

## **Meeting of International Authorities under the Patent Cooperation Treaty (PCT)**

**Thirty-Third Session**  
**Geneva, October 28 and 29, 2026**

### **CITATION OF NON-WRITTEN DISCLOSURES**

*Document prepared by the International Bureau*

#### **SUMMARY**

1. Following the change to the definition of relevant prior art in the PCT to include non-written disclosures, this document summarizes developments on the proposal by the Canadian Intellectual Property Office to delete Rules 33.1(b), 64.2 and 70.9, and the discussions on the future use of category “O” in international search reports.

#### **BACKGROUND**

2. On January 1, 2026, amendments to Rules [33.1\(a\)](#), [64.1](#) and [64.2](#) entered into force to change the definition of relevant prior art to include non-written disclosures. A consolidated version of the International Search and Preliminary Examination Guidelines (“the ISPE Guidelines”) reflecting the change was made available from that date.

#### **FURTHER AMENDMENTS TO THE PCT REGULATIONS**

3. At its thirty-second session from October 29 to 31, 2025, the Meeting discussed a proposal submitted by the Canadian Intellectual Property Office to delete Rules 33.1(b), 64.2 and 70.9, as reproduced in the Annex (see document [PCT/MIA/32/4](#)). In view of the inclusion of non-written disclosures in the definition of relevant prior art, these deletions would remove the requirement to mention separately a written disclosure in the written opinion and international preliminary report on patentability published on or after the relevant date where the written disclosure refers to an oral disclosure, use, exhibition or other means that occurred prior to the international filing date or priority date, as applicable. This would require modification of Forms PCT/ISA/237, PCT/IPEA/408 and PCT/IPEA/409 to remove item 2 of Box No. VI. Discussions of this proposal are summarized in paragraphs 22 to 27 of the Summary by the Chair of the session, document [PCT/MIA/32/10](#).

4. After the Meeting, discussions on the proposal continued through the Quality Subgroup electronic forum to resolve outstanding issues. While there was general support for the proposal, International Authorities considered whether it could be necessary to clarify the use of category “O” citations for documents in international search reports referring to an oral disclosure, use, exhibition or other means. The term “document” is understood to cover relevant references beyond a narrow definition of a written document containing text and drawings, and can encompass video, audio and multimedia representations (see paragraphs 5 and 6 of document [PCT/MIA/31/2](#)).

#### **FUTURE USE OF CATEGORY “O” CITATIONS**

5. Discussions have taken place over the Quality Subgroup electronic forum considering options for the use of the “O” category in international search reports following the deletion of Rules 33.1(b), 64.2 and 70.9. From these options, two have received support from some Authorities.

6. The first option is to remove category “O”. The citation for non-written disclosures, including ephemeral ones that are supported by a later document having evidence of the earlier disclosure, would be indicated as X, Y or A and include the date of the non-written disclosure, if this can be established, and the date of publication of any supporting documents. The relevant date of the citation would be that of the initial disclosure if this can be established. In the case of a supported ephemeral disclosure, it would be up to the examiner to decide whether it would be more appropriate to cite the initial disclosure, or the later published document directly, considering the content of the respective disclosures and the date of the later document. With non-written disclosures becoming relevant prior art in the PCT, Offices supporting this option did not consider it necessary to maintain a category to indicate that the original disclosure was not in written form.

7. One Office supporting this option indicated that any unsupported ephemeral disclosures, for example, in exceptional cases where an examiner is aware of the disclosure but there is no published supporting evidence, would need to be mentioned in the search record or written opinion, together with “X” or “Y”, as applicable. This Office also noted that documents cited to establish the date of public availability of another citation could continue to be indicated using the category “L”.

8. The second option is to continue to use category “O” for any citation where a document reproduces an earlier ephemeral disclosure, accompanied by the symbol X, Y, or A indicating the relevance of the document, regardless of the publication date of the later document. The Offices supporting this option believe that maintaining category “O” would help identify prior art originally made available to the public as an oral disclosure, or through use, an exhibition or other non-written means. Where the later document was published before the priority date, these Offices favored giving examiners discretion over whether to include reference to the original disclosure in the citation of the later document. If no reference is made, then the later document would be cited directly as an X, Y or A.

9. [WIPO Standard ST.14](#) recommends use in granted patents and published patent applications of the category “O” for documents referring to an oral disclosure, use, exhibition or other means, cited in the course of a search or examination. If International Authorities decide to follow the first option in paragraph 6, above, the Standard could be reviewed to consider whether Offices wished to cease using category “O” in national and regional patents and patent applications, or to make its use optional. It would also be preferable for citation practice for non-written disclosures to be consistent between the PCT and national and regional applications.

