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(PCT UNION)**

**WORKING GROUP ON REFORM OF THE PATENT
COOPERATION TREATY (PCT)**

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FURTHER STREAMLINING AND SIMPLIFICATION OF PCT PROCEDURES:

RECTIFICATION OF CLEAR MISTAKES (OBVIOUS ERRORS)

Document prepared by the International Bureau

BACKGROUND

1. At its first session, held on November 12 to 16, 2001, the Working Group discussed a proposal by the United States of America that Rule 91¹ be amended to limit the rectification of obvious errors to errors occurring in the request and to eliminate the rectification of obvious errors in the description, claims, drawings, and abstract of international applications (see document PCT/R/WG/1/4, paragraphs 8 to 12). Those discussions are summarized in document PCT/R/WG/1/9, as follows:

¹ References in this document to “Articles” and “Rules” are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT (“the Regulations”), or to such provisions as proposed to be amended or added, as the case may be (the current texts are available on WIPO’s Web site at http://www.wipo.int/pct/en/access/legal_text.htm). References to “national laws,” “national applications,” “the national phase,” etc., include reference to regional laws, regional applications, the regional phase, etc. References to “PLT Articles” and “PLT Rules” are to those of the Patent Law Treaty (PLT) and the Regulations under the PLT (see document PT/DC/47 on WIPO’s Web site at http://www.wipo.int/eng/document/pt_dc/index.htm).

“Proposal to amend Rule 91 (see document PCT/R/WG/1/4)

“34. The comments and concerns expressed by various delegations included the following:

(i) while some delegations expressed support for the approach taken in the proposal, others felt that the correction of obvious errors should not be limited to errors occurring in the request but should continue to be possible also with regard to such errors in the description, claims and drawings; any such requests for correction should be dealt with as early as possible during the international phase rather than by individual [designated Offices] in the national phase;

(ii) noting the workload of Offices in dealing with requests under present Rule 91, it was recognized that a balanced solution would have to be found which would continue to give applicants the flexibility needed to correct obvious errors without putting too heavy a burden on Offices dealing with requests for rectifications;

(iii) noting ongoing discussions in the context of the draft [Substantive Patent Law Treaty], some delegations expressed their desire for a review of the present definition of “obvious error” under Rule 91.1(b).

“35. It was agreed that the proposal to amend Rule 91 should not be included in revised drafts to be prepared by the International Bureau, although delegations may wish to further consider the matter in the light of the discussion.”

2. For the second session of the Working Group, the International Bureau prepared a paper (document PCT/WG/2/6) outlining possible further PLT-related changes to the PCT. In relation to the correction of mistakes under PLT Rule 18, paragraph 14 of that document explained:

“Correction of mistakes

“14. The PLT sets out the requirements that a Contracting Party is permitted to apply as regards requests for correction by the Office of mistakes in respect of an application (see PLT Rule 18). In particular, it sets out the contents of the request that an Office may require; it also obliges the Office to notify the applicant of any non-compliance with one or more applicable requirements and to provide the applicant with an opportunity to subsequently comply with those requirements. However, it does not regulate what mistakes may be corrected. PCT Rule 91.1 provides for rectification of obvious errors in the international application or other papers. However, it does not set out any requirements as to the contents of the request for rectification. It also does not require the receiving Office, International Searching Authority or International Preliminary Examining Authority or International Bureau, as the case may be, to notify the applicant of any non-compliance with one or more applicable requirements and to provide the applicant with an opportunity to subsequently comply with those requirements.”

3. However, it was suggested “that any proposals to align the PCT with PLT Rule 18 in the above respects not be presented to the Working Group until a future session, as this does not appear to be a matter of high priority” (see document PCT/WG/2/6, paragraph 15; the

Working Group at its second session was unable in the time available to consider document PCT/WG/2/6 (see document PCT/WG/2/12, paragraph 59)).

4. During its third session, the Working Group reviewed a proposal by the Representative of the European Patent Office (EPO) that Rule 91.1(b) be amended so as to refer to a “person skilled in the art” rather than “anyone” when determining whether a rectification offered by the applicant was “obvious” under Rule 91.1(b). Several delegations supported the proposal and also expressed the view that, in general, Rule 91 was unnecessarily strict. It was agreed that the EPO and the International Bureau should work together to review Rule 91 and to submit a written proposal for consideration by the Working Group (see the summary of the Chair of the third session of the Working Group, document PCT/R/WG/3/5, paragraph 64).

