

# WIPO



PCT/AAQ/VIII/21

ORIGINAL: English

DATE: October 17, 1977

## WORLD INTELLECTUAL PROPERTY ORGANIZATION GENEVA

### PATENT COOPERATION TREATY

#### INTERIM ADVISORY COMMITTEE FOR ADMINISTRATIVE QUESTIONS

Eighth Session

Geneva, October 10 to 17, 1977

#### REPORT

##### INTRODUCTION

1. The PCT Interim Advisory Committee for Administrative Questions (hereinafter referred to as "the Interim Committee") held its eighth session in Geneva from October 10 to 17, 1977.
2. The members of the Interim Committee are those States--44 in number-- which have signed, or acceded to, the Patent Cooperation Treaty (PCT), and, pursuant to a decision of the Executive Committee of the Paris Union, any other country which pledges a special contribution to the PCT budget. There are three States, Australia, Cuba and Spain, which have qualified under the latter criterion. The following 20 States were represented: Austria, Brazil, Canada, Denmark, Egypt, Finland, France, Germany (Federal Republic of), Hungary, Japan, Madagascar, Netherlands, Norway, Senegal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom and United States of America. The following 24 States were not represented: Algeria, Argentina, Australia, Belgium, Cameroon, Central African Empire, Chad, Congo, Cuba, Gabon, Holy See, Iran, Ireland, Israel, Italy, Ivory Coast, Luxembourg, Malawi, Monaco, Philippines, Romania, Syrian Arab Republic, Togo and Yugoslavia.
3. Three intergovernmental organizations, the Interim Committee of the European Patent Organisation (EPO), the International Patent Institute (IIB) and the Organization of American States (OAS), were represented by observers.
4. The following eight non-governmental organizations were represented by observers: International Association for the Protection of Industrial Property (AIPPI), Inter-American Association of Industrial Property (ASIPI), Council of European Industrial Federations (CEIF), European Federation of Industrial Property Representatives of Industry (FEMIPI), International Federation of Inventors Associations (IFIA), International Federation of Patent Agents (FICPI), Union of Industries of the European Community (UNICE), and Union of European Professional Patent Representatives (UNION).
5. The number of participants was approximately 55. The list of participants is annexed to this report.

## OPENING OF THE SESSION

6. The session was opened by Mr. K. Pfanner, Deputy Director General of WIPO, who welcomed the participants on behalf of the Director General of WIPO.

## OFFICERS OF THE INTERIM COMMITTEE

7. The Interim Committee unanimously elected Mr. J.-L. Comte (Switzerland) as Chairman and Mr. U.C. Hallmann (Federal Republic of Germany) and Mr. K. Hoshikawa (Japan) as Vice-Chairmen.

8. Mr. E.M. Haddrick, Head, PCT Division, WIPO, acted as Secretary of the Interim Committee.

## AGENDA

9. The Interim Committee adopted its agenda as contained in document PCT/AAQ/VIII/1.Rev.

## PUBLICATION

Guidelines for publication under the Patent Cooperation Treaty (PCT)

10. Discussions were based on document PCT/AAQ/VIII/2.

11. The Guidelines contained in the said document were adopted in principle by the Interim Committee subject to the modifications and observations noted below, as well as certain minor corrections of an editorial nature not reproduced here, which would all be taken into account by the International Bureau in establishing the final version of the document.

Paragraphs 47 to 49

12. In response to a question by the Representative of CEIF concerning the sequence of the elements in the pamphlet, it was explained that the indication in paragraphs 78 and 79, that the claims as amended or the amendments specified would be published together with the claims as filed, meant that the claims as amended or the amendments specified would be published immediately following the claims as filed. The statement by the applicant under Article 19(1) would be published after the claims as amended or the amendments specified and, for that reason, the sequence indicated in paragraph 47 of the Guidelines was restricted to the elements cited in Rule 48.2(a)(i) to (v). The International Bureau was entrusted with the consideration of where to locate in the pamphlet the element comprising the essence of the comments of the applicant on the draft translation into English of the international application prepared under the responsibility of the International Searching Authority.

Paragraph 55

13. The Delegation of the United States of America suggested that, since the volume of sales of pamphlets was not known, it might be better not to rule out the option of reproduction processes which did not require an intermediate matrix. The Interim Committee decided that, while such processes would not be retained for the time being, the reproduction process for the pamphlet would be subject to review in the future.

Paragraph 60, General

14. In response to a question by the Delegation of the Netherlands and in the light of explanations given by the International Bureau and by the Delegation of the United Kingdom, it was decided that the indication of the elected States should be retained on the front page of the pamphlet since it was not confidential, and the Interim Committee for Technical Cooperation should be asked to consider an appropriate amendment of Chapter VI, paragraph 2.2 of the Guidelines for International Preliminary Examination to be Carried Out under the Patent Cooperation Treaty (PCT).

Paragraph 60(iii)

15. The Interim Committee decided to invite the competent body of ICIREPAT to consider the establishment of a specific INID number to identify the data entry indicating the items to be published in the pamphlet as listed in paragraph 60(iii).

Paragraph 64

16. Upon the suggestion of the Delegation of the United States of America, the Interim Committee agreed that the indication whether the abstract appearing on the front page of the pamphlet is as originally filed by the applicant or as established by the International Searching Authority, was not needed since the public would always know, on the basis of whether or not the international search report was published with the pamphlet, if the abstract appearing on the front page was or was not a definitive version approved by the said Authority. Consequently, paragraph 64 should be deleted from the Guidelines.

Paragraph 67

17. The Delegation of the United States of America stated that the second sentence of this paragraph, which covered the publication of the abstract in the case where a declaration has been made under Article 17(2)(a), appeared inconsistent with paragraph 65. Since paragraph 65 dealt with the case where the applicant had not provided an abstract and where consequently no abstract could be published, it was agreed that the matter should be clarified by inserting in the second sentence the words "if provided by the applicant" after the word "abstract."

Paragraph 74

18. The Representative of the IIB suggested that the agreements to be concluded between the International Bureau and the International Searching Authorities should provide that the translations of international applications into English, prepared by the International Searching Authorities, should comply with the physical requirements of Rule 11 to the extent necessary for publication so as to avoid any retyping of the translations by the International Bureau for the purposes of publication. The International Bureau welcomed the suggestion and stated that it would be taken into consideration in negotiations with the International Searching Authorities.

19. The Representative of CEIF suggested that it should be agreed with the International Searching Authorities that the contents of each page of the original and the translation into English of the international application, prepared under the authority of the International Searching Authority, should be identical so that each replacement sheet of the application as originally filed could have an exact counterpart in the English translation of the application. It was, however, observed that this principle would frequently meet with difficulties, especially where the space requirements of the original text and the translated text were substantially different.

20. The Delegation of the Soviet Union stated that the stamp of the International Bureau to appear on each page of the international application as well as the abbreviated name of the Organization and its emblem on the front page should be in the language of publication of international applications if such language is an original language of the WIPO Convention. In reply, the International Bureau indicated that it would study whether stamp, name and emblem, instead of or in addition to appearing in English and French, should appear, or should appear also, in the language of the international publication.

Paragraphs 113 to 116

21. The Interim Committee agreed that the new layout and presentation of the entries of the first Section of the Gazette was an acceptable solution, at least for an initial period. If at a later stage, however, a classified abstract service could be introduced by the International Bureau, the need for reproduction of the front pages of the pamphlet in the first Section should be reconsidered. In this event the layout and presentation of the first Section would require further study, it being recognized that any reconsideration of this matter would be likely to involve amendment to Rule 86.1(i).

22. The Representative of the Interim Committee of the EPO expressed satisfaction with the new format provided for the first Section of the Gazette which was now compatible with the classified abstract service as envisaged by the EPO.

23. Upon a suggestion of the Delegation of the United States of America, it was agreed to delete the words "three" from the expression "three different" in the penultimate line of paragraph 113, since there was no necessity to specify the number of frames that might be used.

#### Paragraph 125

24. The Interim Committee agreed, upon the suggestion of the Delegation of Norway, that any later finding by an International Searching Authority as explained in Chapter IV, paragraph 3.4 of the Guidelines for International Search to be Carried Out under the Patent Cooperation Treaty (PCT), should be published by the International Bureau in Section II of the Gazette and that this matter should be added to paragraph 125 as item (ix).

25. Following a suggestion by the Delegation of the United States of America, it was also agreed to add a citation of Rule 86.1(iv) to item (vi) of this paragraph.

#### Paragraph 136

26. The Interim Committee, on a suggestion by the Delegation of the Netherlands, agreed to the additional inclusion, in item (ii) of this paragraph, of information as to the International Preliminary Examining Authorities competent for international preliminary examination of international applications filed with the various receiving Offices.

#### Paragraph 137

27. Following suggestions by the Delegations of the United States of America and the Netherlands, it was agreed to include in item (xvii) information as to the names of all Contracting States together with an indication whether they are bound by Chapter II.

28. In response to a question raised by the Delegation of the Netherlands whether the information referred to in Rule 18.4(c) should be published in the Gazette or in an Information Brochure, the International Bureau was asked to study whether it might be included in the Guidelines for Applicants.