10. While there are differences on whether to maintain or remove the citation category “O”, the Offices that participated in the discussions indicated that examiners should have some

flexibility in how to cite non-written disclosures. The aim should be to provide a comprehensive international search report that is useful for the applicant, patent examiners, particularly at designated Offices, and third parties. Whether a non-written disclosure should be cited separately from a later document producing the disclosure could therefore depend on the value that the reference to the non-written disclosure would provide in addition to the later document.

11. One option to advance the discussions on the Quality Subgroup electronic forum could be to provide some examples of documents referring to earlier non-written disclosures and invite International Authorities to present ways that they could be recorded in international search reports and the written opinion according to the above two proposed options. This should include at least one case of the document published after the priority date reproducing a non-written disclosure before the priority date. By discussing individual cases, this could help reach a consensus on common practices and cases where the examiner could have more flexibility on the citation.

## NEXT STEPS

12. It is proposed that discussions on the future use of category “O” continue on the electronic forum with a view of reaching consensus in early 2027.

13. Authorities are invited to comment on whether the proposal to delete Rules 33.1(b), 64.2 and 70.9 as proposed by the Canadian Intellectual Property Office in 2025 could be brought to the wider PCT membership, in parallel with further discussions on category “O”.

14. If the proposed deletions meet with support from the wider PCT membership, the earliest date of their entry into force would be July 1, 2028. The implementation of any change to the use of category “O” would depend on the extent of the change in practice, any departure from WIPO Standard ST.14, and what revisions to the Standard would be necessary before following a difference in practice in the PCT.

15. *The Meeting is invited:*

*(a) to note the developments on the PCT electronic forum regarding the proposed amendments to the PCT Regulations discussed in paragraphs 3 and 4, above, and the future use of category “O” in international search reports, discussed in paragraphs 5 to 11, above, and*

*(b) to comment on the next steps discussed in paragraphs 12 to 14, above.*

[Annex follows]

PROPOSED AMENDMENTS TO THE PCT REGULATIONS<sup>1</sup>

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<sup>1</sup> Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

### Rule 33

#### Relevant Prior Art for the International Search

##### 33.1 *Relevant Prior Art for the International Search*

(a) [No change] For the purposes of Article 15(2), relevant prior art shall consist of everything which has been made available to the public anywhere in the world by any means which is capable of being of assistance in determining that the claimed invention is or is not new and that it does or does not involve an inventive step (i.e., that it is or is not obvious), provided that the making available to the public occurred prior to the international filing date.

(b) [Deleted] ~~When any written disclosure refers to an oral disclosure, use, exhibition, or other means whereby the contents of the written disclosure were made available to the public, and such making available to the public occurred on a date prior to the international filing date, the international search report shall separately mention that fact and the date on which it occurred if the making available to the public of the written disclosure occurred on a date which is the same as, or later than, the international filing date.~~

(c) [No change] Any published application or any patent whose publication date is the same as, or later than, but whose filing date, or, where applicable, claimed priority date, is earlier than the international filing date of the international application searched, and which would constitute relevant prior art for the purposes of Article 15(2) had it been published prior to the international filing date, shall be specially mentioned in the international search report.

33.2 and 33.3 *[No change]*

## Rule 64

### Relevant Prior Art for the International Preliminary Examination

#### 64.1 *Prior Art*

(a) [No change] For the purposes of Article 33(2) and (3), everything made available to the public anywhere in the world by any means shall be considered prior art provided that such making available occurred prior to the relevant date.

(b) [No change]

#### 64.2 *[Deleted] Non-Written Disclosures*

~~In cases where the making available to the public occurred by means of an oral disclosure, use, exhibition or other non-written means ("non-written disclosure") before the relevant date as defined in Rule 64.1(b) and the date of such non-written disclosure is indicated in a written disclosure which has been made available to the public on a date which is the same as, or later than, the relevant date, the international preliminary examination report shall call attention to such non-written disclosure in the manner provided for in Rule 70.9.~~

#### 64.3 *[No change]*

**Rule 70**  
**International Preliminary Report on Patentability**  
**by the International Preliminary Examining Authority**  
**(International Preliminary Examination Report)**

70.1 to 70.8 *[No change]*

70.9 *[Deleted]* ~~Non-Written Disclosures~~

~~Any non-written disclosure referred to in the report by virtue of Rule 64.2 shall be mentioned by indicating its kind, the date on which the written disclosure referring to the non-written disclosure was made available to the public, and the date on which the non-written disclosure occurred in public.~~

70.10 to 70.17 *[No change]*

[End of Annex and of document]