5. The Annex to this document contains proposals to amend Rule 91 accordingly, and proposals for consequential amendments of Rules 12, 48, 66 and 70. For information and clarity, the proposals for amendment of Rule 91 are presented both in the form of a “clean” text of the Rule 91 as it would stand after amendment and in the form of a marked-up text of Rule 91 as proposed to be amended.

6. The Working Group is invited to consider the proposals contained in the Annex.

[Annex follows]

ANNEX

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:

RECTIFICATION OF CLEAR MISTAKES (OBVIOUS ERRORS)

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Rule 12

**Language of the International Application and Translation
for the Purposes of International Search and International Publication**

12.1 [No change]

12.2 *Language of Changes in the International Application*

(a) [No change]

(b) Any rectification under Rule 91 ~~91.1~~ of a mistake ~~an obvious error~~ in the international application shall be in the language in which the application is filed, provided that:

[COMMENT: Consequential on the proposed amendment of Rule 91 (see below).]

(i) and (ii) [No change]

(c) [No change]

12.3 and 12.4 [No change]

Rule 48

International Publication

48.1 [No change]

48.2 *Contents*

(a) The pamphlet shall contain:

(i) to (vi) [No change]

(vii) any request for rectification of a mistake, any reasons and any comments referred to in Rule 91.3(d) where the request for publication under Rule 91.3(d) was received by the International Bureau before the completion of the technical preparations for international publication ~~referred to in the third sentence of Rule 91.1(f),~~

(viii) to (x) [No change]

(b) to (h) [No change]

(h-bis) If the authorization for rectification of a mistake in the international application referred to in Rule 91.1(b)(i) and (ii) is received by the International Bureau after completion of the technical preparations for international publication, either the pamphlet (containing the international application as rectified) will be republished or a statement reflecting all the rectifications will be published. In the latter case, at least the front page shall be republished

and the sheets containing the rectifications, or the replacement pages and the letter furnished under Rule 91.2(c), as the case may be, shall be published.

(i) The Administrative Instructions shall determine the cases in which the various alternatives referred to in paragraphs (g), ~~and~~ (h) and (h-bis) shall apply. Such determination shall depend on the volume and complexity of the amendments or rectifications and/or the volume of the international application and the cost factors.

(j) If the request for publication under Rule 91.3(d) was received by the International Bureau after the completion of the technical preparations for international publication, the request for rectification, any reasons and any comments referred to in Rule 91.3(d) shall be promptly published after the receipt of the request for publication, and the front page shall be republished.

[COMMENT: The proposed amendments of Rule 48.2 are consequential on the proposed change of approach with regard to the time limit within which a request for rectification of a mistake may be made; see proposed new Rule 91.2(a), below.]

48.3 to 49.6 [No change]

Rule 66

Procedure Before the International Preliminary Examining Authority

66.1 to 66.5 [No change]

66.5 *Amendment*

Any change, other than the rectification of a mistake ~~obvious errors~~, in the claims, the description, or the drawings, including cancellation of claims, omission of passages in the description, or omission of certain drawings, shall be considered an amendment.

[COMMENT: Consequential on the proposed amendment of Rule 91 (see below).]

66.6 to 66.9 [No change]

Rule 70

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

70.1 to 70.15 [No change]

70.16 *Annexes to the Report*

Each replacement sheet under Rule 66.8(a) or (b), each replacement sheet containing amendments under Article 19 and each replacement sheet containing rectifications of [a mistake](#) ~~obvious errors~~ authorized under Rule [91.1\(b\)\(iii\)](#) ~~91.1(e)(iii)~~ shall, unless superseded by later replacement sheets or amendments resulting in the cancellation of entire sheets under Rule 66.8(b), be annexed to the report. Amendments under Article 19 which have been considered as reversed by an amendment under Article 34 and letters under Rule 66.8 shall not be annexed.