#### Paragraph 153

29. The Delegation of the United Kingdom noted that for budgetary reasons a classified abstract service could not be established in the initial stages of the operation of the PCT. While such a service was not provided for in the PCT, efforts had been made to achieve compatibility between the first Section of the Gazette and the envisaged classified abstract service of the European Patent Office. In view of the desirability of such a service from the users viewpoint, the matter should be looked into when budgetary considerations so permitted. In addition to the envisaged possibility of collaboration with INPADOC, the possibility of collaboration between WIPO and the EPO should be looked at having regard to the possible commercial viability of a combined service.

30. In response to the question of the Director General as to the possibility of collaboration between EPO and INPADOC, the Representative of the Interim Committee of the EPO drew attention to the fact that the EPO classified abstract service would be put out to tender for production by a commercial firm, and that the question of collaboration with INPADOC would have to be considered, by the competent EPO Authority, at a later date.

31. The Delegation of the Netherlands stated that duplication of effort between the EPC system and the PCT system was avoided as far as publication of applications was concerned, and that, in the field of classified abstracts, a similar arrangement could be achieved.

32. The Delegation of Austria expressed the view that any final decision in respect of abstract services was premature since the PCT in its early operation would be on a small scale.



33. The Director General underlined the interest of the International Bureau in cooperating and maintaining compatibility with the EPO services. He added that the International Bureau would have to reserve a decision on the form and implementation of a publication of PCT abstract services until a later stage and, as far as the proposed cooperation with the EPO service was concerned, at least until complete information was available with respect to the framework and form of the EPO service.

#### Annex D

34. Upon a suggestion by the Delegation of Norway, the Interim Committee asked the International Bureau to study whether the symbols of the IPC contained in this Annex could be enlarged in a manner similar to the publication number.

#### Progress report concerning the printing of PCT publications

35. Discussions were based on document PCT/AAQ/VIII/3.

36. The Delegation of the Soviet Union expressed its appreciation of the important and useful work performed by the International Bureau and of the progress achieved to date in connection with negotiating the printing of PCT publications in conformity with both the spirit of the discussions and instructions of the Working Group on Guidelines for Publication and for Drawings. Moreover, the Delegation felt that it could safely expect further progress upon the coming into force of the PCT. With this in mind, the Delegation offered the services of its Office to the International Bureau should in further negotiations problems arise in respect of PCT publications in Russian. This offer was accepted with gratitude by the International Bureau.

37. The Director General informed the Interim Committee that he was not yet in a position to take a decision with respect to awarding a contract for printing PCT publications to a particular printer. The major reasons making a decision at this time difficult were:

- (i) that, since the time the call for tenders was made, a delay in the ratification schedule of the PCT had occurred which could not be foreseen at that time;
- (ii) that, in view of that delay, it could not yet be foreseen precisely when and for which countries the PCT would enter into force;
- (iii) that, consequently the number of PCT applications to be expected and the languages in which PCT publications would have to be printed in the initial period were still uncertain; and
- (iv) that, once more precise data with respect to the factors referred to above were known, a final evaluation of the tenders would have to take place which, for several reasons including the delay which has occurred in the meantime, would require some supplementary information, in particular, confirmation of prices and possible further explanation of matters referred to in the tenders to be provided by the tenderers.

It was therefore unlikely that the evaluation of the tenders would be completed and that a decision could be taken before early next year.

38. The Delegation of the United Kingdom, noting that the tenders received by the International Bureau were still under consideration, expressed regret that no decision on the selection of the printer would be forthcoming until early next year. The question of the costs of printing PCT publications was a major element of the PCT budget and uncertainty in this respect would continue. The printers were, after a rather compressed procedure of call for tenders as suggested by the Working Group, now in a state of uncertainty and thus unable to plan their further work.

39. The Director General said, as soon as the date of entry into force of the PCT was known, the tenderers would be notified of that date and of the approximate date on which the decisions would be taken.

40. The Delegation of Austria asked whether, in view of the fact that a commercial printer from Austria had abstained from presenting his tender because of the short time available, that printer could be given a further opportunity to submit a tender at this stage.

41. The Delegation of France, referring to the fact that a number of printers in France had not submitted tenders because of the short time limit available, expressed some doubts as to the advisability of reopening the call for tenders at this stage. If a call for tenders were to be reopened for the printer nominated by one country, that opportunity would have to be extended also to the printers nominated by other countries.

42. The Delegation of Sweden said that, in such case, the new call for tenders should not be limited to those printers already nominated and the countries having nominated them.

43. The Delegation of the Netherlands, supported by the Delegation of the United Kingdom, expressed doubts whether a general reopening of the call for tenders was useful. With the tenders received, the International Bureau had already enough material to take a decision. Among the countries having nominated printers, Austria was the only country for which no printer had offered a tender. Consequently, an additional opportunity for tender, if any, should only be given to the Austrian printer.

44. In conclusion, the Interim Committee agreed not to reopen the call for tenders in general, but to give the printer nominated by Austria a possibility to tender at this stage, provided that such tender would be submitted within six weeks. It was furthermore agreed, as proposed by the Director General, that, once the date of entry into force of the Treaty was known, the printers would be informed that a decision would be made soon, indicating the approximate time of such a decision.

#### Copyright protection of PCT publications

45. Discussions were based on document PCT/AAQ/VIII/4.

46. Several Delegations questioned whether copyright protection of PCT publications could be maintained having regard to the philosophy of the patent system in general and of the PCT itself, and also having regard to certain national laws which did not give protection to official publications.

47. The Delegation of the United States of America indicated that a distinction could be made between copyright protection for the pamphlet and for the other WIPO publications. It was noted that, since WIPO actually prepared only a small amount of the entire text of the pamphlet, adequate copyright protection thereof may be difficult to achieve.

48. The Director General, in response to those questions, emphasized that the system of protection relevant for PCT publications was a special system applicable under the Universal Copyright Convention to publications of Organizations within the family of the United Nations. Therefore the considerations relating to national patent publications could not be applied. For the PCT, the protection of its publications had serious budgetary implications which ultimately meant implications for the member States. From a legal viewpoint, one should not draw an analogy between the approach which national legislations take towards their own official publications and the protection of the publications of an international organization. Protocol 2 to the Universal Copyright Convention had been established specifically for the protection of the publications of the United Nations and its Specialized Agencies. This underlined the different legal obligations which attached to such publications even in those countries which did not protect their own official publications.

49. The Delegations of the United Kingdom, Sweden, France, Brazil and Japan referred to various national practices involving the copying of patent documents in response to various national needs and particularly within their Patent Offices either for internal purposes or for the needs of the public, especially through their Patent Office libraries. The Delegation of the United Kingdom, recognizing the paramount importance of revenue deriving from the sale of PCT publications, stressed the desirability of defining the limitations, if any, that should be placed on the copying of those publications by Patent Office libraries from the viewpoint both of PCT budgetary considerations and of avoiding undue administrative costs by the Patent Offices in the event that they should have to monitor copying of PCT publications. The Delegation noted that copying by its Patent Office Library was on a non-profit basis. The Delegation of Brazil expressed the special interest of developing countries in free access to patent documents.

50. The Director General observed that, if unrestricted copying were to take place, there would be no practical difference, as regards the ultimate consequences, between copying by Patent Offices or their libraries and copying on a commercial basis. What could be needed were individual arrangements with the national Patent Offices.

51. The Representative of the Interim Committee of the EPO questioned whether International Searching Authorities and International Preliminary Examining Authorities would be expected to pay fees for making copies of PCT pamphlets cited in international search and international preliminary examination reports. The Director General said in reply that possibly such Authorities and the national Offices should enter into an agreement with the International Bureau on the conditions and limits under which copying of PCT publications could take place.

52. In response to a suggestion by the Delegation of the Netherlands that prices of pamphlets should be lowered in order to make copying uninteresting, the International Bureau said that, due to the low cost of making copies and the budgetary requirements of the PCT, it would not be possible to lower the price to an extent which would prevent copying by this means.

53. The Delegation of Japan expressed the opinion that the revenue from PCT publications should constitute an essential part of the income of the International Bureau and that it was also vital to secure income from PCT publications in order to have a reliable source of revenue which was required for the effective implementation of the PCT and, therefore, that Delegation was ready to recognize copyright in PCT publications in Japan. The Delegation stressed, however, that such copyright protection should not extend to the sphere which was recognized as being outside the scope of the said protection, such as facilitating public inspection of PCT publications and using such publications as examination material for the Patent Office examiners. In this connection, the Delegation of Japan asked whether its Office would be allowed to reproduce the PCT publications as part of the Japanese Patent Office Gazette in order to make known the legal effects of such publications.

54. Upon being asked whether the International Bureau was prepared to undertake a study of the situation existing in relation to copying on the national level, the Director General indicated his willingness to do so, it being understood that the national Offices would be prepared to respond to a questionnaire seeking statistical and other factual information.

55. The Interim Committee agreed that a study be undertaken by the International Bureau on this basis.

#### Form of publication of the international search report

56. Discussions were based on documents PCT/AAQ/VIII/5 and 15.

57. The Delegation of the United States of America and the Delegation of the Netherlands expressed their agreement in principle with the new proposals for the International Search Report Form, as presented in document PCT/AAQ/VIII/5. The Delegation of the Netherlands added that the alternative version of the International Search Report Form prepared by the International Bureau met the major objections raised against the existing International Search Report Form (Form PCT/ISA/210), in particular with respect to the duplication of bibliographic information between the search report, as published, and the front page of the pamphlet. The said alternative version of the International Search Report Form was therefore acceptable to that Delegation even though it would have preferred a version corresponding more closely to that to be used by the European Patent Office.

