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RESTORATION OF THE RIGHT OF PRIORITY

Document prepared by the International Bureau

INTRODUCTION

1. The Committee on Reform of the PCT (“the Committee”), at its first and second sessions, and the Working Group, at its first, second, third, fourth and fifth sessions, considered proposals for amendment of the Regulations under the PCT¹ relating to the restoration of the right of priority. The reports of the sessions of the Committee and the summaries by the Chair of the sessions of the Working Group set out the status of the matters discussed by the Committee and the Working Group, respectively, noting the range of views expressed and areas where agreement had been reached, and identifying what future work needed to be undertaken (see documents PCT/R/1/26, paragraphs 72 to 76; PCT/R/2/9, paragraphs 111 to 123 and 125; PCT/R/WG/1/9, paragraphs 22 and 23; PCT/R/WG/2/12, paragraphs 54 to 56; PCT/R/WG/3/5, paragraphs 13 to 27; PCT/R/WG/4/14, paragraphs 35 to 44; PCT/R/WG/5/13, paragraphs 28 to 62).

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. 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.

2. The Working Group's discussions at its last (fifth) session (see document PCT/R/WG/5/13, paragraphs 28 to 62) are outlined in the following paragraphs:

“28. Discussions were based on document PCT/R/WG/5/7.

“29. Many delegations and representatives of users welcomed the general approach taken in the document, noting that it would further align the provisions of the PCT with those of the PLT. Certain delegations emphasized the need to ensure that the reservation provision in respect of the effect in the national phase for their countries was adequate. While some delegations stated that they would have preferred a simpler approach whereby the same criterion for restoration of the priority right was applied by all Offices, it was recognized that agreement on a single criterion was not achievable at the present time and that the proposed approach was thus a good compromise. Several delegations and representatives of users expressed the hope that a clearer form of drafting could be found to make the numerous possibilities involved easier to understand.

“30. One user representative hoped that a way could be found, possibly by filing with the receiving Office of the International Bureau, to afford applicants the choice of having either the “due care” criterion or the “unintentionality” criterion applied during the international phase. Two delegations confirmed that their national Offices provided such a choice under national law and that they also intended to do so in their capacity as PCT receiving Offices.

“31. Several delegations expressed concern that inclusion of provisions relating to the restoration of the right of priority may conflict with Articles 8(2)(a) and 2(xi) which related the terms “priority claim” and “priority date” to Article 4 of the Paris Convention, which provided for a priority period of 12 months with no provision for restoration where that period was exceeded. Two delegations felt that the introduction of a restoration provision under the PCT would represent such a fundamental change to the system that it ought to be addressed in the Articles of the Treaty itself rather than in the Regulations.

“32. The Working Group noted that Rule 4.10 already allowed applicants to claim the priority, in international applications, of earlier applications filed in countries which were not members of the Paris Convention but were members of the World Trade Organization (WTO). Rule 4.10(d) provided the possibility for transitional reservations as to the application of the provision concerned in order to allow Contracting States as designated States to adapt their national laws in order to conform to the provision when it had been adopted by the Assembly. A similar approach could be provided in relation to the changes now under consideration. One delegation expressed its concern that, if a significant number of States were to take advantage of such a transitional reservation provision, the changes would lose much of their effectiveness. Other delegations requested the inclusion of a further transitional reservation provision for receiving Offices whose applicable national law was not compatible with the proposed amendments.

“33. One delegation suggested that the term “priority period” should be defined for the purposes of the proposed amendments. It was noted that the same term was used in the PLT and that it derived directly from the Paris Convention.

“34. The Working Group noted that, under the proposals, the claimed priority date would be used throughout the international phase for the purpose of calculating time limits (for example, those for international publication and national phase entry), even if restoration of the right of priority was not requested by the applicant during the international phase or if restoration was requested but refused by the receiving Office, provided that the international application was filed within two months from the date on which the priority period expired. The Working Group also noted that such retention of a priority claim did not affect the question of relevant prior art for the purposes of the international search under Rule 33, since the relevant date for the purposes of the international search was in any case the international filing date. It was agreed, however, that Rule 33.1(c) should be reviewed with a view to specifically drawing attention, in the international search report, to written disclosures published within 12 to 14 months prior to the international filing date.

“35. The Working Group agreed to refer the question of relevant prior art for the purposes of the written opinion of the International Searching Authority (Rule 43*bis*.1) and the international preliminary examination (Rule 64) to the Meeting of International Authorities under the PCT for consideration via its electronic forum, with a view to the development of a proposal for submission to the next session of the Working Group. It was noted that item (ii) of Rule 64.1(b), relating to cases where the international application “validly” claimed the priority of an earlier application might need to be reviewed in the light of the proposed amendments.

“36. One user representative pointed out that the term of a patent was calculated, in most jurisdictions, from the international filing date, and that allowing priority to be claimed up to 14 months from the filing date of an earlier application would, in effect, enable an extension of term of up to two months. The representative accordingly suggested that restoration be subject to a disclaimer by the applicant of such an extension of term.

“37. In response to a suggestion by one delegation that the terminology be changed to refer to the “restoration of the right to claim priority” rather than “restoration of the right of priority,” the Secretariat recalled that this matter had been discussed extensively at previous sessions of the Working Group and that use of the term “right of priority” had been agreed, noting that it was used in the PLT.

“38. The Working Group agreed that the approach taken in the proposals should be further developed and invited the Secretariat to prepare revised proposals for consideration at its next session, taking into account the matters noted above and the comments and suggestions as to particular provisions noted in the following paragraphs.

Rule 4.10

“39. The Secretariat explained that the proposal to delete the words “, being a date falling within the period of 12 months preceding the international filing date” in Rule 4.10(a)(i) was intended to reflect the distinction between an invitation to correct a defect in a priority claim and an invitation to request restoration of a right of priority.

However, on further reflection, it was apparent that this proposal would need to be reconsidered in order to ensure that an applicant could be invited to correct a priority claim which erroneously indicated a filing date of the earlier application being later than the international filing date.

Rule 26bis.2

“40. One delegation suggested that it would be more appropriate to “notify” the applicant of the possibility of requesting the restoration of the right of priority than to “invite” the applicant to submit a request for such restoration.

“41. One delegation pointed out that no invitation to submit a request for restoration of the right of priority should be needed where the applicant had already submitted such a request or if the time limit for making such a request had expired.

“42. The Working Group agreed that the time limit under Rule 26bis.2(a) should be 14 months from the priority date (or two months from the date on which the priority period expired; see paragraph 45, below) or one month from the date of the invitation, whichever expired later.

