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

Fifth Session

Geneva, November 17 to 21, 2003

CHANGES RELATED TO THE PATENT LAW TREATY (PLT):

“MISSING PART” REQUIREMENTS

Document prepared by the International Bureau

1. This document is being made available provisionally, on WIPO's Internet site, in advance of the formal convening of the fifth session of the Working Group. It is provisional in the sense that the formal convening of the fifth session of the Working Group, as recommended by the Working Group at its fourth session held in May 2003, is subject to approval by the Assembly of the PCT Union. The Assembly is invited, at its 32nd (14th ordinary) session from September 22 to October 1, 2003, held in conjunction with the 39th series of meetings of the Assemblies of the Member States of WIPO, to approve the proposal concerning future work contained in document PCT/A/32/2, paragraph 26(i), “that two sessions of the Working Group should be convened between the September 2003 and September 2004 sessions of the Assembly to consider proposals for reform of the PCT including, in particular, the matters for further consideration identified [in document PCT/A/32/2] above, on the understanding that the Committee could also be convened during that period if the Working Group felt it to be necessary.”

2. Subject to the Assembly's approval, the fifth session of the Working Group will be formally convened and this document will then cease to be provisional in nature.

BACKGROUND

3. At its first session, the Working Group on Reform of the Patent Cooperation Treaty (PCT) discussed proposals designed to align the PCT with the requirements of the Patent Law Treaty (PLT), based on document PCT/R/WG/1/5.

4. Among the PLT-related proposals contained in document PCT/R/WG/1/5 were proposals to conform the PCT “missing part” requirements to those of the PLT (see document PCT/R/WG/1/5, Annex I). However, due to time constraints, a number of the proposals contained in document PCT/R/WG/1/5, including those related to “missing part” requirements, could not be discussed during the first session of the Working Group. Rather, the Working Group desired to give priority to those matters “which would result in the greatest and most immediate practical benefits for users, having regard also to the degree of complexity involved and to workload implications for Offices and Authorities,” in particular, proposals concerning restoration of the right of priority and relief when time limits were missed, especially the time limit for entering the national phase (see the first session summary by the Chair, document PCT/R/WG/1/9, paragraph 21(v)).

5. For the second session of the Working Group, the International Bureau prepared a document outlining possible further PLT-related changes to the PCT, suggesting, in general, that those PLT-related proposals contained in document PCT/R/WG/1/5 which had not been discussed during the first session of the Working Group would not need to be addressed as matters of high priority. With regard to the proposal to conform the PCT “missing part” requirements to those of the PLT, as contained in Annex I to document PCT/R/WG/1/5, it was suggested that “[i]n light of the discussions at the first session of the Working Group, this proposal is considered to have a relatively low priority and will not be resubmitted for consideration by the Working Group until a later date” (see document PCT/R/WG/2/6, paragraph 9; the Working Group at its second session was unable in the time available to consider document PCT/R/WG/2/6 – see document PCT/R/WG/2/12, paragraph 59).

6. At its third session, the Working Group reviewed proposals for reform which had already been submitted to the Committee on Reform of the PCT or the Working Group but not yet considered in detail and agreed on the priority of those proposals, with a view to their inclusion in the work program of the Working Group. Among the proposals reviewed by the Working Group was the proposal to conform the PCT “missing part” requirements to those of the PLT, as originally submitted to the Working Group in document PCT/R/WG/1/5. The Working Group agreed that the International Bureau should resubmit the proposals for further consideration by the Working Group (see the summary of the session by the Chair, document PCT/R/WG/3/5, paragraphs 35 to 40, in particular, paragraph 38).

7. Further revised proposals relating to “missing part” requirements were prepared by the International Bureau for consideration by the Working Group at its fourth session (see document PCT/R/WG/4/2). The Working Group’s discussions at its fourth session (see document PCT/R/WG/4/14, paragraphs 45 to 71) are outlined in the following paragraphs:

“45. Discussions were based on document PCT/R/WG/4/2.

“Existing Rules 20.8 and 20.9

“46. The International Bureau explained that it was not proposed to delete existing Rules 20.8 and 20.9, which should have appeared in document PCT/R/WG/4/2 as

renumbered Rules 20.6 and 20.7, respectively. Further consequential amendments to both Rules would also be needed.

“Rule 20 – Title

“47. The proposed amendment of the title of Rule 20 was approved by the Working Group.

“Existing Rules 20.1 to 20.3

“48. The deletion of Rules 20.1 to 20.3 and the transfer of their contents to the Administrative Instructions were approved by the Working Group.

“Rule 20.1(d)

“49. The Working Group agreed that a decision of the Assembly should be sought, when the proposed amendments were submitted to it, so as to clarify that transitional reservations that had been made under existing Rule 20.4(d) would continue to be effective under that provision when renumbered as Rule 20.1(d).

