateral conventions to which [the country] is a party which regulate the rights of nationals of States parties to such conventions and of persons assimilated to such nationals shall apply by virtue of the present Law.

(2) As far as the application of the Patent Cooperation Treaty is concerned, the Rules [under the Model Law] shall provide further details, including provisions on questions on which that Treaty allows for certain options open to Contracting States.

Section 12: The Application

(1) The application for a patent shall be made to the Patent Office in the ... language [one of the following languages ...] and shall contain a request, a description, one or more claims, one or more drawings (where required), and an abstract.

(2)(a) The request shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant and the agent (if any), and the title of the invention.

(b) If the applicant's address is outside the country and no agent has been appointed within the country, the application shall also contain an address for service within the country.

/Notes concerning Section 12, continued/

Subsection (2)(c): This subsection parallels Section 12(3) of the 1965 Model Law.

Subsection (2)(d): This subsection parallels PCT Rule 4.1(d).

Subsection (3): This subsection parallels Section 12(2) of the 1965 Model Law, except that it allows the declaration to be signed by either the applicant or--as in that Law--the inventor.

Subsection (4): This subsection parallels the first part of PCT Rule 8.1(a)(i), the part which constitutes the essence of Rule 8.1.

Subsection (5): This subsection is identical with Section 12(4) of the 1965 Model Law. The Rules would repeat, or incorporate by reference, the relevant provisions of the PCT and the PCT Regulations, in particular PCT Rules 3 to 11. It is to be noted that the subsection in question refers to all parts and aspects of the application, that is, even those concerning which further details are contained in Sections 13, 14 and 15 (description, claims, drawings, unity of invention, priority claimed).

Notes concerning Section 13

Subsection (1): This subsection parallels Section 13(1) of the 1965 Model Law and PCT Article 5.

Subsection (2): The first sentence parallels Section 13(2) of the 1965 Model Law and the third sentence parallels Section 13(3) of the 1965 Model Law. The subsection, as a whole, is identical with PCT Article 6.

Subsection (3): This subsection parallels PCT Article 7(1). No use has been made of the faculty offered by PCT Article 7(2)(ii), namely, that drawings may be required also where they are not necessary for the understanding of the invention but where, without being necessary for such understanding, the nature of the invention admits of illustration by drawings. This is motivated by the general principle, described above, according to which the application should be as simple as possible. But, of course, there seem to be no major objections to adopting the view that the said faculty may be exercised.

Section 12(2), continued

(c) If an agent is appointed, the request shall contain or be accompanied by a power of attorney signed by the applicant; legalization or certification of the signature shall not be required.

(d) The request shall be signed by the applicant or his agent.

(3) Where the applicant is not the inventor and the inventor wishes to be named as such in the patent, a declaration, signed by the inventor or the applicant, alleging that the former is the inventor and requesting that he be mentioned as such in the patent, shall be filed with the application or at any time before the patent is granted.

(4) The abstract shall consist of a summary of the disclosure as contained in the description, the claims and any drawings.

(5) The details of the formal requirements with which the application for the patent must comply shall be fixed by the Rules.

Section 13: Description, Claims and Drawings

(1) The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

(2) The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

(3) Drawings shall be required when they are necessary for the understanding of the invention.

Section 14: Unity of the Invention

(1) The application for a patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) The details concerning the requirement of unity of invention shall be fixed by the Rules.

Section 15: Right of Priority

(1) The application for a patent may contain a declaration claiming the priority of one or more earlier national or regional applications filed by the applicant or his predecessor in title under a national law or regional treaty in or for

Notes concerning Section 14

Subsection (1): This subsection parallels Section 14(1) of the 1965 Model Law and PCT Rule 13.1.

Subsection (2): Whereas in the 1965 Model Law the corresponding subsection regulates certain details, the subsection proposed here refers the matter to the Rules, which should parallel PCT Rules 13.2 to 13.4. The latter are slightly different and go somewhat more into detail.

Notes concerning Section 15

In General: This Section parallels Section 15 of the 1965 Model Law and differs from it mainly in that it takes into consideration the possibility of priority claims' being based not only on national but also on regional and international (PCT) applications. It is also in line with PCT Article 8 and PCT Rules 4.10 and 17.

Subsection (1): See the observations contained in the preceding paragraph. The provision in question parallels the first portion of Section 15 of the 1965 Model Law. Furthermore, it makes use of the faculty offered by PCT Article 8(2)(b) by treating the applications referred to therein in the same manner as the Paris Convention treats earlier national applications as possible bases of priority claims.

Subsection (2): This subsection parallels the last portion of Section 15 of the 1965 Model Law but also takes into account the fact that the earlier application (on which the priority claim may be based) may be an international (PCT) application.

Notes concerning Section 16

This Section parallels Section 16 of the 1965 Model Law and PCT Article 3(4)(iv).

Section 15(1), continued

any country party to the Paris Convention for the Protection of Industrial Property or of one or more earlier international applications filed under the Patent Cooperation Treaty. The declaration shall indicate the date and number of the earlier application, provided that where, at the time of filing such declaration, the number is not known, that number shall be furnished not later than within a period of three months from the date on which the application containing the declaration was filed. Furthermore, the declaration shall contain the indication of the country in which or for which the earlier application was filed or the indication that the earlier application is an international application.

(2) The Patent Office may, any time after the expiration of three months from the filing of the application containing the declaration, require that the applicant furnish a copy of the earlier application, certified as correct by the Office with which it was filed or, where the earlier application is an international application, by the International Bureau of the World Intellectual Property Organization.

Section 16: Payment of Fees

The application for a patent shall be subject to the payment of the fees prescribed by the Rules.

Section 17: Examination as to Form

(1) The Patent Office shall accord as the filing date the date of receipt of the application, provided that that Office has found that, at the time of receipt:

- (i) the application is in the ... language;
- (ii) the application contains the name of the applicant, a part which, on the face of it, appears to be a description and another part which, on the face of it, appears to be a claim or claims.

(2) (a) Irrespective of whether it has been accorded a filing date or not, the application shall be rejected in any of the following cases:

- (i) where the said application is not in the ... language;
- (ii) where the request does not comply with the requirements of Section 12(2) and the Rules pertaining thereto;

Notes concerning Section 17

In General: This Section parallels Section 17 of the 1965 Model Law and PCT Article 11(1).

Subsection (1): This provision parallels PCT Article 11(1). Any application which is granted a filing date may serve as a basis for a priority claim in later applications even if it is eventually rejected.

