

WIPO



PCT/R/WG/7/6  
ORIGINAL:English  
DATE:April5,2005

WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

INTERNATIONAL PATENT COOPERATION UNION  
(PCT UNION)

WORKING GROUP ON REF ORM OF THE PATENT  
COOPERATION TREATY ( PCT)

Seventh Session  
Geneva, May 25 to 31, 2005

RECTIFICATION OF OBVIOUS MISTAKES

*Document prepared by the International Bureau*

SUMMARY

1. This document contains proposals for amendment of the Regulations under the PCT relating to the rectification of obvious mistakes in international applications. The main aim of the proposals is to rationalize the operation of Rule 91 (presently entitled "Obvious Errors in documents") whose provisions are open to different interpretations and have at times led to strange and inconsistent decisions. The proposals would introduce more consistent practices in PCT Offices and Authorities and would bring PCT practice in line, to the extent possible, with the provisions of the PLT relating to rectification of mistakes.

2. Earlier proposals, discussed at the sixth session of the Working Group, have been revised taking into account the discussions, and the agreement reached, at that session and the comments received on preliminary draft documents made available since then. The main differences in comparison with the proposals considered at the sixth session concern, in

<sup>1</sup> 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.

particular: (i) the definition as to which mistakes are to be considered as being “obvious” and thus rectifiable; (ii) the question as to the emotional person who should understand what was intended by the applicant and who should make the finding whether the alleged mistake is obvious; and (iii) whether, and if so, to which extent, the competent authority should be able to rely on extrinsic documents when deciding whether to authorize the rectification of a mistake.

## BACKGROUND

3. The Working Group, at its fifth and sixth sessions, considered proposals for amendment of the Regulations under the PCT relating to the rectification of obvious mistakes. The Working Group’s discussions at its previous (sixth) session (see document PCT/R/WG/6/12, paragraphs 43 to 57) are outlined in the following paragraphs:

“43. Discussions were based on document PCT/R/WG/6/3.

“44. There was a clear divergence of views among delegations as to the cases and circumstances in which mistakes in international applications and related documents should be rectifiable under Rule 91.

“45. After some discussion, the Working Group agreed that the Secretariat should further consider how to take this matter forward, taking into account the comments and suggestions noted in the following paragraphs, preferably by making use of the PCT Reform and PCT/MIA electronic forums.

“46. While there was some support for a liberal approach to the correction of obvious mistakes, several delegations considered that proposed amended Rule 91.1(c)(i) was too broad, feeling that mistakes which only became apparent as a result of a lengthy investigation were not appropriate for rectification under Rule 91.

“47. One delegation suggested that only mistakes in the request and other documents related to the procedure, but not in the description, claims and drawings, should be rectifiable under Rule 91, noting that mistakes in the description, claims and drawings could be corrected by way of amendments under Articles 19 and 34. It suggested that, since only *obvious* mistakes were rectifiable under Rule 91, it was not necessary that rectifications be physically entered in the application documents in order for their meaning to be known. The delegations suggested that providing for rectifications in the description, claims and drawings added complexity and placed an unnecessary burden on examining staff. It considered that, if rectifications of obvious mistakes in the description, claims and drawings were to be permitted, they should be limited to typographical and clerical mistakes which could be disposed of by clerical staff.

“48. A number of delegations and representatives of users pointed out that existing Rule 91 already permitted the rectification of obvious errors in the description, claims and drawings, and considered that it was in the interests of applicants, designated Offices (in particular smaller Offices) and third parties for any mistake, where rectifiable and noted at a sufficiently early stage, to be rectified by only one action in the international phase, thus having effect for the purposes of the procedure before all designated Offices. While some difficulties were seen with the current proposals, they represented an improvement on the current provisions, which were not clear enough to allow uniform interpretation.

“49. One delegation questioned the relationship between Rule 91 and other Rules offering correction procedures in the case of particular kinds of mistakes (such as Rule 26*bis* with regard to the correction of priority claims), and suggested that the more general Rule (Rule 91) should not apply where a more specialized Rule providing for correction was available.

