

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

PCT COMMITTEE
FOR ADMINISTRATIVE AND LEGAL MATTERS

First Session
Geneva, September 6 to 10, 1982

REPORT

adopted by the Committee

INTRODUCTION

1. The PCT Committee for Administrative and Legal Matters (hereinafter referred to as "the Committee") held its first session in Geneva from September 6 to 10, 1982.
2. The following members of the Committee were represented at the sessions (i) the following 19 States, members of the International Patent Cooperation Union (PCT Union): Australia, Austria, Belgium, Brazil, Cameroon, Denmark, Finland, France, Germany (Federal Republic of), Japan, Liechtenstein, Luxembourg, Netherlands, Norway, Soviet Union, Sweden, Switzerland, United Kingdom and United States of America; (ii) the European Patent Office (EPO), in its capacity as International Searching and Preliminary Examining Authority.
3. The following five States members of the International Union for the Protection of Industrial Property (Paris Union), participated in the session as observers: Ghana, Mexico, Republic of Korea, Spain and Trinidad and Tobago.
4. The following six international non-governmental organizations were represented by observers: Committee of National Institutes of Patent Agents (CNIPA), European Federation of Agents of Industry in Industrial Property (FEMIP), International Association for the

Protection of Industrial Property (IAPIP) , International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI) and Union of Industries of the European Community (UNICE).

5. The list of participants is contained in the Annex to this report.

OPENING OF THE SESSION; ADOPTION OF THE AGENDA

6. The session was opened by the Director General of WIPO.

7. The Committee adopted the agenda of its session as appearing in document PCT/CAL/I/1, it being understood that it was possible for delegations to present, in the course of the sessions, proposals for amendments to the PCT Regulations concerning provisions other than those to which the proposals contained in documents PCT/CAL/I/2 to 4 relate.

OFFICERS OF THE SESSION

8. The Committee appointed Kr. G. Borggård (Sweden) as Chairman and Messrs. H. D. Hoinkes (United States of America) and S. N. Afanassiev (Soviet Union) as Vice-Chairmen.

9. Mr. B. Bartels (WIPO) acted as Secretary of the Committee.

CONSIDERATION OF PROPOSED AMENDMENTS TO CERTAIN TIME LIMITS IN THE PCT AND TO THE REGULATIONS UNDER THE PCT

10. After a brief general debate, in which several delegations referred to the possibility of transferring some proposals for Rule changes to the Administrative Instructions, the Committee considered, chapter by chapter, the amendments proposed in documents PCT/CAL/I/2 to 4 as well as the proposals presented by the Delegations of Norway and Sweden in documents PCT/CAL/I/6 and 7.

11. This report reflects only the conclusions drawn by the Chairman of the Committee concerning each chapter and the major doubts raised during the discussions. This report does not reflect all observations, including drafting points, but the whole discussions were recorded on tape and noted by the Secretariat, which will take them into account when preparing revised proposals.

Chapter I

12. The proposed Amendments met with the general sympathy of the delegations. Particularly the representatives of the international non-governmental organizations stressed the need for such a safeguard procedure. The Delegations of Japan and the United Kingdom, however, wondered whether those amendments were really necessary. The Delegations of Japan and the Soviet Union stated that this procedure should not be binding on all Contracting States. The Delegation of the United Kingdom did not consider that applicants should at any stage of the procedure be invited to send their international applications directly to the

International Bureau. The International Bureau was asked to prepare a new proposal, which should be simpler, if possible, than the proposed amendments and which should take into consideration further aspects of national security requirements. The International Bureau should, in particular, examine to which extent the applicant should be actively involved in the procedure.

Chapter II

13. The proposed amendment to Article 22 was generally accepted by the delegations. The Delegation of Japan however reserved its position. Views were divided as to whether Rule 51 should be amended, and the International Bureau was asked to reconsider the matter.

Chapter III

14. The Delegation of the Netherlands expressed doubts as to the necessity of the proposed amendments. The Delegations of the United Kingdom and the United States of America raised doubts about the proposed amendments. They indicated that the proposed notifications would not be possible under the present text of their national laws. No other objections were made.