“43. One delegation stated that the use of the term “canceled” was not appropriate in Rule 26bis.2(b) to (d).

“44. Several delegations were of the opinion that information concerning a priority claim that has been canceled should be published in all cases under Rule 26bis.2(d), and not only upon request made by the applicant.

Rule 26bis.3

“45. There was no support for the suggestion made by one delegation that the period for submitting a request for restoration of a right of priority under Rule 26bis.3(a) should, consistently with the time limit for correcting a priority claim under Rule 26bis.2(b), be increased to 16 months from the priority date. However, it was agreed that the way in which the time limit was expressed in item (i) of Rule 26bis.3(a) (“14 months from the date on which the earlier application was filed”) and in the chapeau of that Rule (“two months from [the date on which the priority period expired]”) should be made consistent, in particular taking into account the possibility that the last day of the priority period might fall on an official holiday or a non-working day.

“46. Several delegations and a representative of users suggested that the International Bureau should review decisions under Rule 26bis.3(a)(iii) with a view to establishing a quality standard applicable to all receiving Offices. They also suggested that, in order to promote uniform standards, the terms “due care” and “unintentional” as used in that Rule should be defined or at least explained in the Regulations or guidelines. The Working Group agreed that the Secretariat should consider this matter further.

“47. Several delegations and representatives of users supported a suggestion by one delegation that, in order to promote consistency of standards, copies of key decisions of Offices concerning requests for restoration based on the “due care” and “unintentionality” criteria should be made available in a central depository for

consultation by Offices, applicants and third parties. One delegation proposed that the said central depository could be supplemented by relevant national legal provisions on the criteria used. The Secretariat agreed that such a facility could be made available on WIPO's Website.

“48. There was no support for the suggestion of one representative of users that the Rules should prescribe a maximum fee for a request for restoration of the right of priority. The Working Group noted that, under Rule 26bis.3(c), an Office which provided for restoration on both the criterion of “unintentionality” and the criterion of “due care” would be free to charge different fees in respect of the two cases.

“49. With regard to the possibility for the receiving Office to require that a declaration or other evidence in support of the statement of reasons be furnished under Rule 26bis.3(d), one delegation favored restoration of the right of priority on the basis of a simple statement by the applicant that the failure to comply with the priority period was unintentional. The delegation suggested that such a statement should also be sufficient for restoration on the “unintentionality” criterion under the PCT procedure and that this be made clear, for example, in the Administrative Instructions. Several delegations indicated that under their legislation a formal declaration and possibly the furnishing of evidence would be required rather than a simple statement, while other delegations observed that they had as yet no practice in this area. After some discussion, it was agreed that the question of what information or evidence each receiving Office was entitled to require in support of a request for restoration of the right of priority should be left to national law and practice.

“50. One delegation suggested that Rule 26bis.3(d) should be worded so as to encourage applicants to file evidence required under Rule 26bis.3(a)(ii) as soon as possible, preferably together with the filing of the application. In addition, the receiving Office should be permitted to combine the giving of an opportunity to make observations on an intended refusal provided for in Rule 26bis.3(e) with an invitation to file evidence under Rule 26bis.3(d).

“51. In reply to a question by a representative of users, the Secretariat confirmed that, under Rule 26bis.3(g), information on the criterion or criteria applied by each Contracting State would be published in the PCT Gazette as well as in the PCT Applicant's Guide and the PCT Newsletter.

Rule 49ter.1

“52. A suggestion by one delegation and a representative of users that Rule 49ter.1(c) should be deleted to ensure that a restoration of the right of priority by a receiving Office could not be reversed in the national phase was opposed by another delegation. In reply to a query by a representative of users, the International Bureau explained that the reference to “reasonable doubts” was modeled on terminology used in the PLT.

“53. One representative of users suggested that the word “only” should be added before the words “if it has reasonable doubts” in Rule 49ter.1(c). The representative also suggested that wording similar to that used in Rule 51bis.2(b) be considered.

“54. One delegation observed that Rule 49ter.1(c) was directed only to designated Offices whereas other provisions of Rule 49ter were directed, more generally, to designated States. The Secretariat suggested that the wording used throughout Rule 49ter should be reviewed for consistency and to ensure that it was clear what principles would need to be applied under the national law in general.

“55. The Working Group agreed that a designated Office should not be permitted under Rule 49ter.1(c) to review a decision of the receiving Office to restore a right of priority merely because the information or evidence required by that receiving Office was not the same kind of information or evidence as that required by the designated Office under its national law. Instead, a review under that Rule should only be possible where the designated Office had reasonable doubts as to whether the decision of the receiving Office to restore the right of priority based on that information or evidence was correct. The Secretariat noted that the use of the term “reasonable doubts” in this context was modeled on wording used in the PLT.

Rule 49ter.2

“56. One delegation suggested that a request for restoration of the right of priority which has been refused by the receiving Office under Rule 26bis should automatically be considered to be pending before each designated Office.

“57. One delegation suggested that Rule 49ter.2(b) should be worded so as to encourage applicants to file evidence required under Rule 49ter.2(b)(ii) as soon as possible, preferably together with the filing of the application. In addition, the designated Office should be permitted to combine the giving of an opportunity to make observations on an intended refusal provided for in Rule 49ter.2(c) with an invitation to file evidence under Rule 49ter.2(b)(ii).

“58. One delegation stated that, for consistency with Article 27(4), the word “shall” should be replaced by “may” in Rule 49ter.2(d).

“59. One delegation suggested that consideration should be given as to whether the term “that provision,” which referred to any of the provisions of paragraph (a), was appropriate in Rule 49ter.2(f), having regard to other provisions of Rule 49ter.2, for example, paragraph (e).

“60. There was no support for the suggestion made by one delegation that the time limit under Rule 49ter.2(a)(i) should be the applicable time limit under Article 22 instead of one month from that applicable time limit.

“61. One representative of users pointed out that a Contracting State which did not provide for restoration of the right of priority in respect of national applications could nevertheless provide for such restoration in respect of international applications in accordance with Rule 49ter.2, in which case it would not need to make a reservation under paragraph (f) of that Rule.

“62. In reply to a question by a delegation, the Secretariat confirmed that it was implicit in Rule 49ter.2(a) that the right of priority might be restored by one designated Office but not by others. The International Bureau observed that it was already inherent

from the territorial nature of patents, and the differences in national patent laws, that the scope and validity of a patent granted on a particular international application would not necessarily be the same in all Contracting States.”