Subsection (2)(a): This provision parallels the first sentence of Section 17(1) of the 1965 Model Law and PCT Articles 11(1)(ii), (iii)(c)(d)(e), and 14(1)(a)(i)(ii)(iii)(iv)(v) and (3).

Subsection (2)(b): Whereas non-compliance with the minimum requirements set out in subsection (1) cannot be corrected, non-compliance with all other requirements can. The Rules should provide the details, including the time limits allowed for corrections, and should do so, wherever possible, by paralleling or incorporating by reference the relevant portions of the PCT and the PCT Regulations.

Subsection (3)(a): This provision parallels Section 17(3), first sentence, of the 1965 Model Law. It is recalled that because of subsection (2)(b) rejection under subsection (2)(a)(v) is only possible after an invitation to correct the obvious defect.

Subsection (3)(b): This provision parallels Section 17(3), second sentence, of the 1965 Model Law.

Subsection (3)(c): This provision parallels Section 17(3), third sentence, of the 1965 Model Law.

Subsection (4): This provision parallels the second part of Section 17(2) of the 1965 Model Law and PCT Rule 4.10(b).

Section 17(2)(a), continued

(iii) where the said application does not contain a part which, on the face of it, appears to be a description and another part which, on the face of it, appears to be a claim or claims;

(iv) where the abstract does not comply with the requirements of Section 12(4) and the Rules pertaining thereto;

(v) where the said application obviously does not comply with the requirements of Section 14;

(vi) where the fees referred to in Section 16 are not paid as provided in the Rules.

(b) The Rules shall provide for the possibility of correcting defects other than those preventing a filing date from being accorded.

(3)(a) If the application does not comply with the requirements of Section 14 but has not been rejected under subsection (2)(a)(v), the applicant shall be invited by the Patent Office to restrict, within a period of three months from the date of the invitation, the application so that it relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(b) At the same time, the Patent Office shall notify the applicant that, within a period of three months from the date of the notification, he may file, for the rest of the application, one or more divisional applications. Such divisional applications shall benefit from the date of the filing of the original application and, if relevant, from the priority date claimed under Section 15.

(c) If the applicant does not comply with the invitation referred to under (a), the application shall be rejected.

(4) If the provisions of Section 15 have not been complied with, the Patent Office shall treat the declaration made under that Section as if it had not been made.

Notes concerning Section 17bis

Subsection (1): This subsection follows the example of an increasing number of modern laws which provide for the compulsory publication, by the Patent Office, of all applications after the stated 18 months. Such publication is useful because it allows access to the technical information contained in the application even if the patent is never granted or is granted--and then published--only at a much later date. Procedure before grant may last years, particularly where the law provides for examination as to substance, opposition, or deferred examination. Publication may be by a very simple method, for example, by putting photographic copies of the application on sale. But if even that is found too expensive, the Alternative provides for the possibility of merely laying the application open for public inspection.

Subsection (2): The PCT provides for the publication of international applications generally after the same period as that which is provided for in subsection (1) (PCT Article 21). Where international publication occurs, national publication may be regarded as superfluous. One of the cases in which it still may be considered useful is the case where the international application was filed in a language other than the language in which national applications are published.

Notes concerning Section 49

Subsection (1): This subsection is the same as in the 1965 Model Law.

Subsection (2): This subsection is the same as in the 1965 Model Law.

Subsection (3): This subsection is a corollary of the new provision prescribing the publication of applications after 18 months (Section 17bis). It means that an applicant may attack a (would-be) "infringer" as if the patent had already been granted but at his own risk and peril because if, after all, the patent is not granted, he (the attacking applicant) will be responsible to the attacked party for all damages that he may have caused by his--as it now turns out--unjustified attack. This system of "provisional protection" is justified by the fact that once the application is published it is no longer a secret and, without such protection, can be freely used or imitated since the (definitive) protection will become available only upon the grant of a patent.

Section 17bis: Publication of Applications

(1) Every application for a patent shall be published by Alternative: laid open for public inspection in the Patent Office as soon as possible after the expiration of 18 months from the filing date of that application or, if the priority of one or more earlier applications is claimed therein, from the filing date of the earliest of such applications.

(2) The Rules may provide that subsection (1) shall not apply, or shall apply only in certain cases, where the application is, or is identical with, an international application published by the International Bureau under the Patent Cooperation Treaty.

Section 49: Civil Sanctions

(1) A registered owner of a patent whose rights under Sections 21 and 22 are threatened with infringement, or are infringed, may institute legal proceedings designed to prevent the infringement or to prohibit its continuation.

(2) In case of infringement of these rights, the registered owner of the patent may also claim damages and the application of any other sanctions provided for in the civil law.

(3) Before the Patent Office rejects the application or grants the patent and where that application has been published as provided for in Section 17bis, the applicant may exercise the rights referred to in subsections (1) and (2) as from the date of such publication, provided that, if or to the extent to which his application is later rejected, he shall be liable to the other party for any damage he may have caused him by exercising the said rights.

Annex C follows

ANNEX C

PROPOSALS FOR RULES UNDER SECTION 6(2)
OF THE AMENDED MODEL LAW

This Annex contains proposed draft provisions which would form part of the Rules under the Model Law.

The provisions would be issued under the authority of (the new) subsection (2) of Section 6 of the amended Model Law, reading as follows: "As far as the application of the Patent Cooperation Treaty is concerned, the Rules shall provide further details, including provisions on questions on which that Treaty allows for certain options open to Contracting States."

Rules Under Section 6(2)
of the Model Law

Chapter I: Rules Concerning International Applications
Filed with the Patent Office

Rule 1: Receiving Office

The Patent Office shall act as a receiving Office under the Patent Cooperation Treaty.

Rule 2: Language of International Applications

International applications filed with the Patent Office shall be in the ... language.

Rule 3: Transmittal Fee; Basic Fee Part of International
Fee; Search Fee

(1) The amount of the transmittal fee (Rule 14 of the PCT Regulations) shall be ...

(2) The transmittal fee, the basic fee part of the international fee, and the search fee (see Rules 14, 15 and 16 of the PCT Regulations) shall, subject to paragraph (4), be due on the date of receipt of the international application.

(3) If any of the said fees is not paid or its amount is insufficient, the Patent Office shall notify the applicant accordingly.

/Rule 3, continued/

(4) If any of the said fees or the amount required to complete them is received within 1 month after the receipt of the international application, it shall be considered as having been paid in time.