“Rule 20.2(a) and (b)

“50. The deletion of Rule 20.2(a) and the transfer of its contents to the Administrative Instructions were approved by the Working Group. It was also agreed that the International Bureau should review the wording of Rule 20.2(b), consequential on such deletion.

“Rule 20.3(a)

“51. The amendment to change the reference to “Article 11(2)” to read “Article 11(2)(a)” was approved by the Working Group.

“Rule 20.3(b)

“52. The Working Group agreed that the International Bureau should review the wording of the provision in the light of a suggestion that this provision should additionally give the applicant the opportunity to make observations, consistent with existing Rule 20.8 and PLT Article 5(3).

“Rule 20.3(c)

“53. The Working Group agreed that proposed Rule 20.3(c) should be revised to provide that, where the outstanding requirement(s) under Article 11(1) were complied with after the time limit applicable under Rule 20.3(d) but before the receiving Office sent out a notification under Rule 20.4(i), the outstanding requirement(s) concerned should be considered to have been complied with before the expiration of that time limit, similarly to the provision in respect of the payment of fees under Rule 16*bis*.1(d).

“Rule 20.3(d)

“54. There was a clear division of opinion as to the time limit that should apply under this provision. Some delegations and representatives supported a two-month period in order to be consistent with the PLT. One representative also noted that a two-month period was desirable in countries in which difficulties with communications were experienced. Other delegations and representatives were in favor of a one-month period in view of the stringent time frames that governed the PCT procedure (for example, the requirement under Rule 22.1(a) that the record copy be transmitted in time for it to reach the International Bureau by the expiration of 13 months from the priority date). The Working Group noted that the amendment agreed to in respect of Rule 20.3(c) (see paragraph 53 above) would effectively extend the period under Rule 22.1(a).

“Rule 20.4

“55. One delegation suggested that this provision should also cover cases in which no observations from the applicant were received by the receiving Office within the applicable time limit. The delegation also suggested that the expression “the application is considered not to have been filed” (see Rule 20.4(i) as proposed to be amended) was inconsistent with Article 25 which provided for a review by designated Offices. One representative suggested the use of the words “is considered not to have been filed as an international application.” It was agreed that the International Bureau should review Rule 20.4 in the light of these suggestions.

“Rule 20.5(a)

“56. The Working Group agreed that, in general, proposed new Rule 20.5 should apply in cases where a missing part of the description, claims or drawings was furnished either before or after an international filing date had been accorded, so that the Rule could result in either the first according of an international filing date or the correction of an international filing date that had already been accorded, depending on the circumstances.

“57. The Working Group agreed that a restriction should be added to Rule 20.5(a) with regard to the requirement for the receiving Office to invite the applicant to furnish any missing part, similar to PLT Article 5(5), which is restricted to the situation where the Office notices the apparent omission of a part of the description or drawing “in establishing the filing date.” In this context, reference was made to Note 5.19 of the Explanatory Notes on PLT Article 5. The Working Group also discussed the possibility of including an outer time limit under this provision (which could perhaps be fixed to be consistent with the time limit for acting under Article 14(4)).

“58. The Working Group agreed that proposed new Rule 20.5(a) should be reviewed with a view to putting it beyond doubt as to the cases in which it applied, that is, in the case of a missing part of the description, a missing part of a claim or of the claims (including the case where an entire claim was missing), and a missing part of a drawing or of the drawings (including the case where an entire drawing was missing). The operation of the Rule in relation to the minimum requirements for according an international filing date under Article 11(1)(iii)(d) and (e) relating to the description and claims also needed to be clear, as well as in relation to the specific provisions of Article 14(2) concerning references in the international application to missing drawings.

“Rule 20.5(b)

“59. The Working Group noted that the reference in Rule 20.5(b) to “paragraphs (e) and (f)” should be corrected to read “paragraphs (d) and (e).”

“60. The Working Group agreed that a provision should be added, in Rule 20.5(b) or elsewhere, so as to require the receiving Office to promptly notify the applicant and the International Bureau of the international filing date accorded or corrected under Rule 20.5.

“Rule 20.5(c)

“61. The Working Group noted that, although the considerations were not exactly the same, the clear division of opinion under Rule 20.3(d) as to whether the time limit should be one or two months also existed under this provision.

“62. In response to a suggestion that the time limit under this provision should be calculated from the date of receipt of the invitation, the Working Group noted that the general regime under the PCT was that time limits in such cases were calculated from the date on which the invitation was sent and that any change in this respect would therefore need to be considered in the context of that general regime.

“63. The Working Group noted that the word “an” should be deleted in the first line of Rule 20.5(c)(ii).

“Rule 20.5(d)

“64. The Working Group agreed that, in order to ensure that the applicant had sufficient time to take advantage of this provision, the time limit for requesting that a missing part furnished under Rule 20.5(b) be disregarded should be one month from the date on which the applicant was notified of the change of international filing date under that Rule.