3. As invited by the Working Group, revised proposals relating to the restoration of the right of priority, taking account of the suggestions made by delegations and representatives of users at the fifth session (see document PCT/R/WG/5/13, paragraphs 28 to 62, reproduced in paragraph 2, above) were prepared by the International Bureau accordingly and made available, in the form of a preliminary draft document, for comment by the Working Group and the International Authorities via the PCT reform electronic forum and the MIA (Meeting of International Authorities) electronic form, respectively. The further revised proposals contained in Annex I to this document take into account the comments received on the preliminary draft. Article 13 and Rule 14 of the PLT are reproduced, for ease of reference, in Annex II.

4. The main features of the draft proposals remain as outlined in document PCT/R/WG/5/7, as represented in the flowchart appearing on page 8, below, are outlined in the following paragraphs.

RETENTION OF PRIORITY CLAIM; RESTORATION OF RIGHT OF PRIORITY

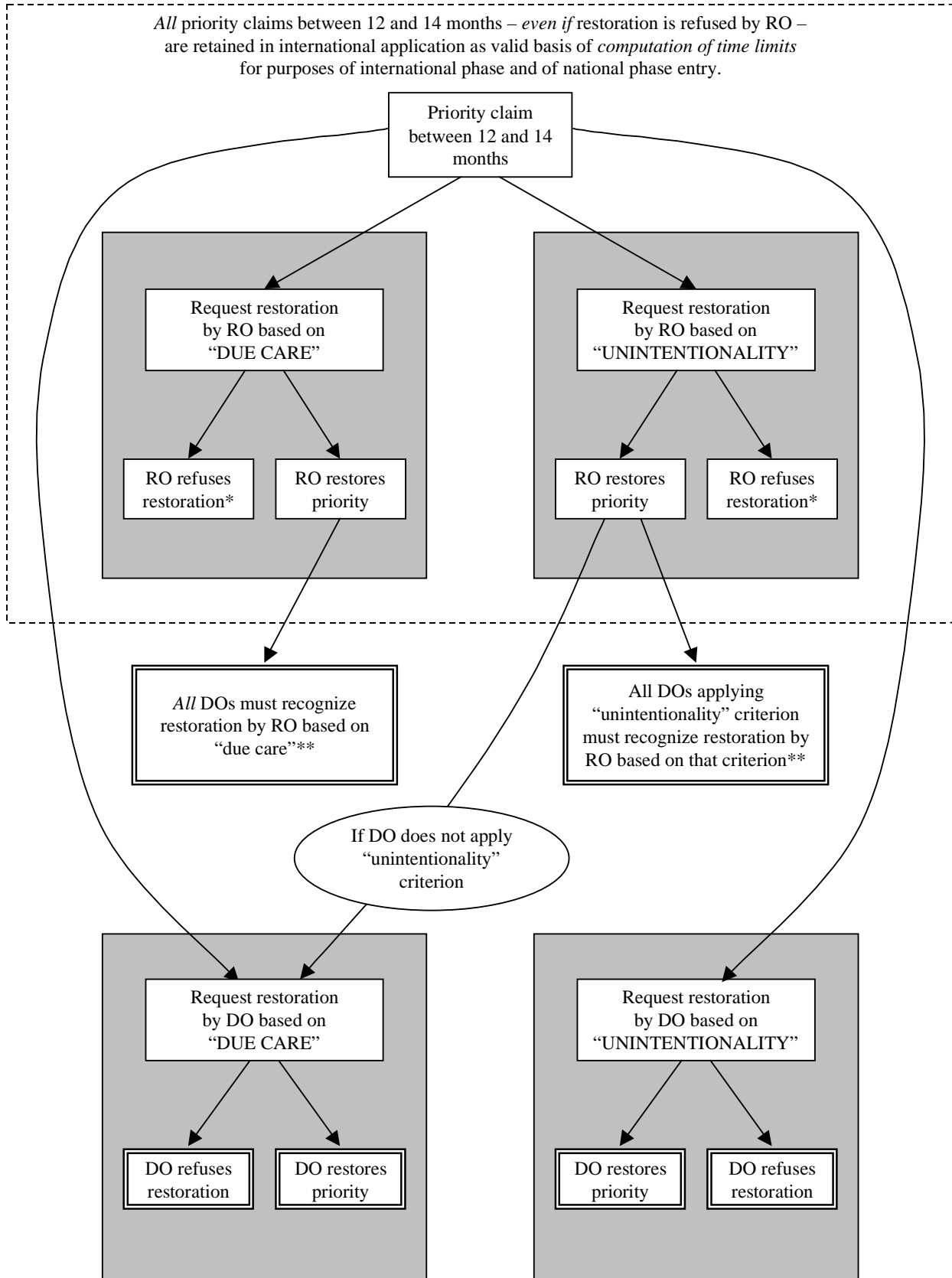
Automatic Retention of Priority Claim During International Phase

5. It is proposed to provide for the automatic retention, during the international phase, of a priority claim where the international application has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date. Such a priority claim would be retained irrespective of whether the applicant requests the receiving Office to restore the right of priority and even where such a request is made but refused by the receiving Office. Such a priority claim would therefore be taken into account during the international phase for the purposes of international search and international preliminary examination, and for the computation of time limits, including that for entry into the national phase.

Restoration of the Right of Priority by the Receiving Office during the International Phase

6. The applicant would have the possibility of requesting the receiving Office to restore the right of priority during the international phase. The receiving Office, when deciding on a request for restoration, would be free to apply either the more strict criterion of “due care” or the less strict criterion of “unintentionality.” Although not expressly stated in the proposed amended provisions, it is to be understood that a receiving Office could, if it wished, apply both criteria and leave the choice to the applicant as to which criterion is sought to be applied in a specific case. Furthermore, receiving Office would also be free to apply, upon request of the applicant, first the “due care” criterion and, if the receiving Office finds that that criterion was not complied with, the “unintentionality” criterion. Those understandings could, if necessary, be expressed by the Assembly in amending the Regulations.

RESTORATION OF RIGHT OF PRIORITY



* Refusal by RO does not preclude a subsequent request to DO based on either criterion.

** Restoration by RO is subject to review by DO where reasonable doubt that requirements were met.

7. It would be advantageous for the applicant to obtain a positive finding by the receiving Office on the stricter criterion of “due care” since such a finding would be effective in all designated States, unlike a finding on the less strict “unintentionality” criterion (see paragraph 9, below).

8. Concern has been previously expressed by several delegations that inclusion of provisions relating to the restoration of the right of priority may conflict with Articles 8(2)(a) and 2(xi), relating the terms “priority claim” and “priority date” to Article 4 of the Paris Convention, which provides for a priority period of 12 months with no provision for restoration where that period was exceeded. However, at its fifth session, the Working Group noted that Rule 4.10 already allowed applicants to claim the priority, in international applications, of earlier applications filed in countries which were not members of the Paris Convention but were members of the World Trade Organization (WTO) (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraphs 31 and 32). Accordingly, a precedent already exists in the PCT Regulations for the inclusion in international applications of a priority claim that is not as provided in Article 4 of the Stockholm Act of the Paris Convention.