58. The Interim Committee agreed to accept, subject to minor modifications, the said alternative version of the International Search Report Form which was adapted for use for the transmittal of the international search report by the International Searching Authority to the applicant and the International Bureau, and for publication purposes, it being understood, however, that any International Searching Authority would be free to use any other kind of form for its internal use.

59. Upon proposals made by the Delegations of Austria, the Netherlands, the Soviet Union and the United States of America, the Interim Committee agreed that the alternative version of the International Search Report Form should be modified as stated in the following paragraphs.

60. First sheet: The following modifications were agreed:

(i) Item I should read "CERTAIN CLAIMS WERE FOUND UNSEARCHABLE (Observations on supplemental sheet (2))."

(ii) Item II should read "UNITY OF INVENTION IS LACKING (Observations on supplemental sheet (2))."

(iii) In Item III, the third box under sub-item 2 should be accompanied by the following text: "Text of the abstract continued on supplemental sheet (1)."

61. Supplemental sheet (1): This supplemental sheet should be used not only for the continuation of the abstract, but also for any further information completing the information set out on the first page, provided that this information is not for publication in the international search report as part of the pamphlet. Accordingly, the title of this supplemental sheet should be changed to read "Further information continued from the first sheet."

62. Second sheet: Having regard to the interpretation to be given to Rule 33.1(b) and (c) in the light of the discussion of the analogous provisions of Rule 64.2 and 64.3 b' the PCT Working Group on Guidelines for International Search and for International Preliminary Examination, the definitions of the letter code relating to the categories of cited documents should be amended with respect to letter codes "E", "P" and "T" to read as follows: " "E" (earlier document but published on or after the international filing date)"; " "P" (document published prior to the international filing date but on or after the priority date claimed)"; " "T" (later document published on or after the international filing date or priority date and not in conflict with the application, but cited to understand the principle or theory underlying the invention)."

63. Supplemental sheet (2): More space for the inclusion of observations should be provided in the frames relating to items V and VI by using more effectively the space available in the upper part of each frame. Any other information for publication, for instance, a continuation of the list of citations, could be included here as well.

64. General: An entry should be provided on the top right hand corner of each sheet for the indication of the international application number.

#### GUIDELINES FOR DRAWINGS

65. Discussions were based on document PCT/AAQ/VIII/12.

66. In connection with Section 14 of the Draft Guidelines for Drawings under the Patent Cooperation Treaty (PCT), the Delegation of the United Kingdom stated that, while it did not rule out the possibility of photographs being presented in a form in which they would be acceptable as drawings, the PCT did not provide for the use of photographs. The Delegation was of the opinion that it was undesirable to encourage the use of photographs which should, in any event, be subject to the same Rules under the Treaty as drawings.

67. The Delegation of the Soviet Union, supported by the Delegation of Finland, drew attention to the fact that, in practice, the need to use photographs did arise and that the use of photographs was not forbidden under the Treaty.

68. It was agreed, in the light of these observations, that the Guidelines could provide for the use of photographs where it was unavoidable, it being recognized that photographs were to be used only in exceptional cases.

69. In conclusion, the Interim Committee adopted the Guidelines, reserving to any Delegation the possibility of presenting written comments to the International Bureau at the latest by the end of the present session. The Delegations of the Netherlands, the United Kingdom and the United States of America submitted comments in writing. Having regard to their detailed nature, the said comments are not recorded in the present report. All of them will be taken into account in the establishment of the final version of the Guidelines which will be included in the series of PCT/INT documents.



## QUESTIONS CONCERNING THE PRIORITY DATE

70. Discussions were based on document PCT/AAQ/VIII/9.Rev.
71. Upon the proposal of the Chairman, the Interim Committee considered separately the four questions dealt with in the said document:
- (a) the withdrawal of the priority claim
  - (b) a claimed priority date which is later in time than the international filing date
  - (c) an erroneously indicated priority date falling within the period of one year preceding the international filing date
  - (d) the determination of the priority date of the international application in factual situations by the application of Rule 4.10.

Withdrawal of the priority claim

72. The Interim Committee, having endorsed the view expressed by the International Bureau in the said document, that the applicant had an inherent right to withdraw any priority claim in his international application, considered the need to specify a time limit for, and the effect of, such withdrawal in the international procedure under the PCT.
73. The Delegations of the United Kingdom and Austria and the Representative of the Interim Committee of the EPO expressed reservations concerning the amendment of the Regulations proposed by the International Bureau providing for a time limit for withdrawal of the priority claim coinciding with the end of the international phase. The said Delegations referred in particular to the solution retained for the European Patent Convention according to which the applicant could not withdraw a priority claim after completion of technical preparations for the publication of his application.
74. The Delegation of the United Kingdom referred to the need to avoid insecurity for the designated Offices which would expect to receive the international application shortly after international publication and to the legal uncertainty to the general public if a claim for priority could be withdrawn after publication.
75. The Representative of the Interim Committee of the EPO expressed concern that, should the applicant withdraw a priority claim after publication of the international application, uncertainty might arise in the procedure under the European Patent Convention, since certain time limits in that procedure were based on publication.
76. The Delegation of Japan stated that the only acceptable solution which it could see was to provide the same time limit, normally 16 months after the priority date, as was provided in Rule 17.1(a) for the submission of the priority document by the applicant.
77. The Director General explained that the considerations relevant to the establishment of the time limit for the submission of the priority document by the applicant were unrelated to those which had to be taken into account when considering the withdrawal of the priority claim relating to that priority document.
78. In this context, the Delegation of the United Kingdom suggested that the time limit under Rule 17.1(a) for the submission of the priority document, which expired shortly before the end of the time limit for publication, tended rather to support the adoption of publication as the time limit for withdrawing the priority claim.
79. The Representative of CEIF stated that there would be no insecurity to the designated Offices if the applicant were to be permitted to withdraw the international application after publication since the application *mutatis mutandis* of the present Rule 32.1(d) proposed by the International Bureau would ensure that Offices which would be expecting to receive the international application 20 months after the priority date would be informed promptly of the withdrawal.

80. Several Delegations questioned the legal consequences of the withdrawal of a priority claim in the situation where a time limit had already expired before the withdrawal took place. The Delegation of Japan asked, in particular, what the solution should be under Article 14(3)(b) in the case where the designation fee had not been paid within the prescribed time limit. The Delegations of Austria, the United Kingdom and Sweden expressed the view that withdrawal of the priority claim in such cases would not have the effect that time limits which had already expired would be reopened from the filing date and that sanctions which had become effective upon failure to meet the time limit could be disregarded. The Delegation of Sweden pointed especially to the effect with regard to the relevant date of the application concerned for prior art purposes.

81. The Director General stated that, since, in fact, the same postponement of time limits would arise if the applicant were to withdraw not only the priority claim but the application itself, while filing a new application without priority claim, the applicant's right to withdraw the priority claim should be recognized for the whole of the international phase. Having regard to the reservations that had been expressed, however, a suitable compromise would be to disentitle the applicant from withdrawing a priority claim after publication so long as it was recognized that such withdrawal was not limited in effect.

82. Several Delegations, having expressed support for the proposal of the Director General, but other having expressed certain reservations, in particular, that any withdrawal should not affect time limits that had expired, the Interim Committee decided to recommend to the Assembly of the PCT Union that the applicant's right to withdraw the priority claim should be allowed only until the publication of his international application. The Interim Committee decided, furthermore, that the International Bureau should present to the first session of the Assembly of the PCT Union the draft of a corresponding amendment to the Regulations and a study of the legal effects which would ensue from such amendment.

Claimed priority date later in time than the international filing date

83. The Interim Committee, having endorsed the view of the International Bureau that the procedure under Rule 4.10(d) should be utilized in the case of a claimed priority date which is manifestly defective because it is later than the international filing date as well as in the case, already covered by that Rule, of a date which is manifestly defective because it precedes the international filing date by more than one year, decided to recommend to the Assembly of the PCT Union that Rule 4.10(d) be amended to read as follows:

"4.10(d)

If the filing date of the earlier application as indicated in the request does not fall within the period of one year preceding the international filing date, the receiving Office, or, if the receiving Office has failed to do so, the International Bureau, shall invite the applicant to ask either for the cancellation of the declaration made under Article 8(1) or, if the date of the earlier application was indicated erroneously, for the correction of the date so indicated. If the applicant fails to act accordingly within 1 month from the date of the invitation, the declaration made under Article 8(1) shall be cancelled ex officio. The receiving Office effecting the correction or cancellation shall notify the applicant accordingly and, if copies of the international application have already been sent to the International Bureau and the International Searching Authority, that Bureau and that Authority. If the correction or cancellation is effected by the International Bureau, the latter shall notify the applicant and the International Searching Authority accordingly."

Erroneously indicated priority date falling within the period of one year preceding the international filing date

84. Several Delegations expressed doubts whether it was necessary to include the new Rule proposed by the International Bureau to allow the applicant to correct an erroneously indicated priority date which fell within the period of one year preceding the international filing date. Such an error should only be correctable where it constituted an obvious error of transcription under Rule 91. This would be the case where a simple comparison with the bibliographic data of the priority document showed an obvious error. The Director General agreed to withdraw the amendment proposed by the International Bureau upon the understanding that a right to correct an error in the date of the priority claim existed in such a case under Rule 91.