15. The proposed amendments met with the general sympathy of the delegations. The representatives of the international non-governmental organizations stressed the particular importance of the proposed amendments. However, the Delegations of Austria, Brazil and the Netherlands expressed doubts as to whether the proposed Rule 49.4 was compatible with Articles 3(2) and 22(1). For the same reasons, the Delegation of Japan stated its objections against that Rule. Furthermore, the Delegations of Brazil, Japan, the Netherlands, the United Kingdom and the United States of America, as well as the representative of the EPO, raised objections against the proposed Rule 49.5(a); those objections were based either on the practical need for a translation of the original claims in all cases, or on doubts about the compatibility of the said Rule with Article 22 or on the fact that the national law of certain countries expressly requires the furnishing of a translation of the original claims. The representative of the EPO observed that Rule 49.6 would entail a delay for the publication of the translation of the application and therefore reserved its position. It was agreed that the fixing of a minimum time limit in Rules 49.5(a) and 49.6 should be omitted, that the word "shall" in Rule 49.5(b) should be replaced by the word "may" while making it clear that disregarding the statement would be the only possible sanction in case of failure to furnish a translation thereof, and that all remarks made in connection with Rules 49.4 to 49.6 applied *mutatis mutandis* to Rules 76.3 to 76.7. All delegations were invited to reconsider their positions and the International Bureau was asked to prepare new proposals. The representative of FICPI underlined that any new proposal should remove the danger for the applicant to automatically lose his international application in case of failure to furnish at the same time a translation of both the original and the amended claims.

Chapter V

16. The majority of the delegations said that they could accept the proposed Rule 51*bis* although several delegations expressed regret that a special rule was needed to give effect to the provisions of Article 27(1). The Delegation of the Netherlands, however, was of the opinion that none of the four items listed in the proposed Rule was compatible with Article 27, although some of them could be accepted with relation to the moment of entry into

the national phase. The Delegation of Brazil said that items (i) and (iii) of Rule 51*bis* were not compatible with its present national procedure. The International Bureau was asked to review the drafting of item (ii) in order to make it clear that it was permitted to require new drawings where the original drawings did not comply with the prescribed physical requirements or where new drawings were necessary in view of amendments made to the application.

Chapter VI

17. After a detailed discussion during which the Delegations of the United Kingdom and the United States of America as well as the representative of the EPO expressed doubts as to whether the interpretation of Article 27 given in several parts of the proposed Rule 51*ter* was correct and the Delegation of Japan stated for the same reasons its objections against that Rule, all the delegations were invited to reconsider their positions and the International Bureau was asked to review the proposed Rule. It was agreed that the verification of the translation furnished under Article 22 or 39(1) should become a separate paragraph and that the fixing of a minimum time limit should be omitted.

Chapter VII

18. The proposals in that Chapter were considered to be very useful. The International Bureau was asked to redraft them in order to make it clear that the amendments would be filed with the International Bureau through the intermediary of the receiving Office or the International Searching Authority and thus to remove the doubts expressed by the Delegations of Japan and the United Kingdom about the compatibility of the proposed amendments with Article 19. Furthermore, the International Bureau was asked to study whether the 14-day time limit could not be extended, in particular with respect to the fact that one Office had declared not to be able to respect that time limit in certain cases.

Chapter VIII

19. The Delegations of Japan, the Netherlands and the United States of America expressed doubts about the proposed amendment and saw difficulties in its application. No other objection was made.

Proposal of the Delegation of Norway

20. The proposal of the Delegation of Norway concerning Rule 12.1 and contained in document PCT/CAL/I/6 was unanimously approved, after a slight amendment had been made to the English text which consisted of replacing, in the third and fourth lines of the text of Rule 12.1(b), as reproduced in the said document, the words “in which it is to be published” by the words “of publication.”

Chapter IX

21. In view of the feeling expressed by many delegations and the representative of IAPIP that the proposed amendments were at variance with Article 11, the International Bureau was asked to reconsider them and either to drop them or to submit new and more restrictive proposals.