Effect of Receiving Office Decision on Designated States

9. A decision by the receiving Office to restore a right of priority based on the criterion of “due care” would be effective in all designated States (subject to a transitional reservation provision). A decision by the receiving Office to restore a right of priority based on the criterion of “unintentionality” would be effective only in those designated States whose applicable national law provided for restoration of the right of priority based on that criterion.

Prior Art for the Purposes of International Search, the Establishment of the Written Opinion by the International Searching Authority and International Preliminary Examination

10. The Working Group, at its fifth session, noted that, under the proposals, the claimed priority date would be used throughout the international phase for the purpose of calculating time limits (for example, those for international publication and national phase entry), even if restoration of the right of priority was not requested by the applicant during the international phase or if restoration was requested but refused by the receiving Office, provided that the international application was filed within two months from the date on which the priority period expired. The Working Group also noted that such retention of a priority claim did not affect the question of relevant prior art for the purposes of the international search under Rule 33, since the relevant date for the purposes of the international search was in any case the international filing date. The Working Group did agree, however, that Rule 33.1(c) should be reviewed with a view to specifically drawing attention, in the international search report, to written disclosures published within 12 to 14 months prior to the international filing date (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 34, at the end).

11. Upon consideration, it would appear that no change to Rule 33.1(c) is needed since that Rule does not deal with the issue of written disclosures published earlier than the international filing date but later than the claimed priority date. Rather, that issue is covered by Section 507(d) of the Administrative Instructions (“Manner of Indicating Certain Special Categories of Documents Cited in the International Search Report”). With regard to international applications claiming the priority of an earlier application filed not within 12 months but within 14 months prior to the international filing date, it would appear that

Section 507 should be modified so as to provide for a special code (say, letter “R” for “Restoration” (of the right of priority)) to identify, in the international search report (in addition to the letter “P” used in accordance with Section 507(d)), any document whose publication date occurred earlier than the international filing date of the international application but later than the priority date claimed in that application where that claimed priority date falls within the 2-month period between 12 months and 14 months prior to the international filing date.

12. At its fifth session, the Working Group also agreed to refer the question of relevant prior art for the purposes of the written opinion of the International Searching Authority (Rule 43*bis*.1) and the international preliminary examination (Rule 64) to the Meeting of International Authorities under the PCT (MIA) for consideration via its electronic forum, with a view to the development of a proposal for submission to the next session of the Working Group (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 35). Following consultation with the International Authorities via the MIA electronic forum, it is proposed to amend Rule 64.1(b) so as to clarify the “relevant date” for the purposes of Rule 64.1(a) where the international application claims the priority of an earlier application but has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date. By virtue of Rule 43*bis*.1(b), this date would also be the “relevant date” for the purposes of establishing the written opinion by the International Searching Authority.

Restoration of the Right of Priority by Designated Office during the National Phase

13. All designated Offices (including elected Offices) would be obliged to provide for the restoration of the right of priority in the national phase (subject to a transitional reservation provision). As under the PLT and the provisions applicable to the receiving Office mentioned above, the national law applicable by the designated Office would have to provide for the restoration of the right of priority either on the basis of the more strict criterion of “due care” or the less strict criterion of “unintentionality.” Although not expressly stated in the proposed amended provisions, it is to be understood that a designated Office could, if it wished, apply both criteria and leave the choice to the applicant as to which criterion is sought to be applied in a specific case. Furthermore, a designated Office would also be free to apply, upon request of the applicant, first the “due care” criterion and, if the receiving Office finds that that criterion was not complied with, the “unintentionality” criterion. Those understandings could, if necessary, be expressed by the Assembly in amending the Regulations.

14. In practice, of course, restoration of the right of priority by a designated Office during the national phase would only be necessary where the receiving Office had not already restored the right of priority with binding effect for the designated Office concerned.

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

[Annex I follows]

ANNEX I

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:²

RESTORATION OF THE RIGHT OF PRIORITY

TABLE OF CONTENTS

Rule 4	The Request (Contents)	2
4.1	<i>Mandatory and Optional Contents; Signature</i>	2
4.2 to 4.9	[No change]	2
4.10	<i>Priority Claim</i>	3
4.11 to 4.18	[No change]	3
Rule 26bis	Correction or Addition of Priority Claim.....	4
26bis.1	[No change]	4
26bis.2	Invitation to Correct Defects in Priority Claims	4
<u>26bis.3</u>	<u>Restoration of Right of Priority by Receiving Office</u>	8
Rule 48	International Publication.....	14
48.1	[No change]	14
48.2	<i>Contents</i>	14
48.3 to 48.6	[No change]	16
<u>Rule 49ter</u>	<u>Effect of Restoration of Priority Right by Receiving Office; Restoration of</u> <u>Right of Priority by Designated Office</u>	17
<u>49ter.1</u>	<u>Effect of Restoration of Priority Right by Receiving Office</u>	17
<u>49ter.2</u>	<u>Restoration of Right of Priority by Designated Office</u>	20
Rule 64	Prior Art for International Preliminary Examination.....	24
64.1	<i>Prior Art</i>	24
Rule 76	Copy, Translation and Fee Under Article 39(1); Translation of Priority Document; <u>Application of Certain Rules to Procedures Before Elected Offices</u>	26
76.1, 76.2 and 76.3	[Remain deleted]	26
76.4	[No change]	26
76.5	Application of <u>Certain Rules to Procedures Before Elected Offices</u> 22.1(g); 47.1, 49, 49bis and 51bis	26

² Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. Certain provisions that are not proposed to be amended may be included for ease of reference.

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_a.

(iv) a request for restoration of the right of priority.

(d) [No change]

4.2 to 4.9 [No change]

4.10 *Priority Claim*

(a) Any declaration referred to in Article 8(1) (“priority claim”) may claim the priority of one or more earlier applications filed either in or for any country party to the Paris Convention for the Protection of Industrial Property or in or for any Member of the World Trade Organization that is not party to that Convention. Any priority claim shall, subject to Rule 26bis.1, be made in the request; it shall consist of a statement to the effect that the priority of an earlier application is claimed and shall indicate:

(i) the date on which the earlier application was filed, ~~being a date falling within the period of 12 months preceding the international filing date;~~

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 39. Upon further consideration, it is proposed to amend item (i) of paragraph (a) so as to require the applicant to only indicate the filing date of the earlier application and to deal with the question of whether the international application has been filed within the Paris Convention priority period (only then the priority claim would be valid) in Rule 26bis.2(a) as proposed to be amended (see below).]