“Rule 20.5(e)

“65. The Working Group noted that the reference in the chapeau to “the time limit under paragraph (b)” should be changed to “the time limit under paragraph (c).” In item (iii), the word “in” should be inserted before the words “the same language.” In item (iv), the reference to “item (iv)” should be changed to “item (iii).”

“66. Two delegations and one representative expressed concern that the proposed requirement, presented in square brackets, “on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, [the international application contained an indication that the contents of the earlier application were incorporated by reference in the international application]” would impose an unnecessary (formality) requirement, limiting the situations where missing parts could be filed without loss of the international filing date. The Working Group noted that the requirement was consistent with an optional requirement under PLT Rule 2(4)(v) and that, without such a requirement, in so far as it related to missing drawings, the provision could be considered to conflict with Article 14(2) which prescribed the procedure to be applied where drawings were furnished after an

international filing date had been accorded. Although it was agreed that the inclusion in the request of a pre-printed statement that the contents of earlier application(s) the priority of which was claimed was included by reference appeared to be undesirable, it was suggested that such a pre-printed statement might be restricted to incorporation by reference *for the purposes of Rule 20.5(e)*, for example, using wording similar to that used in present Rule 4.9(b) with regard to “precautionary” designations in the request. The Working Group invited the Secretariat to review Rule 20.5(e) in the light of these considerations. The Secretariat also invited delegations and representatives to submit suggestions on the electronic forum.

“67. In response to a concern of one delegation and one representative, the Working Group invited the Secretariat to consider whether the copy of the earlier application furnished under item (ii) should be certified, taking account of the corresponding provisions under PLT Rule 2(4)(i) and (ii) which provide for the certified copy to be furnished later.

“68. In response to a concern of one delegation, the Working Group noted that the obligation was on the applicant to establish where in the earlier application(s) the “missing part” was contained and agreed that the following text should be deleted from the Comment on the item: “; it would thus appear that the receiving Office would be required to compare the missing part furnished later with the “missing part” as contained in the earlier application.”

“Rule 26

“69. The Working Group agreed that the wording of Rule 26.1 as proposed to be amended should be further amended so as to “give the applicant the opportunity” to make observations rather than “inviting” the applicant to do so.

“70. The Working Group agreed that Rule 26.5(b)(i) as proposed to be amended should be further amended so as to take into account that the time limit fixed under Rule 26.2 may be extended by the receiving Office. The Working Group agreed further that Rule 26.2(b)(ii) should be reviewed with a view to its possible deletion, noting that Article 14(2) required the sending of an invitation to correct as a condition for considering the application withdrawn where the applicant failed to correct the international application within the prescribed time limit.

“Existing Rule 20.8

“71. One delegation suggested that the provisions of existing Rule 20.8 be split into two separate provisions: one provision would cover the situation in which the receiving Office realized itself that it had made an error, and the other provision would cover the situation in which the receiving Office only realized that it had made an error after this had been pointed out to it by the applicant. The Working Group agreed that the International Bureau should consider whether the provision should be split and where in Rule 20 the provision(s) should be included.”

CONFORM PCT “MISSING PART” REQUIREMENTS TO THOSE OF THE PLT

8. The present document contains revised texts of the proposals related to “missing part” requirements contained in the Annex to document PCT/R/WG/4/2. The proposals have been further revised so as to take into account the discussions and agreements reached at the fourth session of the Working Group as summarized in paragraph 7, above. As in the case of the proposals contained in document PCT/R/WG/4/2, the further revised proposals take into account, as was suggested in document PCT/R/WG/2/6, that there is no intention to proceed, until a future session of the Working Group, with certain other PLT related proposals which were also contained in Annex I to document PCT/R/WG/1/5, such as proposals to align the PCT filing date requirements with regard to claims, “drawing as description,” and replacement of description and drawing by reference to previously filed application to those of the PLT.

Structure of Rule 20

9. In the context of “missing part” requirements, it is proposed to revise Rule 20 so as to move to the Administrative Instructions matters of detail related to the stamping of dates, etc., which are presently dealt with in Rules 20.1 to 20.3, and to leave the Rule to deal with the more significant question of the according of the international filing date. The existing provisions of the Rule would be renumbered accordingly. A new provision would be added as Rule 20.3(c) and (d) dealing with the question of subsequent compliance with Article 11(1). Rule 20.5 as amended would deal with missing parts, including the case where the missing part is completely contained in an earlier application the priority of which is claimed (see below). The proposed amendments would align the order of the provisions dealing with the according of the international filing date with the (logical) order in which a receiving Office determines whether and which date to accord as the international filing date.