(5) Lack of notification under paragraph (3), lack of receipt of such notification, or the date of such receipt, shall not prolong the time limits fixed in paragraphs (2) and (4).

Rule 4: Designation Fee Part of International Fee

(1) Where the check list provided for in Rule 3.3 of the PCT Regulations refers to the payment of designation fees but their amount has not or has only partly been received by the Patent Office, that Office shall notify the applicant accordingly.

(2) Lack of notification under paragraph (1), lack of receipt of such notification, or the date of such receipt, shall not prolong the time limit fixed in PCT Rule 15.4(b).

Chapter II: Rules Concerning International Applications
Designating /the Country/

Rule 5: Translation

Unless the international application is in the ... language /in one of the following languages.../, a translation thereof in the ... language /in one of the following languages .../ shall be required for the purposes of PCT Article 22(1).

Rule 6: Unsearched Parts of the International Application

(1) Where the Patent Office finds the invitation referred to in PCT Article 17(3)(a) of the International Searching Authority justified and where the applicant has not paid all the additional fees, those parts of the international application which consequently have not been searched shall, as far as effects in /the country/ are concerned, be considered withdrawn unless, within 3 months after the date of receipt of the international search report by the Patent Office, a special fee is paid by the applicant to that Office.

(2) The amount of the special fee referred to in the preceding paragraph shall be equivalent to double the amount of the international search fee.

Rule 7: "Provisional Protection" /Applicable only if the national law provides for the publication of national applications and provides for "provisional protection" /

(1) If the language in which the international publication of the international application has been effected (PCT Article 21) is other than the ... language /one of the following languages ... /, the effects provided for in Section 49(3) shall apply only from such time as:

(i) a translation into the latter language has been made available to the public by laying it open for public inspection in the Patent Office, and

(ii) a translation into the latter language has been transmitted by the applicant to the actual or prospective unauthorized user of the invention forming the subject of the international application.

Chapter III: Rules Concerning International Applications
Electing /the Country/

Rule 8: Unexamined Parts of the International Application

(1) Where the Patent Office finds the invitation referred to in PCT Article 34(3)(a) of the International Preliminary Examining Authority justified but the applicant has not paid all the additional fees, those parts of the international application which consequently have not been subjected to international preliminary examination shall, as far as effects in /the country/ are concerned, be considered withdrawn unless, within 3 months after the date of receipt of the international preliminary examination report by the Patent Office, a special fee is paid by the applicant to that Office.

(2) The amount of the special fee referred to in the preceding paragraph shall be equivalent to double the amount of the international preliminary examination fee.

Rule 9: Language of the International Preliminary Examination Report

Unless the international preliminary examination report is in the ... language /in one of the following languages ... /, a translation thereof in the ... language /in one of the following languages ... / shall be required for the purposes of PCT Article 36.

Rule 10: /The Country/ Electable by Certain Applicants

Where, under PCT Article 31(2)(b), the Assembly of the PCT Union decides to allow certain persons to make a demand for international preliminary examination, /the country/ is prepared to be elected by such applicants.

/Annex D follows/

MODEL LAW FOR DEVELOPING COUNTRIES ON INVENTIONS

PART I: PATENTS

CHAPTER I: GENERAL PROVISIONS

Section 1: Patentable Inventions

- (1) Any invention which is new, results from inventive activity, and is capable of industrial application, is patentable.
- (2) Any invention constituting an improvement upon a patented invention is patentable if it is new, results from inventive activity, and is capable of industrial application.
- (3) Principles and discoveries of a scientific nature shall not be considered to be inventions.

Section 2: Novelty

- (1) An invention is new if it does not form part of the state of the art, the state of the art being constituted by everything made available to the public, anywhere and at any time whatever, by means of a written or oral description, by use, or in any other way, before the date of the filing of the patent application or the priority date validly claimed in respect thereof.
- (2) An invention shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of six months preceding the filing of the application for a patent, the inventor or his successor in title has exhibited it in an official or officially recognized international exhibition.

Section 3: Inventive Activity

An invention shall be considered as resulting from inventive activity if it does not obviously follow from the state of the art, either as to the method, the application, the combination of

methods, or the product which it concerns, or as to the industrial result it produces.

Section 4: Industrial Application

An invention shall be considered as capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture.

Section 5: Exceptions to Patentability

Patents cannot be validly obtained in respect of:

- (a) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision, however, does not apply to microbiological processes and the products thereof;
- (b) inventions the publication or exploitation of which would be contrary to public order or morality, provided that the exploitation of an invention shall not be considered as contrary to public order or morality merely because the exploitation is prohibited by law or regulation.

Section 6: Applicability of International Conventions

The relevant provisions of international bilateral or multilateral conventions to which [the country] is a party, which regulate the rights of nationals of States parties to such conventions and of persons assimilated to such nationals, shall be applicable by virtue of the present Law.

Section 7: Rights of Foreigners

Foreigners who do not fall within the scope of the preceding Section shall have the same rights as nationals unless the Minister responsible for industrial property shall have, by order, suspended the application of this provision so far as it relates to nationals of a country and persons assimilated to them on the ground that that country does not grant adequate reciprocity.

CHAPTER II: RIGHT TO GRANT OF PATENT

Section 8: Right to Grant of Patent

- (1) Subject to Section 10, the right to a patent shall belong to the inventor or his successor in title.
- (2) If two or more persons have jointly made an invention, the right to a patent shall belong to them or their successors in title jointly; a person who has merely assisted in the execution of an invention without having contributed any inventive activity shall not, however, be deemed to be an inventor or co-inventor.
- (3) Any person who is the first to file an application for a patent, or is the first validly to claim priority for an application for the same invention, shall, subject to the provisions of Sections 9 and 10, be deemed to be the inventor or successor in title of the inventor.

Section 9: Usurpation

If the essential elements of a patent application have been obtained from the invention of another person, without the latter having consented to this obtaining and to the filing of an application for a patent, the person injured by such unlawful usurpation may demand that the application, or the patent granted in respect of the application, be transferred to him.

Section 10: Inventions Made Pursuant to a Commission or by an Employee

- (1) Subject to the legal provisions governing contracts for performing a certain work and employment contracts, and in the absence of contractual provisions to the contrary, the right to a patent for an invention made in execution of the contract shall belong to the person having commissioned the work or to the employer.
- (2) The same provision shall apply when an employment contract does not require the employee to exercise any inventive activity, but when the employee has made the invention using data or means that his employment has put at his disposal.