(ii) to (v) [No change]

(b) to (d) [No change]

4.11 to 4.18 [No change]

Rule 26bis

Correction or Addition of Priority Claim

26bis.1 [No change]

26bis.2 ~~Invitation to Correct~~ Defects in Priority Claims

(a) Where the receiving Office or, if the receiving Office fails to do so, the International Bureau, finds:

- (i) that the international application has an international filing date which is later than the date on which the priority period expired and a request for restoration of the right of priority under Rule 26bis.3 has not been submitted; or

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 41. Upon further consideration, it is proposed to amend Rule 4.10(a)(i) (see above) and Rule 26bis.2(a) so as to expressly provide that the applicant should be invited to correct the priority claim where the international application has an international filing date which is later than the date on which the priority period expired. As in the PLT (see PLT Article 13(2)), it is not proposed to define the term “priority period” but to rely on the fact that the term “period of priority” is used in Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property (see PCT Article 8(2)); however, a definition referring to the Paris Convention could be included in the PCT Regulations if necessary. There appears to be no need for an invitation to correct a priority claim where a request for restoration of that right of priority has been filed by the applicant, showing that the applicant, while being aware of the fact that the filing date of the earlier application as indicated in the request does not fall within the 12 months preceding the international filing date, has no intention to correct that priority date but rather wishes to have the right of priority restored under Rule 26bis.3, below.]

- (ii) that a priority claim does not comply with the requirements of Rule 4.10~~;~~ or

[Rule 26bis.2(a), continued]

(iii) that any indication in a priority claim is inconsistent with the contents of ~~not~~
~~the same as~~ the corresponding indication appearing in the priority document;

[COMMENT: Clarification only.]

the receiving Office or the International Bureau, as the case may be, shall invite the applicant to correct the priority claim. In the case referred to in item (i), where the international filing date is within two months from the date on which the priority period expired, the receiving Office or the International Bureau, as the case may be, shall also notify the applicant of the possibility of submitting a request for the restoration of the right of priority in accordance with Rule 26bis.3.

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 40. A notification of the possibility of submitting a request for the restoration of the right of priority would, of course, only be sent to the applicant where such request had not already been made (“in the case referred to in item (i)” of paragraph (a)).]

(b) If, ~~in response to an invitation under paragraph (a),~~ the applicant does not, before the expiration of the time limit under Rule 26bis.1(a), submit a notice correcting the priority claim ~~so as to comply with the requirements of Rule 4.10,~~ that priority claim shall, subject to paragraph (c), for the purposes of the procedure under the Treaty, be considered not to have been made (“considered void”) and the receiving Office or the International Bureau, as the case may be, shall so declare and shall inform the applicant accordingly, ~~provided that a~~

[Rule 26bis.2(b), continued]

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 43. Upon further consideration, it is proposed to further amend paragraph (b) so as to avoid, in paragraph (c) (see below) the use of a double negative (“shall *not* be considered *not* to have been made”).]

(c) A priority claim shall not be considered void ~~not to have been made~~ only because:

[COMMENT: See the Comment on paragraph (b) as proposed to be amended, above.]

(i) the indication of the number of the earlier application referred to in Rule 4.10(a)(ii) is missing; ~~or because~~

(ii) an indication in the priority claim is inconsistent with the contents of ~~not the same as~~ the corresponding indication appearing in the priority document; or

(iii) the international application has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date.

[COMMENT: As noted by the Working Group at its fifth session (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 34), pursuant to item (iii), a priority claim contained in an international application whose international filing date is later than the date on which the priority period expired but within the period of two months from that date would automatically be retained, even if restoration of the right of priority was not requested by the applicant during the international phase or if restoration was requested but refused by the receiving Office. Such a priority claim would therefore be used throughout the international phase for the purpose of calculating time limits (for example, those for

[Rule 26bis.2, continued]

international publication and national phase entry) as well as for the determination of prior art in the context of establishing the written opinion by the International Searching Authority and the international preliminary examination report by the International Preliminary Examining Authority under Chapter II (see Rule 64.1(b) as proposed to be amended, below).]

(d) (e) Where the receiving Office or the International Bureau has made a declaration under paragraph (b) or where the priority claim has not been considered void because paragraph (c) applies, the International Bureau shall, ~~upon request made by the applicant and received by the International Bureau prior to the completion of the technical preparations for international publication, and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions~~, publish, together with the international application, information concerning the priority claim as prescribed by the Administrative Instructions which was considered not to have been made, together with any information submitted by the applicant concerning such priority claim received by the International Bureau prior to the completion of the technical preparation for international publication. Such information ~~A copy of that request~~ shall 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: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 44. Under paragraph (d) as proposed to be amended, information concerning a priority claim which is considered void would be published in all cases and not only upon request made by the applicant. Furthermore, information concerning a priority claim would also be published in all cases where the priority claim, in accordance with Rule 26bis.2(c), was not considered void. The Administrative Instructions would have to be modified accordingly. See also Rule 48.2 as proposed to be amended, below.]

26bis.3 Restoration of Right of Priority by Receiving Office

(a) Where the international application has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the receiving Office shall restore the right of priority if the applicant, within the time limit applicable under paragraph (b):

[COMMENT: See PLT Article 13(2) and PLT Rule 14(4)(a). With regard to the time limit for submitting a request for restoration, see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 42, and proposed new paragraph (b), below.]

(i) submits a request to for restoration to the Office, stating the reasons for the failure to file the international application within the priority period, preferably together with, where applicable, any declaration or other evidence in support of that statement of reasons under paragraph (c):

[COMMENT: See PLT Article 13(2)(i) and (iii). See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 50. See also proposed new paragraph (c), below.]

(ii) where a priority claim in respect of the earlier application is not contained in the international application, submits a notice under Rule 26bis.1(a) adding the priority claim;

[COMMENT: See PLT Article 13(2)(i) and PLT Rule 14(5)(ii).]

[Rule 26bis.3(a), continued]

(iii) pays, where applicable, the fee for requesting restoration required under paragraph (d);

[COMMENT: See PLT Article 13(4).]

provided that the Office finds that one of the following criteria is satisfied, that is, that the failure to file the international application within the priority period occurred in spite of due care required by the circumstances having been taken or, at the option of the Office, was unintentional (“criteria for restoration”).