International filing date where missing part is filed

10. Under PLT Article 5(6)(a), later submission (within certain time limits) of a missing part of the description or a missing drawing results in according as the filing date the date on which the Office has received the missing part of the description or the missing drawing, or the date on which all the filing date requirements are complied with, whichever is later. The same principle is applied under the PCT where sheets (description, claims, drawings) pertaining to the same application are not received on the same day. However, while the Treaty (PCT Article 14(2)) expressly deals with the case of missing drawings, neither the Treaty nor the Regulations specifically deal with the according (or correction) of an international filing date where sheets other than missing drawings are received later than the date on which papers were first received. This matter is expressly dealt with only in the Administrative Instructions (see Section 309 of the Administrative Instructions) and in the Receiving Office Guidelines (see paragraphs 200 to 207 of the Receiving Office Guidelines). In order to clarify the procedure, it is proposed to deal with this important matter in the Regulations (rather than in the Administrative Instructions and the Receiving Office Guidelines) and to amend Rule 20 accordingly (see Rule 20.5 as proposed to be amended).

International filing date where missing part is completely contained in earlier application

11. The main difference between the “missing part” requirements of the PLT and those of the PCT is that, under the PLT, the applicant can rectify the omission, at the time of filing, of a part of the description or of a drawing without loss of the filing date if the application claims the priority of an earlier application and the missing part of the description or the missing drawing is completely contained in that earlier application (see PLT Article 5(6) and PLT Rule 2(3) and (4)). There is no equivalent provision in the PCT. It is proposed to amend the PCT Regulations by adding new Rule 20.5(e) so as to align PCT requirements to those of the PLT.

Alignment of certain related requirements under the PCT with those under the PLT

12. In the context of “missing part” type requirements, it is also proposed to align certain related requirements under the PCT with those under the PLT, in particular time limits for compliance with non-filing date related requirements (see Rule 26 as proposed to be amended).

13. The Working Group is invited to consider the proposals contained in the Annex to this document.

[Annex follows]

ANNEX

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:
 “MISSING PART” REQUIREMENTS

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Rule 4

The Request (Contents)

4.1 *Mandatory and Optional Contents; Signature*

(a) and (b) [No change]

(c) The request may contain:

(i) and (ii) [No change]

(iii) declarations as provided in Rule 4.17.

(iv) a statement as provided in Rule 4.18.

[COMMENT: The proposed addition of item (iv) is consequential on the proposed addition of new Rule 4.18, below. See also Comment on proposed new Rule 20.5(e), below.]

(d) [No change]

4.2 to 4.17 [No change]

4.18 Statement for the Purposes of Rule 20.5(e)

The request may contain a statement, for the purposes of Rule 20.5(e), that the contents of any earlier application whose priority is claimed in the international application are incorporated by reference in the international application, subject to confirmation by a written notice submitted to the receiving Office before the expiration of the applicable time limit under Rule 20.5(c), and that any statement which is not so confirmed before the expiration of that time limit is to be considered as if it had not been made.

[COMMENT: See Comment on Rule 20.5(e) below). New Rule 4.18 is modeled in part on paragraph (b) of present Rule 4.9.]

4.19 ~~4.18~~ *Additional Matter*

(a) The request shall contain no matter other than that specified in Rules 4.1 to 4.18 ~~4.17~~, provided that the Administrative Instructions may permit, but cannot make mandatory, the inclusion in the request of any additional matter specified in the Administrative Instructions.

(b) If the request contains matter other than that specified in Rules 4.1 to 4.18 ~~4.17~~ or permitted under paragraph (a) by the Administrative Instructions, the receiving Office shall *ex officio* delete the additional matter.

[COMMENT: The renumbering is consequential on the proposed addition of new Rule 4.18 (see above). See also Comment on proposed Rule 20.5(e), below.]

Rule 12

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

12.1 and 12.2 [No change]

12.3 *Translation for the Purposes of International Search*

(a) and (b) [No change]

(c) Where, by the time the receiving Office sends to the applicant the notification under Rule [20.2\(c\)](#) ~~20.5(e)~~, the applicant has not furnished a translation required under paragraph (a), the receiving Office shall, preferably together with that notification, invite the applicant:

[COMMENT: The renumbering is consequential on the proposed renumbering of present Rule 20.5, below.]

(i) and (ii) [No change]

(d) and (e) [No change]

12.4 [No change]

Rule 20

International Filing Date

Receipt of the International Application

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraphs 47 and 48.]