Chapter X

22. The objectives of the proposed amendments met with the approval of the Committee. However, a number of suggestions were made in order to improve the proposed amendments and better define their scope, in particular, in order to make it clear that no delay could be excused once the receiving Office had declared the international application considered withdrawn. The Delegation of the United Kingdom considered that existing Rule 26.5(a) gave receiving Offices sufficient discretion and this could be made clear in the Receiving Office Guidelines for the Processing of International Applications under the PCT (document PCT/INT/4). The International Bureau was asked to present a new wording of the proposed amendments which should in particular remove any doubts about their compatibility with Article 14(1)(b).

Chapter XI

23. The proposed amendments were approved.

Chapter XII

24. The proposed amendments were approved, subject to a possible improvement, proposed by the Delegation of Finland, in the wording of the last two sentences of Rule 61.1(a).

Chapter XIII

25. The proposed amendments were approved.

Chapter XIV

26. The proposed amendments were generally accepted by the delegations. The Delegation of Japan, however, raised objections against the proposed amendments due to the fact that, once the national processing had started under Article 40, any amendment to the international application was to be submitted according to the national law of the elected Office. The Delegation of Sweden proposed that the fixing of a minimum time limit in paragraph (c) of Rule 74.1 should be omitted. The Delegation of the Netherlands expressed doubts whether that paragraph was really necessary. The Delegation of the United Kingdom reserved its position regarding the proposed Rule 74.1(c) in view of problems with the interpretation of national law.

Chapter XV and Proposal of the Delegation of Sweden

27. The International Bureau was asked to reconsider the need for the proposed amendment to Rule 66.4, in view of its possible impact on the preliminary examination procedure and its cost.

28. The proposal of the Delegation of Sweden concerning Rule 69.1(a) and contained in document PCT/CAL/I/7 was approved subject to the approval of the proposed amendment to the time limit under Article 39(1)(a). The International Bureau should study whether the time limit for establishing the international preliminary examination report should be 8 or 9 months.

Chapter XVI

29. The interested delegations approved the proposed amendment, with the exception of the Delegations of France and Japan, which reserved their positions. The Delegation of Brazil and the representative of the EPO expressed sympathy with the proposal but reserved their positions in view of possible consequences for national procedures.

Chapter XVII

30. The proposed new Rules 82*bis*.1 and 82*bis*.2 were approved in principle by most delegations. The Delegation of the United Kingdom questioned the scope and intended application of proposed Rule 82*bis*.1. The International Bureau explained that the Rule would apply to national Offices acting only in their capacities as designated or elected Offices. The International Bureau was asked to improve the wording of Rules 82*bis*.1 and 82*bis*.2 in order to clarify the scope of their application.

31. The Delegations of Japan, the Netherlands, Sweden, the United Kingdom (in so far as the proposal covers erroneous information) and the United States of America as well as the representative of the EPO expressed doubts whether Article 48(2)(b) provided a legal basis for the proposed new Rule 82*bis*.3 and declared that they could not accept it in its present wording. The International Bureau was asked to reconsider the text of that Rule.

Chapter XVIII

32. The intention to make Rule 91 less strict met with the agreement of the majority of the delegations, and the proposed amendments were supported by the representatives of the international non-governmental organizations. However, the Delegations of Australia, Austria, Belgium, Brazil, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States of America as well as the representative of the EPO declared that they were unable to accept the proposed amendments in their present wording. Doubts were expressed in particular with respect to paragraphs (a) and (b) of Rule 91.1 as well as its title (which were deemed to be too broad), concerning the deletion of paragraph (c) of that Rule and with respect to the proposed new paragraph (i). The Delegation of the United States of America expressed its conviction that any errors or mistakes that could be corrected would not only have to be obvious but also demonstrably non-substantive. The Delegation of Belgium, supported by the Delegations of Austria, Brazil and the Netherlands, proposed to delete from the present Rule the words “of transcription” and to maintain the present definition of “obvious error.” The International Bureau was asked to reconsider its proposals, in particular in order to clarify and limit the scope of the proposed provisions with respect to the errors and mistakes which would be rectifiable under Rule 91.