(3) In the circumstances provided for in sub-section (2), the employee-inventor shall have a right to remuneration taking into account his salary and the importance of the patented invention, which remuneration shall, in the absence of agreement between the parties, be fixed by the Court. In the circumstances provided for in sub-section (1), the employee-inventor shall have a similar right if the invention is of very exceptional importance.

(4) The advantages given to the employee-inventor by the provisions of the preceding sub-section shall not be reduced by contract.

Section 11: Right of the True Inventor to be Named as Such

- (1) The true inventor shall be entitled to be named as such in the patent.
- (2) The preceding provision shall not be modified by contract.

CHAPTER III: GRANT OF PATENT

Section 12: Terms of Application

- (1) The application for a patent shall be made to the Patent Office and shall contain:
 - (a) the complete name and address of the applicant and, if the applicant's address is outside the country, the indication of an address for service within the country;
 - (b) a description of the invention with the drawings, if any, referred to therein;
 - (c) one or more claims.
- (2) If appropriate, the application for the patent shall be accompanied by a declaration, signed by the true inventor, requesting that he be mentioned as such in the patent and giving his name and address.
- (3) If the application is made by an agent, it shall be accompanied by a signed power of attorney; legalization or certification of the signature shall not be necessary.
- (4) The details of the formal requirements with which the application for the patent must comply shall be fixed by the Rules.

Section 13: Contents of the Description and Claims

- (1) The description shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.
- (2) The claim or claims shall define the protection sought.
- (3) The claims shall not exceed the contents of the description.

Section 14: Unity of the Invention

- (1) The application for a patent shall relate to only one invention.
- (2) Subject to the preceding sub-section, an application for a patent may include, in particular:
 - (a) apart from claims for one or more products, claims for one or more manufacturing processes for the product or products, and claims for one or more applications of the product or products;
 - (b) apart from claims for one or more processes, claims for means of working the process or processes, and claims for the product or products which result from that working, and claims for the application of such products.

Section 15: Right of Priority

The applicant for a patent who wishes to avail himself of the priority of an earlier application made in another country is required to append to his application a written declaration, indicating the date and number of the earlier application, the country in which he or his predecessor in title made such application, and the name of the applicant, as well as, within a period of three months from the date of the later application, to furnish a copy of the earlier application, certified as correct by the Industrial Property Office of the country where it was made.

Section 16: Payment of Fees

An application for a patent shall not be accepted unless the fee prescribed by the Rules has been paid.

Section 17: Examination of Application as to Form

- (1) The Patent Office shall examine the application as to its conformity with Sections 12, 14, 15, and 16.
- (2) If the provisions of Sections 12 or 16 have not been complied with, a patent shall not be granted; if the provisions of Section 15 have not been complied with, the Office shall not mention in the patent the priority claimed.
- (3) If the application does not fulfil the requirements of Section 14, the applicant shall be invited by the Patent Office to restrict the application so that it relates to only one invention. At the same time, the Patent Office shall notify the applicant that, within a period of three months, he may file, for the rest of the application, one or more divisional applications, which shall benefit from the date of the filing of the original application, and, if relevant, from the priority date claimed under Section 15. If the applicant does not comply with this invitation to restrict the original application to one invention, no patent shall be granted.

Alternative A

Section 18: Grant of Patent without Examination as to the Substance of the Application

- (1) When the examination referred to in Section 17 shows that the application satisfies the requirements of Sections 12, 14 and 16, the patent, as applied for, shall be granted without further examination, particularly without examination of the questions whether the subject of the application is patentable within the terms of Sections 1 to 5, whether the description and claims satisfy the requirements of Section 13, and whether, for the same invention, a prior application, or an application benefiting from an earlier priority, has been made in the country or a patent has been granted as a result of such application.
- (2) When the examination referred to in Section 17 shows that the provisions of Section 15 have been complied with, the Patent Office shall mention in the patent the priority claimed.
- (3) Patents are granted at the risk of the patentee and without guarantee as to their validity.

Alternative B

Section 18: Grant of Patent after Preliminary Examination of the Substance of the Application

(1) When the examination referred to in Section 17 shows that the application satisfies the requirements of Sections 12, 14 and 16, the Patent Office shall proceed to the examination of the application as to its substance, namely:

(a) whether the subject of the application is patentable within the terms of Sections 1 to 5;

(b) whether the description of the invention and the claim or claims in the application satisfy the requirements of Section 13;

(c) whether, for the same invention, no prior application, or application benefiting from an earlier priority, has been made in the country, and no patent has been granted as a result of such application.

(2) When, or to the extent that, the Patent Office finds that the answers to the questions under (a), (b) and (c) in sub-section (1) are in the affirmative, a patent shall be granted.

(3) When the examination referred to in Section 17 shows that, with respect to a priority claimed under Section 15, the provisions of Section 15 have been complied with, the Patent Office shall proceed to the examination of the question whether this claim is justified, particularly whether it is based on a first regular national filing of an application for the same invention. When the answer to this question is in the affirmative, the Patent Office shall mention in the patent the priority claimed.

(4) The Rules shall determine whether the examination shall be carried out by the Patent Office itself or whether the Patent Office shall base its decisions on an opinion of the International Patent Institute or on reports or patents of another Patent Office, either national or regional.

(5) The Rules may limit the examination as to patentability, according to the requirements of Sections 1 to 5, to one or more of these requirements or parts of them.

(6) With respect to sub-sections (4) and (5), the Rules may provide for different solutions for applications relating to different branches of technology.

(7) The Rules shall ensure that, before a decision under sub-sections (2) and (3) is taken, the applicant or his representative shall be given an opportunity to be heard.

(8) The Rules may provide for a possibility of opposition to the grant of a patent, after publication of the application, by third parties. The Rules shall ensure that, in case of such opposition, the party who lodged such opposition, or his representative, shall be given an opportunity to be heard before a decision under sub-sections (2) and (3) is taken.

(9) Patents are granted at the risk of the patentee and without guarantee as to their validity.

Alternative C

Section 18: Grant of Patent subject to Deferred Examination of the Substance of the Application

(1) When the examination referred to in Section 17 shows that the application satisfies the requirements of Sections 12, 14 and 16, the Patent Office shall grant the patent, as applied for, subject to deferred examination as to the substance of the patent.

(2) When the examination referred to in Section 17 shows that the provisions of Section 15 have been complied with, the Patent Office shall mention in the patent the priority claimed.