~~20.1—Date and Number~~

~~(a) Upon receipt of papers purporting to be an international application, the receiving Office shall indelibly mark the date of actual receipt on the request of each copy received and the international application number on each sheet of each copy received.~~

~~(b) The place on each sheet where the date or number shall be marked, and other details, shall be specified in the Administrative Instructions.~~

~~20.2—Receipt on Different Days~~

~~(a) In cases where all the sheets pertaining to the same purported international application are not received on the same day by the receiving Office, that Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the papers completing the international application were received, provided~~

~~(i) where no invitation under Article 11(2)(a) to correct was sent to the applicant, the said papers are received within 30 days from the date on which sheets were first received;~~

~~(ii) where an invitation under Article 11(2)(a) to correct was sent to the applicant, the said papers are received within the applicable time limit under Rule 20.6;~~

~~(iii) in the case of Article 14(2), the missing drawings are received within 30 days from the date on which the incomplete papers were filed;~~

~~(iv) the absence or later receipt of any sheet containing the abstract or part thereof shall not, in itself, require any correction of the date marked on the request.~~

~~(b) Any sheet received on a date later than the date on which sheets were first received shall be marked by the receiving Office with the date on which it was received.~~

~~20.3 *Corrected International Application*~~

~~In the case referred to in Article 11(2)(b), the receiving Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the last required correction was received.~~

20.1 ~~20.4~~ *Determination Under Article 11(1)*

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 49. Apart from the renumbering, no change is proposed to the present Rule, but the text is reproduced below for convenient reference.]

(a) [No change] Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers comply with the requirements of Article 11(1).

[Rule 20.1, continued]

(b) [No change] For the purposes of Article 11(1)(iii)(c), it shall be sufficient to indicate the name of the applicant in a way which allows his identity to be established even if the name is misspelled, the given names are not fully indicated, or, in the case of legal entities, the indication of the name is abbreviated or incomplete.

(c) [No change] For the purposes of Article 11(1)(ii), it shall be sufficient that the part which appears to be a description (other than any sequence listing part thereof) and the part which appears to be a claim or claims be in a language accepted by the receiving Office under Rule 12.1(a).

(d) [No change] If, on October 1, 1997, paragraph (c) is not compatible with the national law applied by the receiving Office, paragraph (c) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1997. The information received shall be promptly published by the International Bureau in the Gazette.

20.2 ~~20.5~~ *Positive Determination* *Under Article 11(1)*

[COMMENT: Renumbering and clarification of the title only.]

(a) If the determination under Article 11(1) is positive, the receiving Office shall stamp ~~on~~ the request as prescribed by the Administrative Instructions. ~~the name of the receiving Office and the words “PCT International Application,” or “Demande internationale PCT.”~~ If

[Rule 20.2(a), continued]

~~the official language of the receiving Office is neither English nor French, the words “International Application” or “Demande internationale” may be accompanied by a translation of these words in the official language of the receiving Office.~~

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 50. Paragraphs (b) and (c) are not proposed to be amended but the text is reproduced below for convenient reference.]

(b) [No change] The copy whose request has been so stamped shall be the record copy of the international application.

(c) [No change] The receiving Office shall promptly notify the applicant of the international application number and the international filing date. At the same time, it shall send to the International Bureau a copy of the notification sent to the applicant, except where it has already sent, or is sending at the same time, the record copy to the International Bureau under Rule 22.1(a).

20.3 ~~20.6~~ *Correction Under Article 11(2) Invitation to Correct*

(a) The invitation to correct under Article 11(2)(a) shall specify the requirement provided for under Article 11(1) which, in the opinion of the receiving Office, has not been fulfilled.

[Rule 20.3(a), continued]

[COMMENT: Renumbering and clarification only. See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 51.]

(b) The receiving Office shall send the invitation referred to in paragraph (a) promptly. In the invitation, the receiving Office shall invite ~~shall mail the invitation to~~ the applicant to furnish the required correction, and to make observations, if any, within the time limit under paragraph (d)(i) ~~and shall fix a time limit, reasonable under the circumstances of the case, for filing the correction. The time limit shall not be less than 10 days, and shall not exceed one month, from the date of the invitation.~~ If that ~~such~~ time limit expires after the expiration of 12 months ~~one year~~ from the filing date of any application whose priority is claimed, the receiving Office shall ~~may~~ call this circumstance to the attention of the applicant.

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 52. It is also proposed to change the term “one year” to “12 months” for consistency with Rule 4.10(a)(i) and Article 4(C)(1) of the Paris Convention.]

(c) Where one or more of the requirements under Article 11(1) are not complied with at the time of receipt of the purported international application but are complied with on a later date falling within the applicable time limit under paragraph (d), the international filing date shall, subject to Rule 20.5, be that later date and the receiving Office shall proceed as provided in Rule 20.2.

[Rule 20.3(c), continued]

[COMMENT: See PLT Article 5(4). It is proposed to add new paragraphs (c) and (d) so as to clarify the procedure with regard to the according of the international filing date in case of subsequent compliance with Article 11(1) requirements, in particular in view of proposed new Rule 20.5 (according of the international filing date in case a missing part or missing drawing is filed, including the case that a missing part or missing drawing is completely contained in the earlier application the priority of which is claimed; see below).]