Determination of the priority date of the international application in factual situations by the application of Rule 4.10

85. The Interim Committee considered the Annex to document PCT/AAQ/VIII/9.Rev., which set out a number of factual situations to which Rule 4.10 applies, together with the answer, in each case, to the question what is the priority date of the international application for purposes of the international procedure. It was agreed to delete from the heading of item 1, the words "or No Remaining Defect"; otherwise the interpretation given in the Annex in relation to the various factual situations was adopted.

AMENDMENTS OF THE REGULATIONS UNDER THE PCT (OTHER THAN AMENDMENTS RELATING TO FEES)

Adoption of recommendations to the Assembly of the PCT Union

86. Discussions were based on document PCT/AAQ/VIII/10 in relation to the amendment of Rules 11.6(a) and (b) (Margins) and Rule 11.13(a) (Special Requirements for Drawings) and on the said document as well as on document PCT/AAQ/VIII/5 in relation to the amendment of Rules 48.2(a)(v) (Contents) and 48.3(c) (Language).

87. The Interim Committee agreed to recommend to the Assembly of the PCT Union to amend Rules 11.6(a) and (b) and 11.13(a) as set out in the Annex to document PCT/AAQ/VIII/10.

88. The Interim Committee, noting that the amendments to Rules 48.2(a)(v) and 48.3(c), as set out in Annex B of document PCT/AAQ/VIII/5, were required to give effect to the decision of the Interim Committee in relation to the form of publication of the international search report (see paragraph 58), agreed unanimously to recommend the PCT Assembly to amend the said Rules accordingly.

89. The Representative of the Interim Committee of the EPO drew attention to the fact that the formality requirements in relation to applications under the PCT were the same as those in relation to applications under the European Patent Convention but that, if the recommended amendments were adopted, there would in future be some discrepancy between those requirements, unless the corresponding Rules under the European Patent Convention would be changed likewise. The Chairman stated that it would be a matter for the Representative of the Interim Committee of the EPO to inform the competent bodies of the European Patent Organisation of the amendments to the PCT Regulations that would be recommended to the Assembly of the PCT Union, with a view to recommending appropriate action.

Establishment of official German text of amendments to the Regulations

90. The Delegation of Austria, noting that an official text of the PCT in the German language had been established, indicated its country's interest in the establishment of an official text of the amended Rules in that language at an early date.

91. The International Bureau stated that, formally, the establishment of an official text would have to take place after the adoption of the amendments by the Assembly of the PCT Union. The time needed to establish an official German text after adoption of the amendments by the Assembly could, however, be shortened considerably if the interested States should decide to cooperate in establishing a draft prior to the session of the Assembly, and to have the necessary consultations with the Director General during, or shortly after, that session.

PROGRESS REPORT ON BUDGETARY QUESTIONS

92. Discussions were based on document PCT/AAQ/VIII/6.

93. The Director General informed the Interim Committee that the contribution plan for financing the initial deficit of the PCT budget in the years 1978, 1979 and 1980, as proposed by the PCT Working Group on Budgetary Questions, had been adopted at the recent (September/October 1977) sessions of the Governing Bodies of WIPO by the countries concerned, and by those bodies, in particular the Executive Committee of the Paris Union. This information should be considered as a complement to the progress report on budgetary questions contained in document PCT/AAQ/VIII/6.

94. In response to a question by the Delegation of the United Kingdom, it was indicated that the Governing Bodies of WIPO had not considered, and thus had made no decision with regard to, the question, raised in the Report of the Working Group, of the payment of interest in respect of contributions paid under the PCT contribution plan. The Delegation of the United Kingdom expressed the opinion that this question should be borne in mind and should be taken up again when the break-even point in the financing of the operations of the International Bureau under the PCT was being approached.

95. In response to a statement by the Delegation of the Soviet Union suggesting the possible need for further study of some financial questions, the Director General said that the Governing Bodies had taken a decision in this matter. The question of financing would therefore only be reopened if changed circumstances made the reconsideration of that question inevitable. As far as the fees were concerned, their amounts depended upon the decision of the Assembly of the PCT Union which would meet in the Spring of 1978.

96. The Interim Committee took note of the progress report by the International Bureau and the observations made during the discussions.

#### FEES

##### Level of fees under the PCT

97. Discussions were based on document PCT/AAQ/VIII/7.

98. The Delegation of the United States of America said that it thought the price of the pamphlet was too high. It also expressed concern that the level of the fees was high in general, bearing in mind that the fees should be within a range that would render the PCT a viable alternative to the traditional Paris Union route for the applicants.

99. The Delegation of the United Kingdom observed that, while it held similar views to those expressed by the Delegation of the United States of America, it was necessary to be mindful of the influence of the pamphlet price on the PCT budget and the achieving of a break-even point at a reasonable level of applications filed. For those reasons, the Delegation was in favor of maintaining the pamphlet price as proposed.

100. The Delegation of Sweden, while recognizing the need for the PCT to cover costs, expressed its concern that the price of the pamphlet could have a disadvantageous effect on the attitude of the users. It suggested that consideration should be given to a differentiated price for pamphlets with a lower than average number of sheets, the price of such pamphlets being lower than the regular price.

101. The Delegation of Switzerland, while expressing its understanding for the suggestion by the Delegation of Sweden, considered that there would be practical obstacles in implementing such a suggestion as purchasers of pamphlets would have no way of knowing the amount of money they should transfer when placing orders for the pamphlet. Furthermore, while the price of ten Swiss francs appeared to be high, in reality it became economical when taking into consideration that each pamphlet related to an application going to several countries and would thus avoid the need of buying copies of patent documents from each of those countries.

102. The Delegation of France asked what price, if any, was contemplated for a republication of the pamphlet due to the non-availability of the international search report at the time of the normal 18-months publication, or for the publication of a separate pamphlet containing only the international search report in that case. The International Bureau stated that, since such supplementary publications, whether in full or limited to the international search report, should be a rare occurrence and their effect on the PCT budget therefore negligible, no price had yet been fixed. A reasonable price would be established for such special pamphlets in due course, having regard to their nature as a supplementary publication.



103. The Director General said that he shared the concern that the proposed fees were high. The ideal solution would of course have been to have the fees at a low level initially in order to attract applicants. However, the fees had been fixed by the Working Group on Budgetary Questions at a higher level in order to reduce the contributions for the Contracting States during the initial period. They could only be reduced if the Governments of the Contracting States were ready to subsidize the initial operation of the PCT by increased contributions over a longer period. The impact of any reduction of the pamphlet price on the time at which the break-even point for the PCT budget can be reached was particularly substantial in view of the high share of the price of publications in the estimated revenue of the International Bureau.

104. The Delegation of the Netherlands stated that in fixing a price for the pamphlet, the volume of sales should be considered. At the present price level, somebody needing several copies would only order one copy and produce his own copies therefrom. If the price were lower, several copies might be ordered at a time which would allow to reach substantially the same level of income as with the higher price and lower quantity of sales. The International Bureau replied that this question was considered but that a price for the pamphlet which was so low that copying was no longer attractive was unrealistic in view of the need to balance the PCT budget within a foreseeable period of time.

105. The Representative of the IFIA said that his Association regretted the level of the fees of the PCT adopted by the Working Group on Budgetary Questions which could discourage inventors to use the PCT route.

106. The Chairman recalled that the contributing countries would have to provide under the contribution system proposed by the Working Group and adopted by the Governing Bodies of WIPO over two million Swiss francs annually in the years 1978 to 1980 in order to subsidize the initial operations of the PCT.

107. The Delegation of the Soviet Union expressed its support, in principle, to the recommendations of the Working Group. The Delegation recalled, nevertheless, its desire for as much detail and precision on budgetary matters as possible, in order to be in a position to better advise its financial authorities. In line with this, the Delegation proposed that, by the time of the first meeting of the PCT Assembly, the question of fees be considered once more in the light of new data which will have become available by that time. The fees now being agreed upon should not, therefore, be considered definitive.

108. The Director General, in response to the statement of the Delegation of the Soviet Union and a question by the Delegation of the United States of America as to whether a revised document on budgetary matters would be submitted to the first meeting of the Assembly, stated that it was not proposed to ask the Assembly to review the contribution scheme adopted only recently for the coming three years by the interested countries and the Governing Bodies of WIPO. However, should the actual facts show that the estimates used as a basis for the budget calculations were incorrect, the level of the fees may have to be revised. This was, however, a matter to be decided upon by the Assembly of the PCT Union in due course.

109. The Interim Committee, having approved the amount of the fees set out in Annex A of document PCT/AAQ/VIII/7, decided to recommend to the Assembly of the PCT Union the adoption of those fees and of the amendments to the Regulations relating to certain of those fees as set out in Annex B of the said document.

#### Handling of fees under the PCT

110. Discussions were based on document PCT/AAQ/VIII/8.

111. The Interim Committee was asked by the Director General to note that the most important element of the proposals presented by the International Bureau was the method of implementation which envisaged that the principles set out in the document for dealing with difficulties caused by currency fluctuations could be varied by agreement with the receiving Offices and other Authorities through an exchange of letters; the principles themselves were, therefore, more in the nature of guidelines on the basis of which the International Bureau would negotiate. Naturally, the International Bureau would take into account the factual situation existing in a particular country and come to an agreement according to that situation.