(3) The registered owner of the patent granted according to sub-section (1) may, after the expiration of the fifth year from the date of the filing of the application and before the expiration of the sixth year after that date, request the Patent Office to proceed to the examination of the substance of the patent. This request shall not be accepted unless the fee prescribed by the Rules has been paid.

(4) If the registered owner presents the request referred to in sub-section (3) within the period prescribed in that sub-section, the Patent Office shall proceed to the examination of the patent as to substance, namely:

(a) whether the subject of the patent is patentable within the terms of Sections 1 to 5;

(b) whether the description of the invention and the claim or claims in the patent satisfy the requirements of Section 13;

(c) whether, for the same invention, no prior application, or application benefiting from an earlier priority, has been made in the country, and no patent has been granted as a result of such application.

(5) When, or to the extent that, the Patent Office finds that the answers to the questions (a), (b) and (c) in sub-section (4)

are in the affirmative, it shall confirm the patent, and if the priority claimed appears justified, it shall confirm this priority. In the contrary situation the Patent Office shall declare the patent null and void or not mention in the confirmed patent the priority claimed. Section 48 (2) shall apply.

(6) If the registered owner of the patent fails to present a request for the examination of the substance of the patent within the period prescribed in sub-section (3), the patent shall lapse on the last day of that period.

(7) With respect to confirmation of patents, declaration of nullity, and lapse, provided for in sub-sections (5) and (6), Sections 19 and 20 shall apply.

(8) Sub-section (4) of Alternative B.

(9) Sub-section (5) of Alternative B.

(10) Sub-section (6) of Alternative B.

(11) Sub-section (7) of Alternative B.

(12) Sub-section (8) of Alternative B.

(13) Sub-section (9) of Alternative B.

Section 19: Issuance and Registration of Patents and Registration of Acts Relating Thereto

(1) A patent shall be granted by the issuance of letters patent to the patentee. The patent shall contain its number in the order of grant; the name and address of the patentee and, if his address is outside the country, an address for service in the country; the dates of the application and grant; indication, if priority is claimed, of this fact, and the number, date and country of the application, basis of the priority claimed; the description of the invention, the claims and the drawings, if any, relating to the description; and, finally, the name and address of the true inventor if he has requested to be mentioned in the patent.

(2) The Patent Office shall maintain a Register in which shall be recorded patents granted, numbered in their order of grant, and, in regard to each patent, if appropriate, its lapse for non-payment of annual fees, and all transactions to be recorded by virtue of the present Law.

(3) The Patent Office shall record the changes of address or of address for service which shall be notified to it by the registered owner of the patent.

(4) Communications to be made to the registered owner of the patent by virtue of the present Law shall be sent to him at his most recently recorded address and at the same time to his most recently recorded address for service.

Section 20: Publication of Patents

(1) The Patent Office shall publish as soon as possible patents granted in the order of their grant, mentioning the contents of the patent in accordance with Section 19(1) with the exception of the description and the drawings. The publication of the claims of the patent may, to the extent permitted and in the manner prescribed by the Rules, be replaced by a summary of the claims, without prejudice to the scope of the patent and its validity.

(2) Patents registered at the Patent Office may be consulted free of charge at that Office, and any person may obtain copies thereof at his own expense. This provision shall also be applicable to transactions recorded in regard to any patent.

CHAPTER IV: RIGHTS CONFERRED BY THE PATENT

Section 21: Nature of Rights Conferred

The patent shall confer upon its registered owner the right to preclude third parties from the following acts:

- (a) when the patent has been granted in respect of a product:
 - (i) making, importing, offering for sale, selling, and using, the product,
 - (ii) stocking such product for the purposes of offering for sale, selling, or using;
- (b) when the patent has been granted in respect of a process:
 - (i) applying the process,
 - (ii) doing any of the acts referred to in (a) above in respect to a product obtained directly by means of the process.

Section 22: Scope of Protection

(1) The scope of the protection conferred by the patent shall be determined by the terms of the claims.

- (2) The description and the drawings included in the patent shall be used to interpret the claims.

Section 23: Limitation of Rights under the Patent

- (1) The rights under a patent shall only extend to acts done for industrial or commercial purposes.
- (2) The rights under a patent shall not extend to acts in respect of the product covered by the patent after the product has been lawfully sold in the country; nevertheless, in so far as the patent also concerns a special application of the product, this application shall continue to be reserved to the registered owner of the patent.

Section 24: Rights derived from Prior Manufacture or Use

Any person who, in the country, at the date of the filing of the patent application by another person, or at the date of priority validly claimed in respect of such application, was, in good faith, manufacturing the product or applying the process, the subject of the invention, or had made serious preparations with a view to such manufacture or use, shall, despite the patent, have the right to continue such acts and, with respect to products obtained thereby, to perform the other acts referred to in Section 21. This right is only transferable with the undertaking which is the beneficiary of the right.

CHAPTER V: DURATION OF PATENT AND FEES

Section 25: Duration of Patent and Fees

- (1) A patent shall expire at the end of the twentieth* year from the date of the filing of the application, subject to the payment of the annual fees fixed by the Rules.
- (2) A period of grace of six months shall be granted for the payment of the annual fees upon payment of a surcharge fixed by the Rules.
- (3) The lapse of a patent for non-payment of fees shall be published by the Patent Office as soon as possible.

* Alternatives : Replace " twentieth " by " eighteenth " or " sixteenth ".

CHAPTER VI: ASSIGNMENT AND TRANSFER OF PATENT APPLICATIONS AND PATENTS; JOINT OWNERSHIP OF PATENTS

Section 26: Assignment and Transfer of Patent Applications and Patents

- (1) Patent applications and patents may be assigned or transferred by succession.
- (2) The assignment of patent applications and patents shall be made in writing and shall require the signatures of the contracting parties.
- (3) Assignments, or transfers by succession, of patent applications and patents shall be registered in the Patent Office on payment of a fee fixed by the Rules; assignments or transfers by succession shall have no effect against third parties until such registration.

Section 27: Joint Ownership of Patents

In the absence of any provision to the contrary between the parties, joint owners of a patent may, separately, transfer their parts, exploit the patented invention, and exercise the rights granted under Section 21, but may only jointly grant a license to a third party to exploit the patent.

CHAPTER VII: CONTRACTUAL LICENSES

Section 28: License Contracts

- (1) The applicant for or owner of a patent may, by contract, grant to some other person or undertaking a license to exploit his invention.
- (2) The license contract must be in writing and shall require the signatures of the contracting parties.
- (3) Any license contract shall be registered in the Patent Office, on payment of a fee fixed by the Rules; the license shall have no effect against third parties until such registration.