“50. One delegation noted that the term “obvious” had a special connotation in connection with patent law, that is, in determining whether the invention involved an inventive step (see, for example, Article 33(1)), and suggested that it might be preferable to avoid use of that term in connection with the rectification of mistakes.

“51. Opinions differed on the extent to which extrinsic documents (that is, documents other than the one in which the mistake occurred) should be able to be relied upon in support of a request for rectification. It was noted that the application of two tests was involved: (i) the recognition that there was indeed a mistake, and (ii) an assessment as to whether the proposed rectification was the only meaning which could have been intended. Most delegations which spoke on the matter considered that the fact that there was a mistake needed to be apparent on the face of the document containing the mistake, without referring to extrinsic documents, but a few delegations felt that extrinsic documents should be able to be considered at least in the case of mistakes in the request form. Some delegations considered that the question whether nothing else could have been intended than what is offered as a rectification should also have to be answered without reference to extrinsic documents, but others considered that extrinsic documents should be able to be relied upon, at least in certain cases.

“52. Among those delegations which favored reliance on extrinsic documents, there was a divergence of views as to whether the list of such documents appearing in Rule 91.1(c)(ii) was appropriate for all situations and whether it should be seen as exhaustive. There was a widespread feeling that it would usually not be acceptable to refer to extrinsic documents in relation to mistakes in the description, claims and drawings. Some delegations considered that the kind of documents which should be accepted as evidence relating to a mistake should be determined by the competent authority, depending on the facts of the particular case. Others felt that documents already on the file of the international application should always be able to be considered, although one delegation expressed concern that such an approach might lead to a large amount of background art being filed with the international application in the hope that it might later be useful for attempting to introduce changes in the application.

“53. A number of delegations considered that it should be explicit in the Rule itself, rather than left to Guidelines, that a rectification was not permitted to go beyond the disclosure in the international application as filed. One delegation considered that this should be expressed as a limitation of the legal consequences of a rectification rather than as a component of the test for whether a mistake was obvious and thus rectifiable. It was noted that it may be necessary for a designated Office to have before it, when considering this issue, the application papers both as filed and as rectified.

“54. One representative of users expressed the view that the priority document, being a clearly established document of record referred to in the request, should be able to be taken into account in deciding whether there was a rectifiable mistake in the international application. While there was some support for this view, particularly in

relation to mistakes which had been introduced by errors in translation, most delegations which spoke on the matter considered that the description, claims and drawings should be viewed on their face in deciding whether there was a clear mistake. It was noted that a remedy in some cases might be available by way of provisions relating to “missing parts” (see documents PCT/R/WG/6/4 and 4 Add.1).

“55. There was wide agreement that the current wording providing that “anyone” would need to “immediately” recognize that nothing else could have been intended was incapable of literal application and should be reviewed. A number of delegations considered that references should be made to “the competent authority” rather than to “anyone.” One delegation suggested that the notional reader in all cases should be an average person with no special skills, and specifically that the application of Rule 91 should not require the involvement of patent examiners. Other delegations felt that rectification of mistakes in the description, claims and drawings should be dealt with by reference to a “person skilled in the art” and that the involvement of patent examiners was essential in relation to such rectifications.

“56. There were no objections to the notion of a single time limit for the requesting of rectifications (see proposed Rule 91.2(a)), but several delegations felt that 28 months from the priority date was too late to enable completion of all the necessary actions before the end of the international phase, noting, in particular, that the proposals envisaged the republication of the international application if the rectification of an obvious mistake was authorized after international publication.

“57. There was doubt expressed as to whether there was any benefit in allowing rectification of obvious mistakes in the description, claims and drawings during Chapter II proceedings, since such rectifications could in such cases be achieved by way of amendments under Article 34. In this connection, one delegation suggested that the time limit for requesting rectifications might appropriately be aligned with that for filing a demand for international preliminary examination.”

4. The Annex to this document contains revised proposals for amendment of the Regulations relating to the rectification of obvious mistakes, taking account of the suggestions made by delegations and representatives of users at the sixth session (see document PCT/R/WG/6/12, paragraphs 43 to 57, reproduced in paragraph 3, above) and comments received on a preliminary draft document for the seventh session of the Working Group which had been made available for comment on the WIPO website as PCT/R/WG/7 Paper No. 6. For information and clarity, the proposals for amendment of Rule 91 are presented both in the form of a marked-up text of Rule 91 as proposed to be amended (contained in Annex I) and in the form of a “clean” text of the Rule 91 as it would stand after amendment (contained in Annex II). The main features of the revised proposals are outlined in the following paragraphs.