112. The Delegation of the United Kingdom said that it would like to see broad principles adopted which would avoid administrative difficulties for the Patent Offices in monitoring frequent variations in applicable exchange rates and would not cause inconvenience to patent agents who needed adequate notice of variations in the amounts of the fees they had to pay. The Delegation favored the establishment of a level of fees (rounded off to amounts in full pounds) on the basis of an average exchange rate estimated by the International Bureau which would apply for a period of at least a few months. The average estimated exchange rate could include a margin of safety in favor of the International Bureau to cushion it against currency fluctuations. This principle had been accepted by the member countries of the European Patent Organisation which had vested the power of establishing new exchange rates in the President of the European Patent Office. The Delegation considered that a time limit of at least two weeks from publication should be given, before changes in the amount of fees based on changes in the average estimated exchange rate became applicable, and suggested that the changes could be communicated to Offices, Authorities and patent agents through the Gazette. The Delegation assumed that the date of receipt by the receiving Office was to be taken as the operative date for the fees calculation. This was agreed by the International Bureau.

113. The Delegation of the United States of America suggested that an exchange rate should be established quarterly according to the rate applicable on the first working day of the month preceding the month in which the new rate would start to apply. The Delegation thought that such a system could be combined with a quarterly transfer to the International Bureau of fees collected on its behalf by the receiving Offices.

114. The Delegations of France, Germany (Federal Republic of), Switzerland and Austria expressed support for the proposal of the Delegation of the United Kingdom, the Delegation of Austria reserving, however, the right to reflect further on some aspects since it had not previously had the opportunity to study them and the Delegation of France preferring a system under which changes in the exchange rate would be agreed upon between the receiving Offices and the International Bureau.

115. The Representative of CEIF pointed out the interest of the users in having adequate notice of the date on which a revised schedule of fees due to changes in the exchange rate would become effective. If the period of notice was too short, a grace period would have to be granted during which the applicant would have the right to pay any difference not paid in due time in view of his having been unaware of the changed schedule. The Interim Committee was, however, of the opinion that no mandatory grace period should be substituted for the optional solution provided under Rules 15.4(a) and 16.1(b).

116. The Delegation of Japan, also having expressed support for the proposal of the Delegation of the United Kingdom, stated that it could foresee some difficulties in the handling of fees under the PCT in Japan having regard to the financial regulations that its Patent Office would have to observe. It therefore suggested that the International Bureau should entrust an appropriate Japanese organization with the issuing of coupons for payment of fees, the said coupons being obtainable with Japanese currency, or should open a PCT bank account in Japan, giving authority to the Director General of the Japanese Patent Office to draw on that account for the purpose of refunding fees where appropriate.

117. The Delegation of Brazil also supported the use of coupons since otherwise special arrangements would be necessary in view of the existing regulations as to transfer of currencies in Brazil.

118. The Delegation of the Soviet Union, supported by the Delegation of Hungary, stated that the situation was very different from country to country and that the adoption of a fully universal system seemed therefore very difficult. A better solution could probably be found in the conclusion of bilateral agreements, as proposed by the International Bureau.

119. The Interim Committee accepted the proposal of the Director General that, having regard to the views expressed in the course of the discussions, the International Bureau would prepare a new paper in which the principles would be along the lines of what had been proposed by the Delegation of the United Kingdom but in which a possibility of exception by way of bilateral agreements would be provided to meet the particular situation of certain countries such as Japan, the United States of America and Brazil. Both the general principle and the bilateral agreements would, however, while allowing for a certain degree of tolerance, have to respect the principle of equal and fair treatment of all countries.

120. The Delegation of the United Kingdom said that a distinction should be drawn between fees collected in respect of "cleared" and "uncleared" applications, "cleared" applications being those for which a positive determination under Article 11(1) as to the according of an international filing date has been made so that there was no possibility of a refund of fees being required. Only fees collected in respect of "cleared" applications should be subject to transfer to the International Bureau. The receiving Office would require a period of five to seven weeks in order to effect the clearance of applications. The International Bureau should open a bank account in the country of the receiving Office.

121. The Director General observed that it would be much too complicated to relate, for the purpose of transfer, the amounts held by the receiving Office to individual applications according to their stage of processing, even though for final accounting purposes this would naturally be required. A small retention fund established by the receiving Office should be sufficient to deal with the limited number of cases in which a refund of fees would ultimately occur. The International Bureau could, if so desired, open a bank account in the country of the receiving Office which could then also be used for the purpose of making refunds.

122. The Representative of the Interim Committee of the EPO asked that the necessary flexibility of approach be maintained in relation to the European Patent Office. Without anticipating what decision might be made by the European Patent Organisation in relation to the handling of fees, the possibility had to be taken into account that the PCT fees would have to be expressed in all the currencies of the EPO member States and that a special solution on that basis would have to be negotiated with the International Bureau.

123. The Interim Committee considered the principle proposed by the International Bureau that amounts held by the receiving Offices should be transferred when they reached a specified total. The Delegation of the United Kingdom proposed that transfers should rather be effected on a periodic basis irrespective of the amount in order to minimize the administrative effort involved in monitoring and effecting the transfers. For example, transfers could be made on a two monthly or three monthly basis with the receiving Office being allowed a further period of 30 days in which to effect the transfer of the amounts collected in the two or three months period.

124. The Director General and several Delegations observed that the money received was held for the International Bureau and that it was the International Bureau that bore the risk of loss due to currency fluctuations. Therefore a long period during which amounts were held before transfer could have significant adverse financial consequences in case the amounts collected should be substantial. Flexibility in the period allowed for transfer would be necessary in order to minimize this risk. Experience in other systems of international transfer, for instance that of the International Patent Institute, showed that shorter accounting periods than those suggested by the Delegation of the United Kingdom were, in some cases, in operation.

125. The Interim Committee agreed that transfers should, in principle, be made on a periodic basis rather than on the basis proposed by the International Bureau. For this purpose, a reasonable period would have to be established and, for the purposes of determining whether the transfer was effected within the stipulated period, the date on which the receiving Office gave the transfer order would be regarded as the date of the transfer. It was further agreed that, in the event that the receiving Office failed to effect a transfer within the stipulated period allowed for this purpose, the risk of any further loss to the International Bureau through currency fluctuations should be borne by the receiving Office.

126. The Delegation of the United Kingdom said that the interest which, according to the proposals of the International Bureau, would also be payable in the event that the receiving Office failed to transfer fees within the period allowed for this purpose, should not be obligatory and, thus, automatic, but should be discretionary and applied according to the circumstances of the case.

127. The Interim Committee agreed that, while details could be negotiated, the principle of the system of interests suggested in the proposals of the International Bureau should be adopted. It was consequently agreed that, in the revised paper to be prepared by the International Bureau, the principles for safeguarding the International Bureau in the case of transfers not made in due time, which were an integral part of the proposals for the system for the handling of fees, should be included.



128. The Director General said that when the identity was known of the Contracting States for which the PCT would initially enter into force, he would communicate to those States the revised principles and would ask them whether they could agree to the principles contained therein or would prefer to negotiate a special solution. At the time of the first session of the PCT Assembly, the situation with respect to the various Contracting States was expected to be clarified. On the basis of this timetable, the States would have ample time to implement the fee handling system applicable to them.

129. The Interim Committee further agreed, upon a question by the Delegation of Hungary, that the principles and their method of implementation would also be applicable to the fees collected by the receiving Office for the International Searching Authority and to the fees collected by the International Preliminary Examining Authority for the International Bureau.

PROGRESS REPORT ON NEGOTIATIONS WITH PROSPECTIVE INTERNATIONAL SEARCHING AND PRELIMINARY EXAMINING AUTHORITIES

130. Discussions were based on documents PCT/AAQ/VIII/11 and 17.

131. The Delegation of the Soviet Union informed the Interim Committee that the Soviet Union, as already stated during the Washington Diplomatic Conference, wanted its national Office to become a PCT Authority. The proposal of the Office to implement both international search and international preliminary examination was sent to the Government. Final information on this question would be given once the Government had decided in respect of ratification and the application of Chapter I and II of the Treaty. The Soviet Office was ready to start negotiations with the International Bureau soon and probably even before ratification of the PCT. In any event the Soviet Office, in accordance with the Treaty, intended not to confine its activities as an Authority under the PCT to the territory of the Soviet Union. At present the question of languages and volume of work that Office could handle in its capacity as PCT Authority was under study.

132. The Delegation of the United Kingdom informed the Interim Committee that the United Kingdom would shortly deposit the instrument of ratification for the Treaty and wanted to have its national Office act as International Preliminary Examining Authority. The United Kingdom Patent Office was prepared to enter soon into negotiations with the International Bureau with a view to concluding the necessary agreement.

133. The Delegation of the United States of America, referring to paragraph 5 of document PCT/AAQ/VIII/17, stated that its Government will have completed early next year a study whether the United States of America should withdraw the reservation made with respect to Chapter II of the Treaty. If a decision was made to withdraw the reservation, additional implementing legislation for Chapter II was needed.