70.17 [No change]

Rule 91 [“clean” copy]²

Rectification of Mistakes in

the International Application and Other Documents

91.1 *Rectification of Mistakes*

(a) A mistake in the international application or other document submitted by the applicant may, subject to paragraphs (b) to (e) and Rules 91.2 and 91.3, be rectified on the request of the applicant.

(b) A rectification shall be made only if it is authorized by “the relevant authority,” that is to say:

(i) by the receiving Office if the mistake is in the request;

(ii) by the International Searching Authority if the mistake is in any part of the international application other than the request, or in any amendment or correction of that application, or in any document submitted to that Authority;

(iii) by the International Preliminary Examining Authority if the mistake is in any part of the international application other than the request, or in any amendment or correction of that application, or in any document submitted to that Authority;

² Comments on particular provisions appear only in the “marked-up” copy following.

[Rule 91.1(b), continued]

(iv) by the International Bureau if the mistake is in any document, other than the international application or amendments or corrections to that application, submitted to the International Bureau.

(c) The relevant authority shall authorize a rectification if it finds that, as at the applicable date under paragraph (d), the alleged mistake was clearly a mistake and that the meaning which would result from the proposed rectification was clearly the same as the meaning intended in the international application or other document; otherwise, the relevant authority shall refuse to authorize the rectification. In the case of a mistake in the description, the claims or the drawings, or in an amendment thereof or a correction thereof under Rule 26, that finding shall be made on the basis of what a person skilled in the art would have understood, as at the applicable date under paragraph (d), from reading the international application or the amendment or correction.

(d) For the purposes of paragraph (c), the applicable date shall be:

(i) in the case of a mistake in the international application, the international filing date;

(ii) in the case of a mistake in any other document, including an amendment or a correction of the international application, the date on which that document was submitted.

[Rule 91.1, continued]

(e) The omission of an entire element or sheet of the international application shall not be rectifiable under this Rule[, but nothing in this Rule shall prevent the inclusion under Rule 20.5 of a missing part containing an entire element or sheet].

(f) Where the receiving Office, the International Bureau, the International Searching Authority or the International Preliminary Examining Authority discovers what appears to be a rectifiable mistake in the international application or other document, it may invite the applicant to request rectification in accordance with this Rule.

91.2 Requests for Rectification

(a) The request for rectification shall be submitted to the relevant authority within the following time limit, as applicable:

(i) where the relevant authority is the receiving Office, the International Bureau or the International Searching Authority, [26] [27] [28] months from the priority date;

(ii) where the relevant authority is the International Preliminary Examining Authority, the time when that Authority begins to draw up the international preliminary examination report.

[Rule 91.2, continued]

(b) The request for rectification shall contain the following indications:

- (i) an indication to the effect that rectification of a mistake is requested;
- (ii) the mistake to be rectified; and
- (iii) the proposed rectification;

and may, at the option of the applicant, contain:

- (iv) a brief explanation of the mistake and the proposed rectification.

(c) Rule 26.4 shall apply *mutatis mutandis* as to the manner in which a rectification shall be requested.

91.3 *Authorization of Rectifications*

(a) The relevant authority shall promptly decide whether, in accordance with Rule 91.1(c), to authorize or refuse to authorize the rectification and shall promptly notify the applicant and the International Bureau of the authorization or refusal and, in the case of refusal, of the reasons therefor.

[Rule 91.3, continued]

(b) Where the rectification is authorized by the relevant authority, it shall be made in the international application or other document concerned as provided in the Administrative Instructions.

(c) Where a rectification is authorized by the relevant authority, it shall be effective:

(i) in the case of a mistake in the international application, from the international filing date;

(ii) in the case of a mistake in another document, including an amendment or a correction of the international application, from the date on which that document was submitted.

(d) Where authorization of the rectification is refused, the International Bureau shall, upon request submitted to it by the applicant within [one month] [two months] from the date of the decision by the relevant authority, and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, publish the request for rectification, the reasons for refusal by the relevant authority and any further brief comments that may be submitted by the applicant, if possible together with the international application. A copy of that request, of those reasons and of those comments (if any) shall if possible be included in the communication under Article 20 where a copy of the pamphlet is not used for that communication or where the international application is not published by virtue of Article 64(3).