(d) The time limit referred to in paragraphs (b) and (c) shall be:

(i) where an invitation referred to in paragraph (a) was sent to the applicant, [one month] [two months] from the date of the invitation;

[COMMENT: See PLT Article 5(3) and PLT Rule 2(1). The time limit has been retained in square brackets for further consideration by the Working Group (see the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 54).]

(ii) where no invitation referred to in paragraph (a) was sent to the applicant, [one month] [two months] from the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

[COMMENT: See PLT Article 5(4) and PLT Rule 2(2). While the PLT provides for the time limit under item (ii) only in cases where no invitation was sent to the applicant “because indications allowing the applicant to be contacted by the Office have not been filed”, it is proposed to apply that time limit to all cases where no invitation has been sent to the applicant. The time limit has been retained in square brackets for further consideration by the Working Group (see the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 54).]

20.4 ~~20.7~~ *Negative Determination* Under Article 11(1)

(a) If the receiving Office does not ~~;~~ receive a correction under Article 11(2) within the applicable ~~prescribed~~ time limit under Rule 20.3(d), ~~receive a reply to its invitation to correct,~~ or if ~~a~~ the correction is furnished ~~offered~~ by the applicant but the application still does not fulfill the requirements provided for under Article 11(1), the receiving Office ~~it~~ shall:

[COMMENT: Consequential on the proposed amendment of present Rule 20.6 (renumbered Rule 20.3) and the proposed addition of new Rule 20.3(c) and (d). At the fourth session of the Working Group, one delegation suggested that this provision should also cover cases in which no observations from the applicant were received by the receiving Office within the applicable time limit (see the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 55). However, it is not proposed to follow this suggestion since Article 11(2) refers only to the filing and the receipt of the “required correction.” Rule 20.8 (renumbered 20.6, see below) would apply should the receiving Office, on the basis of the applicant’s “observations,” realize that it has erred in issuing an invitation to correct since the requirements under Article 11(1) were fulfilled when the papers were first received.]

(i) promptly notify the applicant that the ~~his~~ application is not and will not be treated as an international application and shall indicate the reasons therefor,

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 55. Upon further consideration, it is not any longer proposed to amend item (i) so as to align the terminology with that used in PLT Article 5(4)(b). Items (ii) to (iv) are not proposed to be amended but are reproduced below for convenient reference.]

(ii) [No change] notify the International Bureau that the number it has marked on the papers will not be used as an international application number,

[Rule 20.4(a), continued]

(iii) [No change] keep the papers constituting the purported international application and any correspondence relating thereto as provided in Rule 93.1, and

(iv) [No change] send a copy of the said papers to the International Bureau where, pursuant to a request by the applicant under Article 25(1), the International Bureau needs such a copy and specially asks for it.

(b) Any correction under Article 11(2) received by the receiving Office after the expiration of the applicable time limit under Rule 20.3(d) but before that Office sends a notification to the applicant under paragraph (a)(i) shall be taken into account in determining whether the papers purporting to be an international application comply with the requirements under Article 11(1).

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 53. Note that the date of actual receipt of the required correction would be accorded as the international filing date even if the required correction was received after the expiration of the applicable time limit under Rule 20.3(d).]

20.5 Missing Part of Description, Claims or Drawings

(a) Where, in determining whether the papers purporting to be an international application comply with the requirements under Article 11(1), the receiving Office finds that any of the following parts of the application appears to be missing from the international application (“missing part”):

[Rule 20.5(a), continued]

(i) a part of the description;

(ii) a part of the claim where there is only one claim;

(iii) a part of a claim or claims where there are several claims, including the case where an entire claim or entire claims appear to be missing;

(iv) a part of a drawing or of the drawings, including the case where an entire drawing or entire drawings appear to be missing;

that Office shall promptly invite the applicant to furnish the missing part (if any), and to make observations, if any, within the time limit under paragraph (c)(i). If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call this circumstance to the attention of the applicant.

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraphs 57 and 58. It does not appear necessary, as discussed by the Working Group at its fourth session, additionally to include an outer time limit under this provision.]

[Rule 20.5, continued]

(b) Where the applicant furnishes a missing part to the receiving Office within the applicable time limit under paragraph (c), that part shall be included in the international application and, subject to paragraphs (d) and (e), the international filing date shall be the date on which the receiving Office received that missing part or the date on which all of the requirements of Article 11(1) are complied with, whichever is later.

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 56.]

(c) The time limit referred to in paragraphs (a) and (b) shall be:

(i) where an invitation referred to in paragraph (a) was sent to the applicant, [one month] [two months] from the date of the invitation;

(ii) where no invitation referred to in paragraph (a) was sent to the applicant, [one month] [two months] from the date on which one or more elements referred to in Article 11(1) were first received by the receiving Office.

[COMMENT: With regard to the applicable time limit, see PLT Article 5(6) and PLT Rule 2(3)(i) and (ii). The time limits have been retained in square brackets for further consideration by the Working Group (see the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 61).]