Chapter XIX

33. The proposed amendments were withdrawn by the International Bureau.

Chapter XX

34. The Delegations of Denmark, the Netherlands, Norway, Sweden and the United Kingdom expressed doubts about the need for the proposed new Rule 92*quarter*.1 since either the national law contained provisions for the application of the procedures under

Articles 24(2) and 39(2)--with the consequence that the proposed new Rule was superfluous--or the national law did not contain such provisions--with the consequence that the said procedures could not be applied in the countries concerned. The Delegation of Japan stated that the introduction of the proposed new Rule would require a revision of Articles 24(2) and 39(2). The representatives of the EPO and of the international non-governmental organizations supported the proposed new Rule. All delegations and the International Bureau were invited to reflect on the matter. The International Bureau said that it was ready to delete paragraph (c) from the proposed new Rule.

Chapter XXI

35. The International Bureau was asked to consider the transfer into the Administrative Instructions of the proposed amendment to Rule 4.10(d). In this context, it was stated that, in general, the International Bureau should consider to which extent all the proposed amendments submitted to the Committee could be transferred into the Administrative Instructions, in accordance with the decision taken by the Assembly of the PCT Union at its seventh session on the basis of a proposal made by the Delegation of Switzerland.

36. The Delegation of Japan stated that any additional optional matter which could be included in the request should be specified in Rule 4.1(c) rather than, under the proposed amendment to Rule 4.17, in the Administrative Instructions. No other objection was raised against the said proposed amendment, which was approved subject to possible improvements of the wording.

Chapter XXII

37. The proposed amendments were approved subject to possible improvements of the wording.

Chapter XXIII

38. The proposed amendments were approved.

Chapter XXIV

39. The Delegation of Belgium reserved its position concerning the proposed amendments to Rule 15.4 as a whole since its national law contained a reference to the present text of the Rule. The Delegations of Japan and the Netherlands said in connection with paragraph (c) of Rule 15.4 as proposed and with the proposed new paragraph (e) of Rule 57.3 that they would have preferred the decisive date to be the date of filing rather than the date of payment. The Delegation of Japan said that the references to the date of receipt of the international application in paragraphs (a) and (b) of Rule 15.4 as proposed should be replaced by references to the international filing date. All other delegations approved the proposed amendments.

Chapter XXV

40. The proposed amendment to Rule 16*bis*.1(d) was approved, subject to the possible inclusion of words to the effect that the receiving Office should also inform the International

Searching Authority and subject to a possible transfer of that provision into the Administrative Instructions.

41. The Delegation of Japan said that it wished to maintain the possibility not to apply Rules 16*bis*.1 and 16*bis*.2 and that, consequently, Rule 16*bis*.3 should be maintained. The Delegation of the Netherlands stated that Rule 16*bis*.3 should be maintained as long as any receiving Office was not ready to apply Rules 16*bis*.1 and 16*bis*.2. No other delegation expressed any reservation against the proposed deletion of Rule 16*bis*.3. The Delegation of Australia declared that the receiving Office of its country was in the process of withdrawing its notification under Rule 16*bis*.3. The Director General expressed the hope that the remaining two receiving Offices having made such a notification--namely, the Offices of Hungary and Japan--would also withdraw it, in the interest of the applicants of their countries.

Chapter XXVI

42. The proposed amendment to Rule 17.1(c) was approved.

43. The proposed amendment to Rule 17.2(b) was withdrawn by the International Bureau.

44. The proposed amendment to Rule 17.2(c) was withdrawn.

Chapter XXVII

45. The proposed amendment was approved.

Chapter XXVIII

46. The proposed amendments were approved.

Chapter XXIX

47. The proposed amendments were approved. Furthermore, the International Bureau was asked to consider whether the requirement to mark replacement sheets with the stamp identifying the receiving Office, as now provided in the first sentence of Rule 26.4 (b) p could not be eliminated.