Rule 91 [“marked-up” copy]

Rectification of Mistakes in the International Application

and Other ~~Obvious Errors in~~ Documents

91.1 *Rectification of Mistakes*

(a) A mistake ~~Subject to paragraphs (b) to (g *quater*), obvious errors~~ in the international application or other document ~~papers~~ submitted by the applicant may, subject to paragraphs (b) to (e) and Rules 91.2 and 91.3, be rectified on the request of the applicant.

[COMMENT: Although the draft SPLT uses the term “correction” instead of “rectification” (see draft SPLT Article 7(3) and draft SPLT Rule 7(2)), it is proposed, in the context of PCT Rule 91, to continue to use the term “rectification” so as to maintain the distinction between “amendments” of the description, claims or drawings (under Articles 19 and 34) and “corrections” of formal defects (under Article 14 and Rule 26).]

[Rule 91.1, continued]

(b) ~~(e)~~ A ~~No~~ rectification shall be made only if it is authorized by “the relevant authority,” that is to say ~~except with the express authorization:~~

(i) by ~~of~~ the receiving Office if the mistake ~~error~~ is in the request; ;

(ii) by ~~of~~ the International Searching Authority if the mistake ~~error~~ is in any part of the international application other than the request, or in any amendment or correction of that application, or in any document ~~paper~~ submitted to that Authority; ;

(iii) by ~~of~~ the International Preliminary Examining Authority if the mistake ~~error~~ is in any part of the international application other than the request, or in any amendment or correction of that application, or in any document ~~paper~~ submitted to that Authority; ;

(iv) by ~~of~~ the International Bureau if the mistake ~~error~~ is in any document ~~paper~~, other than the international application or amendments or corrections to that application, submitted to the International Bureau.

[COMMENT: The purpose of the proposed amendment is to clarify that “the relevant authority” referred to in paragraphs (c), (f) and (g) of Rule 91.1 and paragraphs (b), (c), (d) and (e) of Rule 91.2 is the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau, as the case may be.]

[Rule 91.1, continued]

~~(c) (b) Errors which are due to the fact that something other than what was obviously intended was written in the international application or other paper shall be regarded as obvious errors. The rectification itself shall be obvious in the sense that anyone would immediately realize that nothing else could have been intended than what is offered as rectification.~~ The relevant authority shall authorize a rectification if it finds that, as at the applicable date under paragraph (d), the alleged mistake was clearly a mistake and that the meaning which would result from the proposed rectification was clearly the same as the meaning intended in the international application or other document; otherwise, the relevant authority shall refuse to authorize the rectification. In the case of a mistake in the description, the claims or the drawings, or in an amendment thereof or a correction thereof under Rule 26, that finding shall be made on the basis of what a person skilled in the art would have understood, as at the applicable date under paragraph (d), from reading the international application or the amendment or correction.

[COMMENT: Noting the discussion by the Working Group at its third session, it is proposed to make the requirements under this paragraph more realistic and, in the case of a mistake in the description, claims or drawings, to refer to a “person skilled in the art” rather than “anyone” when determining whether such a mistake is rectifiable.]

[Rule 91.1, continued]

(d) For the purposes of paragraph (c), the applicable date shall be:

(i) in the case of a mistake in the international application, the international filing date:

(ii) in the case of a mistake in any other document, including an amendment or a correction of the international application, the date on which that document was submitted.

[COMMENT: A finding under paragraph (c) would thus be made: (i) where the mistake was in the description, claims or drawings: on the basis of what a person skilled in the art would have understood, as at the international filing date, from reading the international application; (ii) where the mistake was in the request: on the basis of what the person in the receiving Office in charge of authorizing the request for rectification would have understood, as at the international filing date, from reading the international application; (iii) where the mistake is in an amendment or a correction of the international application, on the basis of what a person skilled in the art would have understood, at the time on which the amendment or correction in question was submitted, from reading the amendment or correction; (iv) where the mistake is in any other document: on the basis of what the person in the relevant authority in charge of authorizing the request for rectification would have understood, at the time on which the document in question was submitted, from reading that document.]