(d) Where, in accordance with paragraph (b), the receiving Office has accorded as the international filing date, or has corrected the international filing date to, the date on which the receiving Office received the missing part and has notified the applicant accordingly under

[Rule 20.5(d), continued]

paragraph (f), the applicant may, in a notice submitted to the receiving Office within one month from the date of the notification under paragraph (f), request that the missing part be disregarded, in which case the missing part shall be considered not to have been furnished and the international filing date shall be the date on which all of the requirements of Article 11(1) are complied with.

[COMMENT: See PLT Article 5(6)(c). See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 64. The proposed wording (“request to disregard”) differs from that used in the PLT (“withdraw”) so as to avoid confusion with withdrawals under Rule 90bis.)]

(e) Where the international application, on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, claims the priority of an earlier application and the applicant furnishes a missing part under paragraph (b), the international filing date shall, upon request of the applicant submitted to the receiving Office within the applicable time limit under paragraph (c), be the date on which all the requirements of Article 11(1) are complied with, provided that:

[COMMENT: See the summary of the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 66.]

(i) a copy of the earlier application is furnished to the receiving Office within the applicable time limit under paragraph (c);

[COMMENT: See PLT Rule 2(4)(i). Upon further review by the International Bureau, as invited by the Working Group (see the summary of the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 67), the present draft retains the proposal, as was contained in document PCT/R/WG/4/2, not to include in paragraph (b) a requirement, as permitted under PLT Rule 2(4)(ii), that the applicant, upon invitation by the

[Rule 20.5(e)(i), continued]

Office, must file a certified copy of the earlier application (the “priority document”), in addition to the “simple” copy of the earlier application required to be furnished. The furnishing of a “simple” copy of the earlier application would appear sufficient for the purposes of the international phase; the consequences in case of any discrepancies between the “simple” copy and the certified copy of the earlier application would have to be dealt with in the national phase.]

(ii) where the earlier application is not in the same language accepted by the receiving Office under Rule 12.1(a) as the international application, a translation of the earlier application into that language is furnished to the receiving Office within the applicable time limit under paragraph (c);

[COMMENT: See PLT Rule 2(4)(iii).]

(iii) the missing part is completely contained in the earlier application;

[COMMENT: See PLT Rule 2(4)(iv).]

(iv) the international application, on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, contained a statement under Rule 4.18 which subsequently was confirmed in accordance with that Rule;

[COMMENT: See PLT Rule 2(4)(v). See also proposed new Rule 4.18, above, and the summary of the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 66.]

[Rule 20.5(e), continued]

(v) an indication is furnished to the receiving Office within the applicable time limit under paragraph (c) as to where, in the earlier application or in the translation referred to in item (iii), the missing part is contained.

[COMMENT: See PLT Rule 2(4)(vi).]

(f) In the cases referred to in paragraphs (b) and (d), the receiving Office shall promptly notify the applicant of the international filing date accorded or corrected under those paragraphs. At the same time, it shall send to the International Bureau a copy of the notification sent to the applicant, except where it has already sent, or is sending at the same time, the record copy to the International Bureau under Rule 22.1(a).

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 60. The second sentence is modeled on Rule 20.2(b), second sentence.]

20.6 ~~20.8~~ *Error by the Receiving Office*

[No change] If the receiving Office later discovers, or on the basis of the applicant's reply realizes, that it has erred in issuing an invitation to correct since the requirements provided for under Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule 20.2 ~~20.5~~.

[Rule 20.6, continued]

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraphs 46 and 71. Since the provisions under proposed Rule 20.5 concerning the time limits for furnishing a missing part and concerning the according of the international filing date are the same in both situations (that is, the situation where the receiving Office realized itself that it had made an error and the situation where the error had been pointed out to the receiving Office by the applicant), a split into two separate provisions, as suggested by one delegation at the fourth session of the Working Group, would appear to provide no benefit.]

20.7 ~~20.9~~ *Certified Copy for the Applicant*

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 46. No change is otherwise proposed to the present Rule but the text is reproduced below for convenient reference.]

[No change] Against payment of a fee, the receiving Office shall furnish to the applicant, on request, certified copies of the international application as filed and of any corrections thereto.

Rule 22

Transmittal of the Record Copy and Translation

22.1 *Procedure*

(a) [No change]

(b) If the International Bureau has received a copy of the notification under Rule [20.2\(c\)](#) ~~20.5(e)~~ but is not, by the expiration of 13 months from the priority date, in possession of the record copy, it shall remind the receiving Office that it should transmit the record copy to the International Bureau promptly.

(c) If the International Bureau has received a copy of the notification under Rule [20.2\(c\)](#) ~~20.5(e)~~ but is not, by the expiration of 14 months from the priority date, in possession of the record copy, it shall notify the applicant and the receiving Office accordingly.