134. The Delegation of Sweden confirmed the information contained in paragraph 4 of document PCT/AAQ/VIII/17. A Bill to ratify and implement the PCT had been introduced in Parliament on October 10, 1977. Ratification was expected at the end of this year or early next year.

135. The Delegation of Japan, expressing its appreciation for the recent consultations between the Japanese Patent Office and the International Bureau in Tokyo, suggested the following amendments to the text contained in paragraph 6 of document PCT/AAQ/VIII/17:

- (i) in line 3 "possibly" should be replaced by "eventually";
- (ii) the last sentence should be replaced by the following text: "while negotiations on the level of the Japanese Government could not take place before the ratification of the Treaty was approved by the Diet, further negotiations with the International Bureau at the level of the Japanese Patent Office were envisaged to take place as soon as possible, probably in early 1978."



136. The Interim Committee then considered the draft Model Agreement between an International Preliminary Examining Authority and the International Bureau contained in the Annex to document PCT/AAQ/VIII/11.

137. In a general discussion, the Interim Committee noted a statement by the International Bureau that this Annex was submitted at this stage only for information and not for detailed discussion. It followed very closely the draft Model Agreement between an International Searching Authority and the International Bureau approved by the Interim Committee in its last session, taking into account the observations on that draft Model Agreement made during the said session. The draft Model Agreement contained in the Annex was already used as a basis for the ongoing discussions with some of the prospective PCT authorities.

138. Upon a question by the Delegation of the United Kingdom, the International Bureau confirmed that the draft Model Agreement constituted not more than a basis of discussion and that only those provisions of that Agreement had to be accepted as binding by the prospective authorities which were based on obligations resulting from the Treaty, the Regulations or the Administrative Instructions. The International Bureau would, however, in its negotiations with the prospective PCT authorities, strive for the greatest possible uniformity of the agreements to be concluded and to achieve this high degree of uniformity was the main purpose of the draft Model Agreement. On the basis of this assurance, the Delegation of the United Kingdom submitted written comments to be taken into account by the International Bureau in its negotiations with the United Kingdom Patent Office.

139. On a question of the Delegation of the United Kingdom related to Article 6 of the Draft Model Agreement, it was agreed that an estimate of the likely number of applications to be examined by a particular Office in its capacity as International Preliminary Examining Authority was not possible at present since it depended on many factors so far unknown, such as precise information on the countries for which the PCT Authority in question would be working (depending not only on the willingness of the Authority concerned, but also on the development of ratifications), on the competitive character of the fee charged by the Authority concerned and on the degree of use made by the PCT during the initial stage of operations.

140. On a question of the Delegation of the United Kingdom whether Article 12 had its place in a draft Model Agreement with an International Preliminary Examining Authority, the Interim Committee, on a proposal by the Delegations of the Netherlands, Sweden and Hungary, agreed to maintain that Article in the draft Model Agreement in view of the necessity to provide technical assistance to developing countries under Chapter IV of the PCT to the greatest possible extent.

141. On a question by the Delegation of the Netherlands whether a provision in the draft Model Agreement was required providing for the sending of copies of literature cited in the international preliminary examination report to the applicant, it was agreed to leave this question to a consideration by the Interim Committee for Technical Cooperation in its present session concerning the Guidelines for International Preliminary Examination (for the report of the consideration of this question by the said Interim Committee, see document PCT/TCO/VII/14, paragraph 104).

FRENCH VERSION OF FORMS UNDER THE PCT; FURTHER VERSIONS IN OTHER LANGUAGES

142. Discussions were based on document PCT/AAQ/VIII/19.

143. The International Bureau drew the attention of the Interim Committee to the draft of the French version of the four printed PCT forms and of the PCT forms relating to Chapter I as contained in document PCT/AAQ/VIII/19. The Interim Committee was informed that a draft of the French version of the forms relating to Chapter II, which would complete the forms to be annexed to the French version of the Administrative Instructions, would be available within two weeks. The finalization of the French version of the PCT forms would be effected in consultation with the Offices intending to utilize that version upon the entry into force of the PCT. To this effect, the said Offices were invited to submit their written comments on the said draft forms by November 30, 1977.

144. The suggested procedure for the establishment of the French version of the PCT forms was endorsed by the Interim Committee.

145. The Delegation of the Soviet Union pointed out that the establishment of the PCT forms in languages other than English and French constituted an important aspect of the implementation of the PCT procedure. The Delegation informed the Interim Committee that the State Committee for Inventions and Discoveries of the USSR Council of Ministers had prepared a translation of the Administrative Instructions, including the PCT forms other than those forms to be used by the International Bureau into the Russian language and expressed its willingness to provide the International Bureau with a copy thereof and to assist it in its further work in this matter.

146. The International Bureau said that it recognized the need to establish the PCT forms in the languages in which international applications may be filed (Rule 12.1) and indicated that, for the initial period of operation of the PCT, three languages, in addition to English and French, would probably be German, Japanese and Russian. Since the International Bureau could not undertake to prepare itself the PCT forms in the said languages, it intended to enter into consultations with the interested countries in which the ratification procedure was sufficiently advanced, in order to ensure timely preparation of versions of the PCT forms in the said languages. The offer of the Delegation of the Soviet Union concerning the Russian version of the PCT forms was noted with appreciation. In this context, the International Bureau invited Austria, the Federal Republic of Germany and Switzerland to cooperate in the preparation of a German language version of the PCT forms.

147. The International Bureau stated that not all the PCT forms needed translation into the said languages. For instance, the International Bureau forms were only required in English and French; these two versions had been completed; as far as the forms for International Searching and International Preliminary Examining Authorities were concerned, translations into other languages would only be required to the extent to which these Authorities intended to use languages other than English or French. The International Bureau would contact the interested States in this respect as appropriate.

#### COMPLETION OF GUIDELINES FOR APPLICANTS AS REGARDS CHAPTER II

148. Discussions were based on document PCT/AAQ/VIII/18.

149. In a general discussion it was agreed, as suggested by several Delegations, in particular those of the United States of America and of the United Kingdom, that in view of the late submission of the document, all Delegations wishing to do so could, in addition to the observations they wished to make during this session, submit their observations on the document in writing to the International Bureau until October 31, 1977; furthermore, that observations of mere drafting nature or of minor importance would only be made in writing. The Delegation of the United Kingdom submitted its written comments at the end of the session.

#### Ad paragraph 201

150. The Delegation of the Netherlands suggested to amend that paragraph by adding information on the possibility of withdrawal of reservations against Chapter II according to Article 64(6)(a).

151. The Delegation of France suggested to include in the introductory portion of the Chapter of the Guidelines concerning Phase II the information relating to the advantages of using Phase II contained in paragraphs 224 to 230. Furthermore, the French text of the Guidelines on Chapter II should be reviewed in order to ensure the use of the appropriate terminology. With respect to the latter suggestion, the International Bureau stated that the translation was so far a provisional one and would be revised once the final version of the document was completed.

#### Ad paragraph 206

152. The Delegation of Austria suggested to delete the words "must of course" in line 8.

Ad paragraph 207

153. The Delegation of France stated that the information provided under this paragraph was similar to that contained in paragraph 75 of the Guidelines for Chapter I of the Treaty. The presentation should either be aligned or an appropriate reference to the earlier paragraph should be made. It was agreed that, as far as feasible, a mere reference would be preferable to a repetition of the information.

Ad paragraph 209

154. The Delegations of the United Kingdom and Austria suggested that the appendix referred to in that paragraph should not contain complete lists of the subject matter which the various International Preliminary Examining Authorities do not accept for examination since such lists would contain a fair amount of repetition. It would be simpler to list only those items which were accepted for examination.

155. The International Bureau drew attention to the fact that the same problem was dealt with in paragraph 80 of the Guidelines with respect to Rule 39. It was advisable to follow the same presentation.

156. On a further suggestion of the Delegation of Austria, it was agreed that, while in this paragraph the same presentation as in paragraph 80 should be followed, the information contained in the appendix should be presented in a simplified form avoiding unnecessary repetition of matter generally not accepted for examination.

Ad paragraph 210

157. On a suggestion by the Representative of the Interim Committee of the EPO, it was agreed that references to the receiving Office in that paragraph should be to the receiving Office "of, or acting for," the Contracting State concerned.

Ad paragraph 213

158. The Delegation of the Netherlands suggested to add to the end of that paragraph a reference to the effect that the demand may be filed at any time after the filing of the international application. In this context, a reference to paragraphs 266 and 267 should be made already in this part of the Guidelines in order to stress the advantages of early submission of the demand.

Ad paragraph 216

159. The International Bureau stated that the second sentence of that paragraph should also make a reference to Article 40(2) in order to draw attention to the possibility that on the request of the applicant an elected Office may start processing of the application earlier.

Ad paragraph 225

160. The Delegation of Norway suggested to clarify in this paragraph that the advantage of a further delay for national processing only existed with respect to elected States.

Ad paragraph 231

161. On a question by the Representative of UNICE, the Interim Committee considered whether an applicant might have different agents for the procedure under Chapter I and under Chapter II of the Treaty. Doubts were expressed whether, in particular in the case of a telescoped simultaneous procedure under both Chapters, such representation by separate agents was possible. The Delegation of Austria observed that Article 49 and the Rules thereunder applied to representation before the International Preliminary Examining Authority in the same way as to representation before other international authorities and that a statement to that effect should appear in the paragraph under consideration. The International Bureau was asked to study the question further.