[Rule 91.1, continued]

(e) ~~(e)~~ The omission ~~Omissions~~ of an entire element ~~s~~ or sheets of the international application, ~~even if clearly resulting from inattention, at the stage, for example, of copying or assembling sheets,~~ shall not be rectifiable under this Rule, but nothing in this Rule shall prevent the inclusion under Rule 20.5 of a missing part containing an entire element or sheet].

[COMMENT: The words in square brackets would be included only if the proposed amendments of Rule 20 in document PCT/R/WG/4/2 relating to inclusion of “missing parts” proceed at the same time as the present amendments; otherwise, those words would need to be added at a later date when Rule 20 is amended.]

(f) ~~(d)~~ Where the receiving Office, the International Bureau, the International Searching Authority or the International Preliminary Examining Authority discovers ~~Rectification may be made on the request of the applicant. The authority having discovered~~ what appears to be a rectifiable mistake in the international application or other document, it ~~an obvious error~~ may invite the applicant to ~~present a~~ request ~~for~~ rectification ~~as provided in paragraphs (e) to (g-*quater*)~~ in accordance with this Rule. ~~Rule 26.4 shall apply *mutatis mutandis* to the manner in which rectifications shall be requested.~~

[COMMENT: Clarification only. It is proposed to move the last sentence of present paragraph (d) to proposed new Rule 91.2(b) (see below).]

91.2 Requests for Rectification

(a) The request for rectification shall be submitted to the relevant authority within the following time limit, as applicable ~~The authorization for rectification referred to in paragraph (e) shall, subject to paragraphs (g bis), (g ter) and (g quater), be effective:~~

[COMMENT: It is proposed to fix a clear time limit for the submission of the request for rectification by the applicant rather than, as under present Rule 91.1(g), making the effectiveness of the authorization for rectification dependent on the timely receipt by the International Bureau of the authorization (and hence of the timely processing by the relevant authority of the request for rectification).]

(i) where the relevant authority is ~~it is given by~~ the receiving Office, the International Bureau or ~~by~~ the International Searching Authority, [26] [27] [28] months ~~if its notification to the International Bureau reaches that Bureau before the expiration of 17 months~~ from the priority date;

[COMMENT: Existing items (i) and (iii) were designed to ensure that a rectification authorized during the Chapter I procedure (if the applicant did not request international preliminary examination under Chapter II) would be included in the international application as published 18 months from the priority date, noting also that the application had to enter the national phase of processing 20 months from the priority date. Where the applicant requested international preliminary examination under Chapter II, present item (ii) provided for rectifications to be made after the publication of the application but before the applicant entered the national phase 30 months from the priority date. However, the time limit for entering the national phase under Chapters I and II is now the same, namely, 30 months from the priority date, so it does not seem necessary to maintain the present distinction between Chapters I and II in this respect. It is therefore proposed to link the time limit for rectification to the time for national phase entry in all cases. Under Chapter I, a time limit towards the end of the 30 month period seems appropriate.]

[Rule 91.2(a), continued]

(ii) where the relevant authority is ~~it is given by~~ the International Preliminary Examining Authority, the time when that Authority begins to draw up ~~if it is given before the establishment of~~ the international preliminary examination report;

[COMMENT: See the Comment concerning item (i). Where the applicant requests international preliminary examination under Chapter II, slightly different considerations apply since the International Preliminary Examining Authority will be actively processing the application. Each replacement sheet containing a rectification of a mistake authorized by the International Preliminary Examining Authority is annexed to the international preliminary examination report (see Rule 70.16 as proposed to be amended, above). The appropriate time limit therefore would be the time when the Authority begins to draw up the international preliminary examination report.]

~~(iii) where it is given by the International Bureau, if it is given before the expiration of 17 months from the priority date.~~

[COMMENT: Rectification by the International Bureau is dealt with in proposed amended item (i).]

[Rule 91.2, continued]

(b) The request for rectification shall contain the following indications:

(i) an indication to the effect that rectification of a mistake is requested;

(ii) the mistake to be rectified; and

(iii) the proposed rectification;

[COMMENT: See PLT Rule 18(1)(a)(i), (iii) and (iv). The indication under PLT Rule 18.1(a)(ii) (the number of the application or patent concerned) is not included here since the request for rectification must be in the form of, or accompanied by, a letter identifying the international application to which it relates (see PCT Rule 92.1(a)). The indication under PLT Rule 18.1(a)(v) (the name and address of the requesting party) is not included since rectification may be made only on the request of the applicant (see paragraph (d), above).]

and may, at the option of the applicant, contain:

(iv) a brief explanation of the mistake and the proposed rectification.