[COMMENT: The proposed renumbering is consequential to the proposed renumbering of present Rule 20.5 above.]

(d) to (h) [No change]

22.2 and 22.3 [No change]

Rule 26

Checking by, and Correcting Before, the Receiving Office of Certain Elements of the International Application

26.1 Invitation Under Article 14(1)(b) to Correct ~~Time limit for Check~~

(a) The receiving Office shall, ~~issue the invitation to correct provided for in Article 14(1)(b)~~ as soon as possible, preferably within one month from the receipt of the international application, invite the applicant, under Article 14(1)(b), to furnish the required correction, and give the applicant the opportunity to make observations, within the time limit under Rule 26.2.

[COMMENT: The title is proposed to be amended so as to correctly cover the subject matter of paragraph (a). See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 69; see also PLT Article 6(7).]

(b) ~~[Deleted] If the receiving Office issues an invitation to correct the defect referred to in Article 14(1)(a)(iii) or (iv) (missing title or missing abstract), it shall notify the International Searching Authority accordingly.~~

[COMMENT: It is proposed to move the content of present paragraph (b) to the Administrative Instructions.]

26.2 *Time Limit for Correction*

The time limit referred to in Rule 26.1 Article 14(1)(b) ~~shall be reasonable under the circumstances and~~ shall be [one month] [two months] ~~fixed in each case by the receiving Office. It shall not be less than one month~~ from the date of the invitation to correct. It may be extended by the receiving Office at any time before a decision is taken.

[Rule 26.2, continued]

[COMMENT: See PLT Article 6(7) and PLT Rule 6(1). The time limits have been retained in square brackets for further consideration by the Working Group (see also the Comments on the time limits under proposed Rules 20.3(d) and 20.5(c), above).]

26.2*bis* to 26.3*bis* [No change]

26.3*ter* *Invitation to Correct Defects Under Article 3(4)(i)*

(a) Where the abstract or any text matter of the drawings is filed in a language which is different from the language of the description and the claims, the receiving Office shall, unless

(i) and (ii) [No change]

invite the applicant to furnish a translation of the abstract or the text matter of the drawings into the language in which the international application is to be published. Rules 26.1~~(a)~~, 26.2, 26.3, 26.3*bis*, 26.5 and 29.1 shall apply *mutatis mutandis*.

[COMMENT: The proposed renumbering is consequential to the proposed renumbering of present Rule 26.1(a), above.]

(b) [No change]

[Rule 26.3ter, continued]

(c) Where the request does not comply with Rule 12.1(c), the receiving Office shall invite the applicant to file a translation so as to comply with that Rule. Rules 3, 26.1(~~a~~), 26.2, 26.5 and 29.1 shall apply *mutatis mutandis*.

[COMMENT: The proposed renumbering is consequential to the proposed renumbering of present Rule 26.1(a) above.]

(d) [No change]

26.4 [No change]

26.5 *Decision of the Receiving Office*

The receiving Office shall decide whether the applicant has submitted the correction within the time limit [applicable](#) under Rule 26.2, and, if the correction has been submitted within that time limit, whether the international application so corrected is or is not to be considered withdrawn, provided that no international application shall be considered withdrawn for lack of compliance with the physical requirements referred to in Rule 11 if it complies with those requirements to the extent necessary for the purpose of reasonably uniform international publication.

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 70.]

~~26.6 *Missing Drawings*~~

~~(a) If, as provided in Article 14(2), the international application refers to drawings which in fact are not included in that application, the receiving Office shall so indicate in the said application.~~

[COMMENT: It is proposed to move the content of paragraph (a) to the Administrative Instructions.]

~~(b) The date on which the applicant receives the notification provided for in Article 14(2) shall have no effect on the time limit fixed under Rule 20.2(a)(iii).~~

[COMMENT: The proposed deletion of present paragraph (b) is consequential on the proposed amendment of Rule 20 (see above).]

Rule 51

Review by Designated Offices

51.1 Time Limit for Presenting the Request to Send Copies

The time limit referred to in Article 25(1)(c) shall be two months computed from the date of the notification sent to the applicant under Rule [20.4\(i\)](#) ~~20.7(i)~~, 24.2(c) or 29.1(ii).

[COMMENT: The proposed renumbering is consequential to the proposed renumbering of present Rule 20.7 above.]

51.2 Copy of the Notice

Where the applicant, after having received a negative determination under Article 11(1), requests the International Bureau, under Article 25(1), to send copies of the file of the purported international application to any of the named Offices he has attempted to designate, he shall attach to his request a copy of the notice referred to in Rule [20.4\(i\)](#) ~~20.7(i)~~.

[COMMENT: The proposed renumbering is consequential to the proposed renumbering of present Rule 20.7 above.]

51.3 [No change]

[End of Annex and of document]