[COMMENT: See PLT Article 13(2)(iv). The receiving Office, when deciding on a request for restoration, would be free to apply either the more strict criterion of “due care” or the less strict criterion of “unintentionality.” Although not expressly stated in the proposed amended provisions, it is to be understood that a receiving Office could, if it wished, apply both criteria and leave the choice to the applicant as to which criterion is sought to be applied in a specific case. Furthermore, receiving Office would also be free to apply, upon request of the applicant, first the “due care” criterion and, if the receiving Office finds that that criterion was not complied with, the “unintentionality” criterion. Those understandings could, if necessary, be expressed by the Assembly in amending the Regulations. At its fifth session, the Working Group agreed that the International Bureau should consider a suggestion by several delegations and a representative of users that, in order to promote uniform standards, the terms “due care” and “unintentional” as used in Rule 26bis.3 should be defined or at least explained in the Regulations or Guidelines (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 46). Upon consideration, it would appear not feasible to define or explain the terms “due care” and “unintentional” in the Regulations. Rather, it is proposed that, following adoption of the proposed amendments by the Assembly, the International Bureau should consider this matter further, with a view to defining or explaining those terms in the Receiving Office Guidelines, taking into account any standards that are currently applied under the national laws applicable in Contracting States.]

(b) The time limit referred to in paragraph (a) shall be two months from the date on which the priority period expired or, where applicable, one month from the date of the notification under the last sentence of Rule 26bis.2(a), whichever expires later.

[COMMENT: See PLT Article 13(2)(ii) and PLT Rule 14(4)(b). See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 42, and the chapeau of proposed new paragraph (a), above.]

[Rule 26bis.3, continued]

(c) The receiving Office may require that a declaration or other evidence in support of the statement of reasons referred to in paragraph (a)(i) be filed with it within a time limit which shall be reasonable under the circumstances. The applicant may furnish to the International Bureau, and the International Bureau shall include in its files, a copy of any such declaration or other evidence filed with the receiving Office.

[COMMENT: See PLT Article 13(5). Note that the Working Group agreed at its fifth session that the question of what information or evidence each receiving Office was entitled to require in support of a request for restoration of the right of priority should be left to national law and practice (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 49).]

(d) The submission of a request under paragraph (a)(i) may be subjected by the receiving Office to the payment to it, for its own benefit, of a fee for requesting restoration. The amount of that fee, if any, shall be fixed by the receiving Office.

[COMMENT: See PLT Article 13(4). As noted by the Working Group at its fifth session, under Rule 26bis.3(c), an Office which provided for restoration on both the criterion of “unintentionality” and the criterion of “due care” would be free to charge different fees in respect of the two cases (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 48).]

(e) The receiving Office shall not refuse, totally or in part, a request under paragraph (a)(i) without giving the applicant the opportunity to make observations on the intended refusal within a time limit which shall be reasonable under the circumstances. Such notice of intended refusal by the receiving Office may be sent to the applicant together with any invitation to file a declaration or other evidence under paragraph (c).

[Rule 26bis.3(e), continued]

[COMMENT: See PLT Article 13(6). See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 50. See also proposed new paragraph (a)(i), above.]

(f) The receiving Office shall promptly:

(i) notify the International Bureau of the receipt of a request under paragraph (a)(i);

(ii) make a decision upon the request;

(iii) notify the applicant and the International Bureau of its decision and which of the criteria for restoration the decision was based upon.

(g) Each receiving Office shall inform the International Bureau as to which of the criteria for restoration it is, in general, prepared to apply. The International Bureau shall promptly publish such information in the Gazette.

(h) If, on [date of adoption of these modifications by the PCT Assembly], paragraphs (a) to (g) are not compatible with the national law applied by the receiving Office, paragraphs (a) to (g) 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 [three months from the date of adoption of these modifications by the PCT Assembly]. The information received shall be promptly published by the International Bureau in the Gazette.

[Rule 26bis.3(f), continued]

[COMMENT: While it would be preferable, so as to achieve a uniform approach to the question of restoration of the right of priority at least during the international phase, not to provide for a transitional reservation provision in Rule 26bis.3 (see the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraph 32, at the end), upon consideration, it would appear that such transitional reservation provisions is needed to give any Contracting State time to adapt its national law, as applied by the receiving Office, where that national law is not compatible with the provisions of Rule 26bis.3. Note, however, that a Contracting State could only take advantage of such transitional reservation provision if its national law contained provisions addressed to its national Office in its capacity as a PCT receiving Office (and not only in its capacity as a national Office) which were not compatible with the proposed amendments of the PCT Regulations.]

Rule 48

International Publication

48.1 [No change]

48.2 *Contents*

(a) The pamphlet shall contain:

(i) to (viii) [No change]

(ix) any information concerning a priority claim [referred to in Rule 26bis.2\(d\)](#)
~~considered not to have been made under Rule 26bis.2(b), the publication of which is~~
~~requested under Rule 26bis.2(c),~~

(x) any declaration referred to in Rule 4.17(v), and any correction thereof under Rule 26ter.1, which was received by the International Bureau before the expiration of the time limit under Rule 26ter.1,

[\(xi\) any information concerning a request under Rule 26bis.3 for restoration of the right of priority and the decision of the receiving Office upon such request, including information as to which of the criteria for restoration the decision was based upon.](#)

[Rule 48.2, continued]

(b) Subject to paragraph (c), the front page shall include:

(i) to (iii) [No change]

(iv) where applicable, an indication that the request contains any declaration referred to in Rule 4.17 which was received by the International Bureau before the expiration of the time limit under Rule 26*ter*.1.

(v) where applicable, an indication that the pamphlet contains information under Rule 26*bis*.2(c).

(vi) where applicable, an indication that the pamphlet contains information concerning a request under Rule 26*bis*.3 for restoration of the right of priority and the decision of the receiving Office upon such request.

(vii) where applicable, an indication that the applicant has, under Rule 26*bis*.3(c), furnished copies of any declaration or other evidence to the International Bureau.

(c) to (i) [No change]

[Rule 48.2, continued]

(j) If, at the time of completion of the technical preparations for international publication, a request under Rule 26bis.3 for restoration of the right of priority is still pending, the pamphlet shall contain, in place of the decision by the receiving Office upon that request, an indication to the effect that such decision was not available and that the decision (when it becomes available) will be separately published.

48.3 to 48.6 [No change]

Rule 49ter

Effect of Restoration of Priority Right by Receiving Office:

Restoration of Right of Priority by Designated Office

49ter.1 Effect of Restoration of Priority Right by Receiving Office

(a) Where the receiving Office has restored a right of priority under Rule 26bis.3 based on a finding by it that the failure to file the international application within the priority period occurred in spite of due care required by the circumstances having been taken, that restoration shall, subject to paragraph (c), be effective in each designated State.