Ad paragraph 236(a)

162. The Representative of UNICE drew attention to the difficulties for the applicant inherent in the proposed system of translation according to which the contents of each page would have to be identical in both language versions.

163. The International Bureau pointed to the additional difficulty created by the difference in length of the same text in different languages.

164. It was agreed that the International Bureau would review the paragraph under consideration in the light of the observations made.

Ad paragraphs 252 and 253

165. The Delegation of the Netherlands suggested to underline the necessity of giving full attention to the prior art cited in the international search report more effectively by inserting a separate sentence to that effect in paragraph 252, rather than maintaining the present reference to that matter in paragraph 253.

Ad paragraph 265

166. The Chairman suggested to make here a reference to the need to submit amendments both in the original language of the international application and in the translation required by the International Preliminary Examining Authority, a requirement arrived at by way of interpretation of Rule 55.2 (an agreement to that effect was reached by the Interim Committee for Technical Cooperation when discussing paragraph 7.1 of Chapter VI of the Guidelines for International Preliminary Examination - see paragraph 101 of document PCT/TCO/VII/13).

Ad paragraph 280

167. The Representative of the Interim Committee of the EPO stated that, whereas the requirement of filing the necessary data relating to the inventor when entering the national phase was stated with respect to Chapter I, the relevant time limit being 20 months from the priority date, the same requirement must be possible under Chapter II on the expiration of the time limit of 25 months from the priority date. This should be stated in the Guidelines although it does not seem to be explicitly provided for under the Treaty and the Regulations. It was agreed that the International Bureau would study the question further, taking into account the different requirements of the national law permitted under the Treaty.

168. In conclusion, it was agreed that the International Bureau, on the basis of the discussions at this session and the observations received until October 31, 1977, would establish a final version of the relevant part of the Guidelines, would incorporate it in the existing Guidelines (document PCT/INT/3) and would publish the Guidelines with high priority in the form of a printed brochure.

STEPS IN THE PROCEDURE BEFORE THE INTERNATIONAL SEARCHING AUTHORITY

169. This item of the agenda was dealt with in a joint session of both Interim Committees. Discussions were based on document PCT/AAQ/VIII/14-PCT/TCO/VII/5.

170. In a general discussion, it was agreed that the document under consideration, the usefulness of which for the work of the International Searching Authorities was fully recognized, did not require publication in the series of PCT/INT documents. It should, however, in its final form be placed at the disposal of prospective International Searching Authorities in order to facilitate their preparation for their future tasks. Since several Delegations expressed the desire to have an opportunity for the submission of observations in writing after this session, it was agreed that observations concerning the document could be submitted to the International Bureau until January 1, 1978. Thereafter the International Bureau would prepare a final version of the document and would distribute the document to the prospective International Searching Authorities.

171. The Representative of the IIB stated that the sequence of procedural steps followed in the document under consideration did not always correspond with the practice of prospective International Searching Authorities. Since the practice of the said Authorities might differ in this respect, it should be understood that the prospective International Searching Authorities were not bound by the sequence of procedural steps as reflected in the said document.



STEPS IN THE PROCEDURE BEFORE THE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

172. This item of the agenda was dealt with in a joint session of both Interim Committees. Discussions were based on document PCT/AAQ/VIII/13-PCT/TCO/VII/4.

173. In a general discussion, the two Interim Committees reached the same understanding as with respect to the document concerning steps in the procedure before the International Searching Authority, this, however, with the proviso that the distribution of the final version of the document under consideration should be limited to the prospective International Preliminary Examining Authorities.

174. The Representative of CEIF stated, in relation to Step IPEA/2.2 in Part B of the Annex to the document, that such step should include the case where the International Preliminary Examining Authority finds that, in the case of different applicants for different elected States, none of the applicants indicated for the purposes of a given elected State is entitled under Rule 54.3 to make a demand. Therefore, the election of that State should be considered not to have been made and the International Preliminary Examining Authority should notify, accordingly, both the applicant or applicants so indicated and the International Bureau.

TIME LIMITS UNDER THE PCT; DISTRIBUTION OF DOCUMENTS

175. This item of the agenda was dealt with in a joint session of both Interim Committees. Discussions were based on document PCT/AAQ/VIII/16-PCT/TCO/VII/11.

176. Several Delegations, in particular those of the United States of America, Austria and Sweden, commended the International Bureau for having submitted a very clear and complete document setting out the time limits under the PCT.

177. In a general discussion, the Interim Committees recommended to publish the final version of the document under consideration in the series of PCT/INT documents. The final version should be established by the International Bureau after the present session, taking into account the discussions during that session and any written observations submitted thereafter and before November 30, 1977. It was, however, agreed that, if the volume of the written observations would be such that a complete revision of the document would entail a substantial workload which could only be undertaken to the detriment of other priority tasks of the International Bureau during the remaining interim period, the document would be published in the PCT/INT series essentially in its present form whereas an additional document would be prepared containing the observations submitted in writing.

178. With respect to page 20 of the document under consideration, the Delegation of Austria stated that the document included the time limit of 20 months from the priority date for the submission of indications concerning the inventor for purposes of the procedure before designated Offices under Chapter I of the Treaty, whereas the corresponding time limit of 25 months concerning the submission of the said indications for the procedure before elected Offices under Chapter II was missing. It was agreed that the International Bureau would study the question of the relevant time limit under Chapter II and would take the results of its study into account for the revision of the document under consideration.

179. In this context, the two Interim Committees had a general discussion concerning the distribution of documents issuing in the PCT/INT series, during which a general desire for wide dissemination as far as possible free of charge in particular for the competent authorities of, or acting for, the interested States, was expressed.

180. The International Bureau stated that a distinction would be made between those documents which would soon be printed in brochure form and others, the printing of which was not foreseen, and that a special situation existed with respect to the PCT forms. While in general the documents of the PCT/INT series would be largely distributed free of charge, the printed brochures would be distributed against a modest charge but with a fair amount of free copies for the competent authorities of, or acting for, the Contracting States going beyond the obligations of the International Bureau under Rule 87. The fact that a wide dissemination of the documents and brochures on conditions which were not onerous was in the interest of a rapid and smooth implementation of the PCT system would be taken into account. The PCT forms would be distributed to the receiving Offices free of charge.

181. On a question from the Delegation of Hungary, the International Bureau stated that the situation with respect to the copyright of WIPO concerning the said publications under the PCT was as described in document PCT/AAQ/VIII/4, but that those Offices wishing to republish certain of the documents in translation would receive the necessary authorization by the International Bureau.

FURTHER PROGRAM FOR THE IMPLEMENTATION OF THE PCT

182. In a joint session of both Interim Committees, the question of the further program for the implementation of the PCT was considered.

183. The Director General informed the Interim Committees that, in view of the expected imminent deposit of the last instrument of ratification required for the entry into force of the Treaty, further sessions of the Interim Committees for the purpose of continuing the preparatory work for the implementation of the PCT were not envisaged and consideration of any further program of the Interim Committees was not necessary. Entry into force of the Treaty was expected for early 1978 and a period of two weeks beginning April 3, 1978, was provisionally set aside during the second week of which the convening of the first session of the Assembly of the PCT Union was envisaged. That session would probably be preceded by a meeting of a Preparatory Committee which would prepare the decisions to be taken by the Assembly. In that Preparatory Committee and in the Assembly, the Contracting States of the PCT and the States contributing to the PCT budget without being Contracting States would have a different status since the latter States could not vote. The Preparatory Committee would deal with all matters whether they were now within the competence of the PCT Interim Advisory Committee for Administrative Questions or the PCT Interim Committee for Technical Cooperation. While the PCT Interim Committee for Technical Cooperation would have one more session in January 1978 which would be held jointly with the first session of the new Permanent Committee for Patent Information, the purpose of that last session was not to deal with PCT interim work, but to have an organizational meeting reviewing the activities of the said Interim Committee with a view to the future planning of work within the Permanent Committee for Patent Information.

184. On a question from the Delegation of Austria, the Director General stated that it was envisaged that the Rules of Procedure of the Assembly of the PCT Union would follow the General Rules of Procedure of WIPO. If certain special rules of procedure were considered necessary in addition, the International Bureau would make proposals which could then be considered in the meetings foreseen for April 1978.

185. The two Interim Committees agreed with the proposals made by the Director General with respect to the further program and time schedule. The Chairman concluded that this was consequently the last session of the PCT Interim Advisory Committee for Administrative Questions and that the next and last session of the PCT Interim Committee for Technical Cooperation, to be held jointly with the Permanent Committee for Patent Information in January 1978, would not deal with substantive matters so that the said Interim Committee would also terminate its work concerning the preparation of the implementation of the PCT at the present session.

CLOSING OF THE SESSION

186. In closing the session, the Chairman noted that this eighth session would be the final session of the Interim Advisory Committee for Administrative Questions and would bring to an end the preparatory work which had been undertaken in the period following the Washington Diplomatic Conference. The Chairman thanked the Delegations and the observer Organizations for their considerable contribution to the completion of this work through their comments, proposals and suggestions as well as the International Bureau for its role in the preparation of the meetings of the Interim Committee, all of which would permit the PCT to be implemented under excellent conditions.