Section 29: Right of Licensor to Grant Further Licenses

(1) In the absence of any provision to the contrary in the license contract, the grant of a license shall not prevent the licensor from granting further licenses to third persons, nor from exploiting the invention himself.

(2) The grant of an exclusive license shall prevent the licensor from granting licenses to third persons and, in the absence of any provision to the contrary in the license contract, from exploiting the invention himself.

Section 30: Rights of Licensee

In the absence of any provision to the contrary in the license contract, the licensee shall be entitled to exploit the invention during the whole duration of the patent, in the entire territory of the country, through any application of the invention, and in respect to all the acts referred to in Section 21.

Section 31: Non-Assignability of Licenses

In the absence of any provision to the contrary in the license contract, a license shall not be assignable to third parties, and the licensee shall not be entitled to grant sub-licenses.

Section 32: License Contracts Involving Payments Abroad

The Minister responsible for industrial property may, by order, provide that, on pain of invalidity, license contracts or certain categories of them, and amendments or renewals of such contracts, which involve the payment of royalties abroad, shall require the approval of . . . taking into account the needs of the country and its economic development.

Section 33: Invalid Clauses in License Contracts

(1) Clauses in license contracts or relating to such contracts are null and void in so far as they impose upon the licensee, in the industrial or commercial field, restrictions not deriving from the rights conferred by the patent.

(2) The following in particular shall be deemed not to constitute such restrictions:

(a) limitations concerning the degree, extent, quantity, territory or duration of exploitation of the subject of the patent;

(b) limitations justified by the interest of the licensor in the technically flawless exploitation of the subject of the patent;

(c) the obligation imposed upon the licensee to abstain from all acts capable of impeding or preventing the grant of the patent or prejudicing its validity.

CHAPTER VIII: COMPULSORY LICENSES

Section 34: Compulsory License for Non-Working and Similar Reasons

(1) At any time after the expiration of a period of four years from the date of the filing of an application for a patent, or three years from the date of the grant of a patent, whichever period last expires, any person interested may, in accordance with the conditions specified in Section 44, apply for the grant of a compulsory license upon one or more of the following grounds:

(a) that the patented invention, capable of being worked within the country, has not been so worked within the terms of sub-section (3);

(b) that the working of the patented invention within the country does not meet on reasonable terms the demand for the product;

(c) that the working of the invention within the country is being prevented or hindered by the importation of the patented article;

(d) that, by reason of the refusal of the registered owner of the patent to grant licenses on reasonable terms, the establishment or development of industrial or commercial activities in the country is unfairly and substantially prejudiced.

(2) In all the above cases, a compulsory license shall not be granted if the owner of the patent justifies himself by legitimate reasons. Importation shall not constitute a legitimate reason.

(3) Working of a patented invention under this Section means the manufacture of a patented article, the application of a patented process, or the use in manufacture of a patented machine, by an effective and serious establishment existing within the country, and on a scale which is adequate and reasonable in the circumstances.

(4) The compulsory license shall permit the licensee to perform some or all the acts referred to in Section 21 with the exception of importation.

Section 35: Compulsory License for Products and Processes Declared to be of Vital Importance for the Defence or Economy of the Country or for Public Health

The Minister responsible for industrial property may, by order, provide that, for certain patented products and processes, or for certain categories of such products and processes, which are declared by that order of vital importance for the defence or the economy of the country or for public health, compulsory licenses may be granted, in the conditions provided for in Section 34, even before the expiration of the period mentioned in subsection (1) of that Section and even for importation into the country.

Section 36: Compulsory Licenses Based Upon Interdependence of Patents

(1) If an invention protected by a patent within the country cannot be worked without infringing rights deriving from a patent granted on a prior application or benefiting from an earlier priority, a compulsory license may, upon application, be granted under the conditions specified in Section 44 to the registered owner of the later patent, to the extent necessary for the working of his invention, in so far as such invention serves industrial purposes different from those of the invention forming the subject of the earlier patent, or constitutes noteworthy technical progress in relation to it.

(2) If the two inventions serve the same industrial purpose, a compulsory license shall be granted only if a license is granted in respect of the later patent to the registered owner of the earlier patent, if he so requests.

Section 37: Refusal of Contractual License

Any person who applies for a compulsory license under Sections 34, 35 or 36, must furnish proof showing that he has previously approached the registered owner of the patent, by registered letter, requesting a contractual license, but has been unable to obtain such a license from him on reasonable terms and within a reasonable time.

Section 38: Guarantee Required from Applicant for a Compulsory License

In the cases provided for in Sections 34 and 35, a compulsory license shall be granted only to an applicant offering the necessary guarantees to work the invention sufficiently to remedy the deficiencies or to satisfy the requirements which gave rise to the application for the compulsory license.

Section 39: Scope of Compulsory License

(1) Compulsory licenses shall be non-exclusive.

(2) The terms of a compulsory license, fixed in accordance with Section 44, may contain obligations and restrictions both for the licensee and for the registered owner of the patent.

Section 40: Compensation

A compulsory license shall only be granted subject to the payment of adequate royalties commensurate with the extent to which the invention is worked.

Section 41: Transfer of Compulsory License

(1) A compulsory license can only be transferred with the undertaking of the licensee or with that portion of his undertaking which uses the patented invention. Any such transfer shall, on pain of invalidity, require the authorization of the authority which granted the compulsory license; Sections 42 and 44 shall be applicable.

(2) The grantee of the compulsory license shall not be entitled to grant sub-licenses.

Section 42: Registration of Compulsory License at Patent Office

Every compulsory license shall, either at the request of the interested party or ex officio, be registered at the Patent Office without fee. The license shall have no effect as against third parties until such registration.

Section 43: Amendment and Cancellation of Compulsory License

- (1) Upon the request of the registered owner of the patent or of the licensee of the compulsory license, the terms of the license may be amended by the authority which granted it when new facts justify it, in particular when the registered owner of the patent grants contractual licenses on terms more favorable to the contractual licensees.
- (2) At the request of the registered owner of the patent, the compulsory license may be cancelled if the licensee does not comply with the prescribed terms of the license or if the conditions which justified the grant of the compulsory license have ceased to exist; in the latter case, a reasonable time shall be given to the licensee to cease working the invention if an immediate stoppage would cause serious damage to him.
- (3) Sections 42 and 44 shall be applicable to the amendment and cancellation of compulsory licenses.