[COMMENT: See paragraph 9 of the Introduction to this document. As regards a transitional reservation provision, see paragraph (f) and Rule 49ter.2(g), below.]

(b) Where the receiving Office has restored a right of priority under Rule 26bis.3 based on a finding by it that the failure to file the international application within the priority period was unintentional, that restoration shall, subject to paragraph (c), be effective in any designated State whose applicable national law provides for restoration of the right of priority based on that criterion.

[COMMENT: See paragraph 9 of the Introduction to this document. Restoration by the receiving Office would also be effective in any designated State whose applicable national law provided for the restoration of the right of priority based on a criterion more favorable than the “unintentionality” criterion. A decision by the Assembly may be necessary to ensure that such understanding is agreed upon by all Contracting States. As regards a transitional reservation provision, see paragraph (f) and Rule 49ter.2(g), below.]

[Rule 49ter.1, continued]

(c) A decision by the receiving Office to restore a right of priority under Rule 26bis.3 shall not be effective in a designated State where the designated Office, a court or any other competent organ of or acting for that designated State finds that a requirement applied by the receiving Office under that Rule was not complied with, provided that the designated Office shall not review the decision of the receiving Office unless it may reasonably doubt that a requirement applied by the receiving Office under that Rule was complied with. In the latter case, the designated Office shall notify the applicant accordingly, indicating the reasons for those doubts and giving the applicant an opportunity to make observations within a reasonable time limit.

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 53. The proposed wording “the designated Office, a court or any other competent organ of or acting for that designated State” is modeled on Article 27(4). Note that the requirement for reasonable doubt applies only to designated Offices in order not to fetter the courts or any other competent organs of or acting for the designated States in the exercise of their discretion under national law. At its fifth session, the Working Group agreed that a designated Office should not be permitted under Rule 49ter.1(c) to review a decision of the receiving Office to restore a right of priority merely because the information or evidence required by that receiving Office was not the same kind of information or evidence as that required by the designated Office under its national law; instead, a review under that Rule should only be possible where the designated Office had reasonable doubts as to whether the decision of the receiving Office to restore the right of priority based on that information or evidence was correct (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 54).]

(d) No designated State shall be bound by a decision of the receiving Office refusing a request under Rule 26bis.3 for restoration of the right of priority.

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 54. Upon further consideration, it is proposed to direct paragraph (d) to designated States rather than, as in the previous draft, to designated Offices.]

[Rule 49ter.1, continued]

(e) Where the receiving Office has refused a request for the restoration of the right of priority, any designated Office may consider that request to be a request for restoration submitted to that designated Office under Rule 49ter.2(a) within the time limit under that Rule.

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 56. Note, however, that, in order for the request to be considered by the designated Office, it must comply with certain requirements (such as the furnishing of reasons, which the request filed during the international phase may not have complied with) and a fee may have to be paid to the designated Office (see Rule 49ter.2(a)(ii), below).]

(f) If, on [date of adoption of these modifications by the PCT Assembly], paragraphs (a) to (c) are not compatible with the national law applied by the designated Office, those paragraphs shall not apply in respect of that Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [three months from the date of adoption of these modifications by the PCT Assembly]. The information received shall be promptly published by the International Bureau in the Gazette.

[Rule 49ter.1(f), continued]

[COMMENT: A designated Office whose applicable national law did not provide for the restoration of the right of priority at all or did provide for the restoration of the right of priority based on a more stringent criterion than the “due care” criterion would have to make use of the transitional reservation provision under paragraph (f) and also of the transitional reservation provision under Rule 49ter.2(g).]

49ter.2 Restoration of Right of Priority by Designated Office

(a) Where the international application has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the designated Office shall restore the right of priority if the applicant, within a time limit of one month from the applicable time limit under Article 22:

(i) submits a request for restoration to the designated Office, stating the reasons for the failure to file the international application within the priority period, preferably together with, where applicable, any declaration or other evidence in support of that statement of reasons under paragraph (b);

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 57.]

(ii) pays, where applicable, the fee for requesting restoration required under paragraph (c);

[Rule 49ter.2(a), continued]

provided that the Office finds that one of the following criteria is satisfied, that is, that the failure to file the international application within the priority period occurred in spite of due care required by the circumstances having been taken or, at the option of the Office, was unintentional (“criteria for restoration”).

[COMMENT: Although not expressly stated in the proposed amended provisions, it is to be understood that a designated Office could, if it wished, apply both criteria and leave the choice to the applicant as to which criterion is sought to be applied in a specific case. Furthermore, a designated Office would also be free to apply, upon request of the applicant, first the “due care” criterion and, if the receiving Office finds that that criterion was not complied with, the “unintentionality” criterion. Those understandings could, if necessary, be expressed by the Assembly in amending the Regulations.]

(b) The designated Office may require that a declaration or other evidence in support of the statement of reasons referred to in paragraph (a)(i) be filed with it within a time limit which shall be reasonable under the circumstances.

(c) The submission of a request under paragraph (a)(i) may be subjected by the designated Office to the payment to it, for its own benefit, of a fee for requesting restoration.

(d) The designated Office shall not refuse, totally or in part, a request under paragraph (a)(i) without giving the applicant the opportunity to make observations on the intended refusal within a time limit which shall be reasonable under the circumstances. Such notice of intended refusal may be sent by the designated Office to the applicant together with any invitation to file a declaration or other evidence under paragraph (b).

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 57.]

[Rule 49ter.2, continued]

(e) Where the national law applicable by the designated Office provides, in respect of the restoration of the right of priority, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for under paragraph (a), the designated Office may, when determining the right of priority, apply the requirements under the applicable national law instead of the requirements under that paragraph.

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 58.]

(f) Each designated Office shall inform the International Bureau as to which of the criteria for restoration it is, in general, prepared to apply or, where applicable, of the requirements of the national law applicable in accordance with paragraph (e). The International Bureau shall promptly publish such information in the Gazette.

(g) If, on [date of adoption of these modifications by the PCT Assembly], paragraph (a) is not compatible with the national law applied by the designated Office, paragraph (a) shall not apply to that designated 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 [three months from the date of adoption of these modifications by the PCT Assembly]. The information received shall be promptly published by the International Bureau in the Gazette.