187. The Deputy Director General of WIPO expressed the appreciation of the International Bureau, for its part also, for the substantial work accomplished by the Interim Committee, which had ensured that the PCT could now enter into its operational phase.

188. This report was unanimously adopted by the Interim Committee at its closing meeting on October 17, 1977.

[Annex follows]

LISTE DES PARTICIPANTS/  
LIST OF PARTICIPANTS

I. ETATS/STATES

ALLEMAGNE (REPUBLIQUE FEDERAL D')/GERMANY (FEDERAL REPUBLIC OF)

Mr. U. C. HALLMANN, Regierungsdirektor, German Patent Office, Munich

Mr. N. HAUGG, Regierungsdirektor, German Patent Office, Munich

AUTRICHE/AUSTRIA

Mr. G. GALL, Abteilungsleiter, Federal Ministry for Trade, Commerce and Industry,  
Industrial Property Section, Vienna

BRESIL/BRAZIL

Mr. G. R. COARACY, Director, Documentation and Technical Information Center,  
Instituto Nacional da Propriedade Industrial, Rio de Janeiro

CANADA

Mr. E. BOWN, Senior Patent Examiner, Canadian Patent Office, Hull, Quebec

DANEMARK/DENMARK

Mr. O. P. CALLESEN, Deputy Head of Section, Danish Patent Office, Copenhagen

Ms. L. OESTERBORG, Deputy Head of Section, Danish Patent Office, Copenhagen

EGYPTE/EGYPT

Mr. A. ABOUL-KHEIR, Counsellor, Permanent Mission of Egypt, Geneva

ESPAGNE/SPAIN

Mr. J. DELICADO MONTERO-RIOS, Jefe del Servicio de Invenciones y Creaciones de  
Forma, Ministerio de Industria, Registro de la Propiedad Industrial, Madrid

ETATS UNIS D'AMERIQUE/UNITED STATES OF AMERICA

Mr. L. MAASSEL, Patent Procedure Specialist, United States Patent and Trademark  
Office, Washington, D.C.

Ms. M. E. TUROWSKI, Management Analyst, United States Patent and Trademark Office,  
Washington, D.C.

FINLANDE/FINLAND

Mr. P. SALMI, Head of the Patent Department, Patent and Registration Board, Helsinki

FRANCE

M. P. GUERIN, Attaché de direction, Institut national de la propriété industrielle,  
Paris

HONGRIE/HUNGARY

Ms. E. PARRAGH, Deputy Head of Section, National Office of Inventions, Budapest

JAPON/JAPAN

Mr. K. HOSHIKAWA, Counsellor for PCT Affairs, Japanese Patent Office, Tokyo

Mr. K. HATAKAWA, Director, Japan Trade Center, Düsseldorf, Germany (Fed. Rep. of)

MADAGASCAR

M. S. RABEARIVÉLO, Conseiller, Mission permanente de Madagascar, Genève

M. O. RAVELOSON, Secrétaire d'Ambassade, Mission permanente de Madagascar, Genève

NORVEGE/NORWAY

Mr. O. OS, Overingeniør, Norwegian Patent Office, Oslo

PAYS-BAS/NETHERLANDS

Mr. J. DEKKER, Vice-President, Netherlands Patent Office, Rijswijk (Z.H.)

Mr. S. de VRIES, Examiner, Netherlands Patent Office, Rijswijk (Z.H.)

ROYAUME-UNI/UNITED KINGDOM

Mr. M. F. VIVIAN, Principal Examiner, The Patent Office, London

Mr. A. F. GILMOUR, Head of Internal Administration, The Patent Office, London

Mr. E. F. BLAKE, Senior Examiner, The Patent Office, London

Mr. A. HUNTER, Assistant Director, Her Majesty's Stationery Office, Norwich

SENEGAL

M. S. L. BA, Directeur de l'industrie et de l'artisanat, Direction de l'industrie, Dakar

SUEDE/SWEDEN

Mr. S. LEWIN, Deputy Director General, Royal Patent and Registration Office, Stockholm

Ms. B. SANDBERG, Legal Counsel, Royal Patent and Registration Office, Stockholm

Mr. Y. TRUVE, Member of the Board of Appeal, Royal Patent and Registration Office, Stockholm

SUISSE/SWITZERLAND

M. J.-L. COMTE, Directeur adjoint, Bureau fédéral de la propriété intellectuelle, Berne

M. R. KÄMPF, Chef de Section, Bureau fédéral de la propriété intellectuelle, Berne

UNION SOVIETIQUE/SOVIET UNION

Mr. L. KOMAROV, Deputy Chairman, State Committee for Inventions and Discoveries of the USSR Council of Ministers, Moscow

Mr. E. BURYAK, Head, International Patent Cooperation Division, All-Union Research Institute of the State Patent Examination, Moscow



II. ORGANISATIONS INTERGOUVERNEMENTALES  
INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION EUROPEENNE DES BREVETS/EUROPEAN PATENT ORGANISATION (EPO)

Mr. P. E. CATCHLOVE, Member of the Planning Group of the Interim Committee of the European Patent Organisation, Munich, Germany (Fed. Rep. of)

INSTITUT INTERNATIONAL DES BREVETS (IIB)/INTERNATIONAL PATENT INSTITUTE

Mr. J. A. H. van VOORTHUIZEN, Deputy Technical Director, Rijswijk (Z.H.), Netherlands

Mr. F. DUHR, Chef de Division, Rijswijk (Z.H.), Pays-Bas

ORGANISATION DES ETATS AMERICAINS (OEA)/ORGANIZATION OF AMERICAN STATES (OAS)

Dr. F. E. HURTADO DE MENDOZA, Conseiller de la Délégation permanente à Genève

III. ORGANISATIONS NON-GOUVERNEMENTALES  
NON-GOVERNMENTAL ORGANIZATIONS

ASSOCIATION INTERNATIONALE POUR LA PROTECTION DE LA PROPRIETE INDUSTRIELLE (AIPPI)  
INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (IAPIP)

Mr. E. ZURRER, Vice Manager, F. Hoffmann-La Roche & Co., A.G., Basle, Switzerland

ASSOCIATION INTER-AMERICAINE DE LA PROPRIETE INDUSTRIELLE (ASIPI)/INTER-AMERICAN ASSOCIATION OF INDUSTRIAL PROPERTY

Mr. E. TERRERO, Caracas, Venezuela

Ms. V. TERRERO, Caracas, Venezuela

CONSEIL DES FEDERATIONS INDUSTRIELLES D'EUROPE/COUNCIL OF EUROPEAN INDUSTRIAL FEDERATIONS (CEIF)

Mr. M. van DAM, Patent Agent, Eindhoven, Netherlands

FEDERATION EUROPEENNE DES MANDATAIRES DE L'INDUSTRIE EN PROPRIETE INDUSTRIELLE (FEMIPI)/  
EUROPEAN FEDERATION OF INDUSTRIAL PROPERTY REPRESENTATIVES OF INDUSTRY

Dr. F. A. JENNY, Patent Department, Ciba-Geigy AG, Basle, Switzerland

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS EN PROPRIETE INDUSTRIELLE (FICPI)/  
INTERNATIONAL FEDERATION OF PATENT AGENTS

Mr. V. BALASS, Patent Attorney, Zürich, Switzerland

FEDERATION INTERNATIONALE DES ASSOCIATIONS D'INVENTEURS/INTERNATIONAL FEDERATION OF INVENTORS ASSOCIATIONS (IFIA)

Mr. S.-E ANGERT, Engineer, Stockholm

Mr. P. FELDMANN, Engineer, Opsikon-Glattbrugg, Switzerland

UNION DES CONSEILS EUROPEENS EN BREVETS/UNION OF EUROPEAN PATENT ATTORNEYS (UNION)

M. G. E. KIRKER, Ingénieur-conseil en propriété industrielle, Genève, Suisse

UNION DES INDUSTRIES DE LA COMMUNAUTE EUROPEENNE (UNICE)/UNION OF INDUSTRIES OF THE EUROPEAN COMMUNITY

Dr. R. KOCKLAUNER, Hoechst AG, Werk Albert, Wiesbaden, Germany (Fed. Rep. of)

IV. ORGANISATION MONDIALE DE LA PROPRIETE INTELLECTUELLE (OMPI)  
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Dr. A. BOGSCH, Director General  
Mr. K. PFANNER, Deputy Director General  
Mr. F. A. SVIRIDOV, Deputy Director General  
Mr. P. CLAUS, Director, Patent Information Division  
Mr. E. M. HADDRICK, Head, PCT Division  
Mr. J. FRANKLIN, Head, PCT Technical Section  
Mr. N. SCHERRER, Counsellor, PCT Division  
Mr. D. BOUCHEZ, Technical Counsellor, PCT Division  
Mr. Y. GYRDYMOV, Technical Officer, PCT Division  
Mr. A. OKAWA, Consultant, PCT Division

V. BUREAU/OFFICERS

Président/Chairman : M. J.-L. COMTE (Suisse/Switzerland)  
Vice-Présidents/  
Vice-Chairmen : Mr. U.C. HALLMANN (République fédérale d'Allemagne/  
Federal Republic of Germany)  
Mr. K. HOSHIKAWA (Japon/Japan)  
Secrétaire/Secretary : Mr. E.M. HADDRICK (OMPI/WIPO)

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