Section 44: Procedure

- (1) Any application for a compulsory license shall be made to the Court.
- (2) The Registrar of the Court shall invite, by registered letter, the applicant for the license and the registered owner of the patent to appear or to be represented before the Court within a reasonable time; the Court shall hear the party or parties or their representatives who have appeared. Before granting a compulsory license, the Court shall seek the advice of the Minister responsible for industrial property, who may delegate a representative to intervene at the hearing and to make any pertinent observations.
- (3) The Court shall first decide whether a compulsory license can be granted. If it finds that it can be granted, it will give the parties reasonable time to agree on the terms. If there is no agreement between the parties when the time limit expires, the Court shall fix the terms, including the amount of royalties referred to in Section 40. The terms of a compulsory license, including those relating to royalties, shall be considered to constitute a valid contract between the parties.
- (4) The decision of the Court granting a compulsory license shall be notified by the Registrar of the Court to each of the parties involved and to the Patent Office.

CHAPTER IX: LICENSES OF RIGHT

Section 45: Licenses of Right

- (1) Any registered owner of a patent not precluded by the terms of any previously registered license from granting further licenses may apply to the Patent Office to have, in respect of his patent, the mention "licenses of right" entered in the Register. The mention shall be entered in the Register, and this fact shall be published by the Patent Office as soon as possible.
- (2) The entry of this mention in the Register shall entitle any person to obtain a license to exploit the said patent upon such terms as shall, in the absence of agreement, be fixed by the Court.
- (3) The amount of the annual fees payable in respect of any patent after the date on which the mention "licenses of right" has been entered in the Register shall be reduced by one half.
- (4) The registered owner of the patent may, at any time, apply to the Patent Office to cancel the entry "licenses of right." If no license is in force, or if all licensees agree thereto, the Patent Office shall cancel the entry, after payment of all fees and annual fees which would have been payable if the entry had not been made in the Register.
- (5) The provisions of Sections 28(3), 30, 32, and 33, shall be applicable equally to licenses of right.
- (6) The grantee of a license of right may neither assign it nor grant sub-licenses under it.

CHAPTER X: SURRENDER AND NULLITY

Section 46: Surrender of Patent

- (1) A patent may be surrendered by its registered owner by written declaration addressed to the Patent Office.
- (2) The surrender may be limited to one or more claims of the patent.
- (3) The surrender shall be immediately registered and published by the Patent Office. Surrender shall be effective only after it has been registered.

(4) If a contractual license or a license of right is registered at the Patent Office, surrender of the patent shall only be registered upon the submission of a declaration by which the registered licensee consents to the surrender.

Section 47: Nullity of Patent

(1) On the request of any person, including any competent authority, the Court shall declare a patent null and void:

(a) if the subject of the patent is not patentable within the terms of Sections 1 to 5;

(b) if the description of the invention or the claim or claims in the patent do not satisfy the requirements of Section 13;

(c) if, for the same invention, a patent has been granted in the country as the result of a prior application or of an application benefiting from an earlier priority.

(2) If the provisions of the preceding sub-section affect only part of the patent, nullity shall be declared in the form of a corresponding limitation of the claim or claims of the patent.

(3) The Court may require the registered owner of the patent to submit to it for the purpose of examination the list of publications or earlier patents which may have been referred to in connection with either a patent application filed for the same invention by the registered owner himself or his predecessor in title with the Patent Office of another country or any proceedings relating to the patent in question. The same requirement may be made by the Court in regard to publications or patents mentioned in any report sent to the registered owner of the patent or his predecessor in title by a governmental or inter-governmental search institute.

Section 48: Effects of Declaration of Nullity

(1) A patent declared to be null and void shall be regarded as having been null and void from the date of its grant. Nevertheless, where licenses have been granted, the nullity shall not entail the repayment of the royalties by the licensee in so far as he has effectively profited from the license.

(2) When the declaration of nullity becomes final, the Registrar of the Court shall notify it to the Patent Office which shall enter it in the Register and publish it as soon as possible.

CHAPTER XI: INFRINGEMENT OF RIGHTS UNDER THE PATENT

Section 49: Civil Sanctions

(1) A registered owner of a patent whose rights under Sections 21 and 22 are threatened with infringement, or are infringed, may institute legal proceedings designed to prevent the infringement or to prohibit its continuation.

(2) In case of infringement of these rights, the registered owner of the patent may also claim damages and the application of any other sanctions provided for in the civil law.

Section 50: Penal Sanctions

(1) Any intentional infringement of the rights of a registered owner of a patent under Sections 21 and 22 shall constitute an offence.

(2) Such offence shall be punishable by a fine not exceeding . . . or by imprisonment not exceeding . . . months, or both.

(3) In the event of recidivism, the maximum penalties shall be doubled.

(4) Recidivism shall be deemed to have occurred when, in the course of the five preceding years, the offender has been convicted of another infringement of a patent.

Section 51: Presumption of Use of a Patented Process

If a patent is in respect of a process for the manufacture of a new product, the same product, manufactured by a third party, shall, in the absence of proof to the contrary, be presumed to have been manufactured by that process.

Section 52: Legal Proceedings by Licensee

(1) Any licensee under a contractual or compulsory license, or a license of right, may, by registered letter, require the licensor to introduce the legal actions necessary to obtain civil or penal sanctions in respect of any infringement of the patent indicated by the licensee.

(2) If the licensor refuses or neglects to introduce the said legal actions within three months of the request, the licensee under the registered license may introduce them in his own name, without prejudice to the right of the licensor to intervene in such actions.

PART II: TECHNICAL KNOW-HOW

Section 53: Conditions of Protection of Technical Know-How

(1) Subject to any right conferred by patents in force and the provisions of sub-section (2) of the present Section, manufacturing processes or knowledge concerning the use and application of industrial techniques shall be in the public domain.

(2) Nevertheless, provided that these processes and knowledge have not been published or made available to the public, they shall be protected against unlawful use, disclosure or communication by third parties, on condition that the person who has developed them has taken the necessary steps to preserve their secret character.

Section 54: Unlawful Acts

Any use, disclosure, or communication, without the consent of the owner, of the processes and knowledge referred to in Section 53(2) by any person who is aware of their secret character, as referred to in Section 53(2), or who could not fail to be aware of such character, shall be deemed to be unlawful.

Section 55: Independent Acquisition

Any person who has developed, by his own means, manufacturing processes or knowledge concerning the use and application of industrial techniques and any person who has legally acquired those processes or that knowledge from the former shall, even if another person has kept secret the same processes and knowledge, be free to use, disclose, or communicate them.