Chapter XXX

48. The International Bureau was asked to consider whether there was a real need for the notifications referred to in the proposed Rules 29.2 and 92*quinquies*. The Delegation of Sweden reserved its position, stating that its views on the proposed amendments would be communicated in writing to the International Bureau. The proposed amendments to Rule 48.6 were approved.

Chapter XXXI

49. The proposed amendments to Rules 34 and 48 were positively received by the delegations and by the representatives of the international non-governmental organizations. In particular, the proposals were stated to be an important step towards making the PCT more attractive for Spain and the Spanish-speaking countries of Latin America. The Delegations of

Belgium, Germany (Federal Republic of) and Switzerland, while supporting the proposals in principle, referred to the need for further consultations within the framework of the European Patent Organisation before taking a final decision on this matter. The Delegation of the United Kingdom noted the political nature of the problem, suggested that the political issues were not a matter for the Committee and indicated that its position would be determined after discussions within the framework of the European Patent Organisation. The Delegations of Japan and the Soviet Union were of the opinion that the PCT Committee for Technical Cooperation and the Permanent Committee on Patent Information should be consulted on the proposals for amendment to Rule 34. The Delegation of the Soviet Union said that the inclusion of the Spanish language was premature before at least one Spanish speaking country adhered to the PCT. The Delegation of Austria said that it had not yet adopted a final view on this matter. The Delegations of Germany (Federal Republic of), Sweden, the United Kingdom and the United States of America referred to a need to study further the technical problems and costs connected with the implementation of the proposed amendments for Rule 34. The Delegation of the United States of America also proposed to insert in Rule 34.1(c)(vi), after the words "in which," the words "or from which." The representative of the EPO observed that such insertion was superfluous in view of the existing patent family services. The representative of the EPO drew attention to the fact that the proposal to add the Spanish language in Rule 48 would have practical consequences only if it could be ensured that international applications could be filed in that language. He expressed the view that, pending a solution under the existing Rule 12.1, this problem should be kept in mind by the International Bureau when reviewing the proposed amendment of Rule 12. The Director General, referring to the ongoing consultations with the European Patent Office on that question, asked the European Patent Organisation and its member States to continue to give urgent and favorable consideration to this problem of vital importance for the Spanish-speaking Cooperation would be consulted in due course on the technical questions raised by the amendments to Rule 34, but that the very insignificant increase of the number of documents contained in the PCT minimum documentation resulting from the proposed, rather restricted, inclusion of Spanish language patent documents constituted a negligible additional burden for the International Searching Authorities. The Delegation of Spain, expressed its satisfaction with the positive attitude shown by the Committee with respect to the proposed amendments, which it considered to be of fundamental importance for the future of the PCT in the Spanish speaking world.

Chapter XXXII

50. The proposed amendment was approved.

Chapter XXXIII

51. The proposed amendments to Rules 47.1(b) and 48.2(9) and (h) were approved.

52. The Delegations of Japan and the United States of America raised objections against the proposed amendments to Rule 47.2(c). The International Bureau stated that the special demands of some Offices, in particular the Offices of Japan (to receive in addition to the pamphlet a copy of the request) and the United States of America (to receive the pamphlet in a version printed recto only), would continue to be satisfied on the basis of bilateral arrangements although they constituted a burden for the PCT budget, and that there was consequently no need to maintain in the Regulations for these special situations a general

exception from the rule of communication by pamphlet. No other delegation raised any objection.

Chapter XXXIV

53. The proposed amendment was approved.

Chapter XXXV

54. The proposed amendments to Rules 54.3 and 54.4 were approved, subject to a possible correction in paragraph (a) of Rule 54.4.

55. The International Bureau was asked to study whether the possibility of refund under Rule 58.3 should not also extend to the case where none of the States elected in the demand was designated in the international application or was bound by Chapter II.