[COMMENT: Such an explanation would assist the relevant authority in deciding whether a rectification should be authorized. Note that Article 19(1) provides for a statement explaining amendments of the claims under that Article.]

(c) Rule 26.4 shall apply *mutatis mutandis* as to the manner in which a rectification shall be requested.

91.3 Authorization of Rectifications

(a) ~~[91.1](f)~~ The relevant authority shall promptly decide whether, in accordance with Rule 91.1(c), to authorize or refuse to authorize the rectification and ~~Any authority which authorizes or refuses any rectification~~ shall promptly notify the applicant and the International Bureau of the authorization or refusal and, in the case of refusal, of the reasons therefor. ~~The authority which authorizes a rectification shall promptly notify the International Bureau accordingly.~~

[COMMENT: The proposed amendments would align the wording with that used elsewhere in the amended Rule.]

(b) Where the rectification is authorized by the relevant authority, it shall be made in the international application or other document concerned as provided in the Administrative Instructions.

[COMMENT: Sections 325, 413, 511 and 607 of the Administrative Instructions would have to be modified.]

[Rule 91.3, continued]

(c) Where a rectification is authorized by the relevant authority, it shall be effective:

(i) in the case of a mistake in the international application, from the international filing date;

(ii) in the case of a mistake in another document, including an amendment or a correction of the international application, from the date on which that document was submitted.

[COMMENT: Proposed new paragraph (c) would clearly spell out the effective date of a rectification once authorized.]

[Rule 91.3, continued]

(d) ~~91.1(f)~~ Where ~~the~~ authorization of the rectification ~~is~~ ~~was~~ refused, the International Bureau shall, upon request submitted to it ~~made~~ by the applicant within [one month] [two months] from the date of the decision by the relevant authority, ~~prior to the time relevant under paragraph (g bis), (g ter) or (g quater)~~ and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, publish the request for rectification, the reasons for refusal by the relevant authority and any further brief comments that may be submitted by the applicant, if possible together with the international application. A copy of that ~~the~~ request, of those reasons and of those comments (if any) ~~for rectification~~ shall if possible be included in the communication under Article 20 where a copy of the pamphlet is not used for that communication or where the international application is not published by virtue of Article 64(3).

[COMMENT: Under paragraph (d) as proposed to be amended, upon request of the applicant, the International Bureau would also publish information with regard to a request for rectification which was refused by the International Preliminary Examining Authority, even if the request for publication is received after international publication. This would fill a gap which exists under the present Regulations: under present Rule 91.1(f), any request for publication of information with regard to a refused request for rectification has to be received by the International Bureau prior to completion of technical preparations for international publication. In practice, this means that information concerning a request for rectification which has been refused by the International Preliminary Examining Authority after international publication is neither published nor mentioned in the international preliminary examination report: only authorized rectifications are annexed to that report (see present Rule 70.16; see also Rule 70.16 as proposed to be amended, above).]

[Rule 91.3, continued]

~~{91.1}(g *bis*) If the notification made under paragraph (g)(i) reaches the International Bureau, or if the rectification made under paragraph (g)(iii) is authorized by the International Bureau, after the expiration of 17 months from the priority date but before the technical preparations for international publication have been completed, the authorization shall be effective and the rectification shall be incorporated in the said publication.~~

~~{91.1}(g *ter*) Where the applicant has asked the International Bureau to publish his international application before the expiration of 18 months from the priority date, any notification made under paragraph (g)(i) must reach, and any rectification made under paragraph (g)(iii) must be authorized by, the International Bureau, in order for the authorization to be effective, not later than at the time of the completion of the technical preparations for international publication.~~

~~{91.1}(g *quater*) Where the international application is not published by virtue of Article 64(3), any notification made under paragraph (g)(i) must reach, and any rectification made under paragraph (g)(iii) must be authorized by, the International Bureau, in order for the authorization to be effective, not later than at the time of the communication of the international application under Article 20.~~

[End of Annex and of document]