[Rule 49ter.2(g), continued]

[COMMENT: See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 58. Any designated Office whose national law provided for a criterion more stringent than the “due care” criterion or did not provide for restoration of the right of priority at all could make use of the transitional reservation provision under proposed new paragraph (g). Designated Offices whose applicable national law provided for the restoration of the right of priority based on requirements similar but not identical to the requirements under Rule 49ter.2(a) would not need to make use of the transitional reservation provision, provided the requirements under the applicable national law were, from the viewpoint of applicants, at least as favorable as the requirements under Rule 49ter.2(a). A decision by the Assembly may be necessary to ensure that such understanding is agreed upon by all Contracting States.]

Rule 64

Prior Art for International Preliminary Examination

64.1 *Prior Art*

(a) [No change]

(b) For the purposes of paragraph (a), the relevant date will be:

(i) subject to items (ii) and (iii), the international filing date of the international application under international preliminary examination;

(ii) where the international application under international preliminary examination ~~validly~~ claims the priority of an earlier application and has an international filing date which is within the priority period, the filing date of such earlier application, unless the International Preliminary Examining Authority considers that the priority claim is not valid;

(iii) where the international application under international preliminary examination claims the priority of an earlier application and has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the filing date of such earlier application, unless the International Preliminary Examining Authority considers that, for reasons other than the fact that the international application has an international filing date which is later than the date on which the priority period expired, the priority claim is not valid.

[Rule 64.1(b), continued]

[COMMENT: See paragraph 12 of the Introduction to this document.]

64.2 and 64.3 [No change]

Rule 76

~~Copy, Translation and Fee Under Article 39(1); Translation of Priority Document;~~

Application of Certain Rules to Procedures Before Elected Offices

[COMMENT: The proposed amendment of the title of this Rule is consequential on the proposed amendment of the subtitle of Rule 76.5 (see below).]

76.1, 76.2 and 76.3 [*Remain deleted*]

76.4 [No change]

76.5 Application of Certain Rules to Procedures Before Elected Offices ~~22.1(g), 47.1, 49, 49bis and 51bis~~

[COMMENT: Clarification and simplification only.]

Rules 22.1(g), 47.1, 49, 49bis, 49ter and 51bis shall apply, provided that:

[COMMENT: The proposed amendment of Rule 76.5 is consequential on the proposed addition of new Rule 49ter.]

(i) to (v) [No change]

[Annex II follows]

ANNEX II

ARTICLE 13 AND RULE 14 OF THE PATENT LAW TREATY (PLT)

Article 13

Correction or Addition of Priority Claim; Restoration of Priority Right

(1) [*Correction or Addition of Priority Claim*] Except where otherwise prescribed in the Regulations, a Contracting Party shall provide for the correction or addition of a priority claim with respect to an application (“the subsequent application”), if:

- (i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;
- (ii) the request is filed within the time limit prescribed in the Regulations; and
- (iii) the filing date of the subsequent application is not later than the date of the expiration of the priority period calculated from the filing date of the earliest application whose priority is claimed.

(2) [*Delayed Filing of the Subsequent Application*] Taking into consideration Article 15, a Contracting Party shall provide that, where an application (“the subsequent application”) which claims or could have claimed the priority of an earlier application has a filing date which is later than the date on which the priority period expired, but within the time limit prescribed in the Regulations, the Office shall restore the right of priority, if:

- (i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;
- (ii) the request is filed within the time limit prescribed in the Regulations;
- (iii) the request states the reasons for the failure to comply with the priority period; and
- (iv) the Office finds that the failure to file the subsequent application within the priority period occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, was unintentional.

(3) [*Failure to File a Copy of Earlier Application*] A Contracting Party shall provide that, where a copy of an earlier application required under Article 6(5) is not filed with the Office within the time limit prescribed in the Regulations pursuant to Article 6, the Office shall restore the right of priority, if:

- (i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;
- (ii) the request is filed within the time limit for filing the copy of the earlier application prescribed in the Regulations pursuant to Article 6(5);

(iii) the Office finds that the request for the copy to be provided had been filed with the Office with which the earlier application was filed, within the time limit prescribed in the Regulations; and

(iv) a copy of the earlier application is filed within the time limit prescribed in the Regulations.

(4) [*Fees*] A Contracting Party may require that a fee be paid in respect of a request under paragraphs (1) to (3).

(5) [*Evidence*] A Contracting Party may require that a declaration or other evidence in support of the reasons referred to in paragraph (2)(iii) be filed with the Office within a time limit fixed by the Office.

(6) [*Opportunity to Make Observations in Case of Intended Refusal*] A request under paragraphs (1) to (3) may not be refused, totally or in part, without the requesting party being given the opportunity to make observations on the intended refusal within a reasonable time limit.

Rule 14

Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13

(1) [*Exception Under Article 13(1)*] No Contracting Party shall be obliged to provide for the correction or addition of a priority claim under Article 13(1), where the request referred to in Article 13(1)(i) is received after the applicant has made a request for early publication or for expedited or accelerated processing, unless that request for early publication or for expedited or accelerated processing is withdrawn before the technical preparations for publication of the application have been completed.

(2) [*Requirements Under Article 13(1)(i)*] A Contracting Party may require that a request referred to in Article 13(1)(i) be signed by the applicant.

(3) [*Time Limit Under Article 13(1)(ii)*] The time limit referred to in Article 13(1)(ii) shall be not less than the time limit applicable under the Patent Cooperation Treaty to an international application for the submission of a priority claim after the filing of an international application.

(4) [*Time Limits Under Article 13(2)*] (a) The time limit referred to in Article 13(2), introductory part, shall expire not less than two months from the date on which the priority period expired.

(b) The time limit referred to in Article 13(2)(ii) shall be the time limit applied under subparagraph (a), or the time that any technical preparations for publication of the subsequent application have been completed, whichever expires earlier.

(5) [*Requirements Under Article 13(2)(i)*] A Contracting Party may require that a request referred to in Article 13(2)(i):

(i) be signed by the applicant; and

(ii) be accompanied, where the application did not claim the priority of the earlier application, by the priority claim.

(6) [*Requirements Under Article 13(3)*] (a) A Contracting Party may require that a request referred to in Article 13(3)(i):

(i) be signed by the applicant; and

(ii) indicate the Office to which the request for a copy of the earlier application had been made and the date of that request.

(b) A Contracting Party may require that:

(i) a declaration or other evidence in support of the request referred to in Article 13(3) be filed with the Office within a time limit fixed by the Office;

(ii) the copy of the earlier application referred to in Article 13(3)(iv) be filed with the Office within a time limit which shall be not less than one month from the date on which the applicant is provided with that copy by the Office with which the earlier application was filed.

(7) [*Time Limit Under Article 13(3)(iii)*] The time limit referred to in Article 13(3)(iii) shall expire two months before the expiration of the time limit prescribed in Rule 4(1).

[End of Annex II and of document]