Chapter XXXVI

56. The proposed amendment was approved.

Chapter XXXVII

57. The proposed amendments were approved. The Delegation of the Netherlands, however, reserved its position.

Chapter XXXVIII

58. The Delegation of Japan said that it wished to keep the possibility not to apply the second sentence of Rule 80.6(a) since it was not possible for the time being to give a guarantee that the national law of Japan would be changed in order to make it possible to apply the said sentence. The Delegations of Denmark, Finland, Norway and Sweden had no objection in principle against the deletion of Rule 80.6(b) since they expected to be able to withdraw their notifications under that Rule before the entry into force of the proposed amendment. The Delegation of Australia supported the proposed amendment since the difficulties which had led to the need, for a notification under Rule 80.6(b) by the Australian Patent Office had been overcome. The Delegation of the Netherlands stated that Rule 80.6(b) should be maintained as long as any receiving Office was not ready to apply the second sentence of Rule 80.6(a).

Chapter XXXIX

59. The proposed-amendments were approved, with the proviso that the International Bureau should study whether it would be, appropriate, to give the possibility to record a requested change until the time at which the international preliminary examination report is established even where, at that time, the time limit under Article 39(1) (a) had already expired.

Proposals and observations by the Delegation of the Netherlands

60. It was agreed that the proposals and observations by the Delegation of the Netherlands which are contained in document PCT/CAL/I/8 would be studied by all delegations and the International Bureau in order to be discussed at the next session of the Committee. Furthermore, the Delegation of the Netherlands announced that, in order to enable the Committee to finish the debate within the time available, it would send written additional observations on documents PCT/CAL/I/2 to 4 to the International Bureau within a few weeks.

FUTURE WORK

61. The Delegation of Brazil noted that the documents prepared for the first session of the Committee did not touch upon matters reflected in paragraphs 23 and 56 of the report of the seventh session of the PCT Assembly (document PCT/A/VII/15) pertaining to the situation of developing countries vis-à-vis the PCT and particularly to a proposal to consider lower fees in favour of nationals of developing countries; that delegation expressed the hope that for the next session of the Committee the International Bureau would prepare a document covering those aspects.

62. The International Bureau confirmed that the mandate for the study entrusted to the International Bureau included the questions of special interest to developing countries referred to in the said two paragraphs. The reason that no proposals had been made so far with respect to these items was that both questions were intimately linked with the proposals concerning preferential treatment for developing countries made in the context of the ongoing revision of the Paris Convention for the Protection of Industrial Property. Since the PCT was a special agreement under the Paris Convention, the outcome of the ongoing revision process in this matter would have to be awaited before the study could revert to those questions. In this context, the Representative of FICPI underlined the importance for developing countries of those among the proposals under consideration which were intended to promote the use of Chapter II of the Treaty.

63. The Delegation of Belgium stated, with reference to its general support for the proposals discussed in this session and its reservations on some of the points referred to above, that in the future work particular attention should be given to the need for applicants to take upon themselves a larger responsibility for the processing of their international applications and to avoid an increase of the burden for Offices. A similar declaration was made by the Delegation of the Netherlands. Furthermore, both Delegations were of the opinion that, generally speaking, the proposals, by spelling out a large number of possible details, were making the Treaty and its Regulations more complex, rather than resulting in a simplification.

64. The Director General said that the Committee would be convened for a second session in early 1983 and would receive for that session a revised set of proposals from the International Bureau. He said furthermore, with reference to statements made by several delegations relating to difficulties caused by certain amendments requiring a change of national law, that the Committee should, at the same time, consider whether for the entry into force of certain amendments a longer period should be fixed than for others and even whether, in respect of some amendments, particularly if they affect only the relations between a receiving Office of a country and the nationals of that country, such country should not be allowed to make a reservation. Depending on the results of the second session of the

Committee, the Assembly of the PCT Union could probably be convened in late 1983 for a special session to consider the proposals for amendment of the Treaty and the Regulations emanating from the ongoing study.

65. The Committee unanimously adopted this report on September 10, 1982.

[Annex follows]

LIST.OF PARTICIPANTS/
LISTE DES PARTICIPANTS

I. MEMBERS OF THE COMMITTEE/MEMBRES DU COMITE

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Etats-Unis d'Amérique)
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Secretary/Secrétaire : Mr. B. BARTELS (WIPO/OMPI)

VI. INTERNATIONAL BUREAU OF WIPO/BUREAU INTERNATIONAL DE L'OMPI

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