Section 56: Transfers and Licenses

(1) The processes and knowledge referred to in both sub-sections of Section 53 may be transferred and may form the subject of a license contract.

(2) Sections 26(2), 28(2), 29, 30, 31, and 32, shall be applicable by analogy.

Section 57: Legal Proceedings

Sections 49 and 50 shall be applicable by analogy to the unlawful acts referred to in Section 54.

PART III: PROCEDURAL PROVISIONS AND RULES

Section 58: Competence of Civil Courts

(1) Civil Courts shall be competent to deal with all litigation concerning the application of the present Law, particularly as regards rights to patents, the assessment of the remuneration of an employee-inventor, license contracts, the grant, amendment and cancellation of compulsory licenses, the fixing of royalties relating thereto, the fixing of the terms of licenses of right, the nullity of patents, the infringement of rights conferred by patents, and unlawful acts in respect of technical know-how.

(2) The Civil Court of the domicile of the registered owner of the patent or, if he is domiciled abroad, the Civil Court of the place where the Patent Office is located, shall have jurisdiction.

(3) Before deciding questions of a technological or economic nature, the Court shall hear the advice of at least two experts who must be independent of the parties and must have no interest in the outcome of the litigation.

(4) The decisions of the Court shall be open to appeal, annulment, or revision, according to the general rules of procedure.

Section 59: Rules

The Rules shall prescribe the details of application of the present Law, particularly in regard to Sections 12(4), 16, 20(1), 25(1)(2), 26(3), and 28(3).

ANNEX A

POSSIBLE ADDENDUM
ON PATENTS OF INTRODUCTION

Section I: Grant of Patents of Introduction

Subject to the provisions of Section II, a patent of introduction shall be granted for any invention for which a patent has been granted in a foreign country:

- (a) if the application for the patent of introduction is filed by the registered owner of the foreign patent,
- (b) if the foreign patent is in force at the time of the filing of the application for the patent of introduction, and,
- (c) if, up to the time of the filing of the application for the patent of introduction, neither the claimed process has been applied in the country nor the product, directly obtained by means of the claimed process, or the claimed product has been manufactured or sold in the country.

Section II: Applicability of Other Provisions

Sections 1 to 7, 11 to 14, 16 to 24, 25(2) (3), 26 to 44, 46, 49 to 52, 58 and 59, shall apply to patents of introduction, provided, however, that:

- (a) the conditions referred to in Sections 2 and 3 shall be required to be fulfilled at the date of the filing of the application for the foreign patent or at the date of the priority validly claimed for it,
- (b) in addition to the data to be furnished under Section 12, the applicant for a patent of introduction shall also indicate in his application the number, date and country of grant of the foreign patent, and, within a period to be fixed by the Rules, shall furnish to the Patent Office a copy of the foreign patent.

Section III: Duration of Patents of Introduction and Fees

A patent of introduction shall expire at the end of the tenth year from the date of the filing of the application, subject to the payment of the annual fees fixed by the Rules.

Section IV: Nullity of Patent of Introduction

- (1) On the request of any person, including any competent authority, the Court shall declare a patent of introduction null and void:
 - (a) if the subject of the patent was not patentable within the terms of Sections 1 to 5 or Section I;

(b) if the description of the invention and the claim or claims in the patent do not satisfy the requirements of Section 13;

(c) if, for the same invention, a patent has been granted in the country as the result of a prior application or of an application benefiting from an earlier priority;

(d) if the invention, the subject of the patent of introduction, is not effectively exploited within a period of two years from the date of the grant of the patent of introduction, or if effective exploitation subsequently ceases for a period exceeding two years.

(2) Sections 47(2) (3) and 48 are applicable by analogy to patents of introduction.

Section V: Importation by Owner or Licensee

Direct or indirect importation by the owner of the patent of introduction or by a licensee under such a patent of a product, the subject of the patent of introduction, or of a product obtained directly by means of the process, the subject of the patent of introduction, shall constitute an offence punishable according to Section 50. Importation of model or prototype products shall not constitute such an offence.

ANNEX B

POSSIBLE ADDENDUM
ON INVENTORS' CERTIFICATES*

Section I: Grant of Inventors' Certificates

- (1) Sections 2 to 9, 11 to 15, and 17 to 20, shall be applicable by analogy to the grant of inventors' certificates.
- (2) The grant of an inventor's certificate shall be exempt from fees.

Section II: Obligations and Rights of the State

- (1) The State is required to examine the possibilities of exploitation of the invention, the subject of an inventor's certificate, in State undertakings and organizations, and to exploit it to the extent possible.
- (2) It may authorize any undertaking or person to exploit the invention in the country.

* Countries adopting this Annex would have to word Section 1 of the Law as follows:

Alternative for Section 1: Grants of Patents or Inventors' Certificates

- (1) For any invention which is new, results from inventive activity, and is capable of industrial application, the inventor or his successor in title may obtain, at his option, either a patent or an inventor's certificate.
- (2) The same stipulation applies to inventions improving other inventions.
- (3) Principles and discoveries of a scientific nature shall not be considered to be inventions.

**Section III: Obligations and Rights of the Holder
of the Certificate**

- (1) The holder of an inventor's certificate has the right and the obligation to participate actively in the examination, the carrying out, and the subsequent development, of the invention in the country.
- (2) He is required in particular to put at the disposal of the State or any persons or undertakings designated by the State all documentation in his possession regarding the invention and give all advice and information relating to it.

Section IV: Compensation to the Holder of the Certificate

The holder of an inventor's certificate for an invention which is exploited in State undertakings or organizations, or, by virtue of an authority from the State, by other persons or undertakings, has the right to receive from the State adequate remuneration, commensurate with the extent of the exploitation of the invention, as well as other benefits to be fixed by the Rules.

Section V: Penal Sanctions

- (1) Usurpation in an application for an inventor's certificate of the inventorship or co-inventorship, or the attributing of co-inventorship to persons who have not contributed an inventive activity, shall be punished by a fine not exceeding.....or a term of imprisonment not exceedingmonths, or both.
- (2) In case of recidivism, the maximum penalties shall be doubled.
- (3) Recidivism shall be deemed to have occurred when, within the preceding five years, the offender has been convicted under the provisions of subsection (1) above.

Section VI: Applicability of Other Provisions

Sections 24, 26, 47, 48, 58, and 59, shall be applicable by analogy to inventors' certificates.

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