## RECTIFICATION OF OBVIOUS MISTAKES

### *Types of Rectifiable Mistakes*

5. Existing Rule 91 permits the rectification of “obvious errors” in the description, claims and drawings, as well as in the more “formal” request part of the international application. It would appear to be in the interest of applicants, designated Offices (in particular smaller Offices) and third parties that any mistake, where rectifiable and noted as sufficiently early

stage, is rectified by only one action in the international phase, thus having effect for the purposes of the procedure before all designated Offices. It is thus not proposed, as had been suggested by one delegation during the sixth session of the Working Group (see the summary by the Chair of the sixth session, document PCT/R/WG/6/12, paragraph 47), that only mistakes in the request and other documents related to the procedure, but not in the description, claims and drawings, should be rectifiable under Rule 91, or to limit rectifications of mistakes in the description, claims or drawings to typographical and clerical mistakes which could be disposed of by clerical staff.

### *Terminology*

6. “*Rectification*.” Although the draft SPLT uses the term “correction” instead of “rectification” (see draft SPLT Article 7(3) and draft SPLT Rule 7(2)), it is proposed, as was proposed in document PCT/R/WG/6/3, to continue to use the term “rectification” so as to maintain the distinction, in the context of the PCT, between “rectifications” of obvious mistakes (under Rule 91), “amendments” of the description, claims or drawings (under Articles 19 and 34) and “corrections” of formal defects (under Article 14 and Rule 26).

### *Responsibility for Authorization of Rectification*

7. *Competent authorities*. It is proposed, as in document PCT/R/WG/6/3, to make it clear which are the “competent authorities” responsible for authorizing the rectification of obvious mistakes appearing in the different elements of the international application and in related documents, bearing in mind the responsibilities of the different authorities in the different stages of the international phase. Under the proposals, the finding whether an alleged mistake is obvious and thus rectifiable would be made:

- (a) in the case of a mistake in the request part of the international application or in a correction thereof — by the receiving Office;
- (b) in the case of a mistake in the description, claims, drawings or abstract or in a correction thereof, or in an amendment under Article 19, unless the International Preliminary Examining Authority is competent under paragraph (c), below — by the International Searching Authority;
- (c) in the case of a mistake in the description, claims, drawings or abstract or in a correction thereof, or in an amendment under Article 19 or 34, where a demand for international preliminary examination has been made and has not been withdrawn and the date on which international preliminary examinations shall start in accordance with Rule 69.1 has passed — by the International Preliminary Examining Authority;
- (d) in the case of a mistake in a document not referred to in paragraphs (a) to (c), above, submitted to the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau — by that Office, Authority or Bureau, as the case may be.

*Rectification of "Obvious Mistakes"*

8. *"Obvious" to the competent authority.* Upon consideration of the concern expressed by some delegations during the sixth session of the Working Group that mistakes which only became apparent as a result of a lengthy investigation were not appropriate for rectification under Rule 91 (see the summary by the Chair of the sixth session, document PCT/R/WG/6/12, paragraph 46), it is proposed:

(a) to continue to use, as at present, the term "obvious" mistake, noting that the term "obvious" appears to best define and most clearly describe the kind of mistake that should be rectifiable under Rule 91, despite the fact that it also has a special connotation in connection with the determination of inventive step (see the summary by the Chair of the sixth session, document PCT/R/WG/6/12, paragraph 50);

(b) not to ascribe any special attributes to the person in the competent authority making the finding whether an alleged mistake is "obvious" and thus rectifiable, and to simply refer to "the competent authority."

9. *Extrinsic documents.* Opinions differed in the sixth session of the Working Group as to whether, and if so, to which extent, extrinsic documents (that is, documents other than the one in which the mistake occurred) should be able to be relied upon (see the summary by the Chair of the sixth session, document PCT/R/WG/6/12, paragraphs 51, 52 and 54). Most delegations which spoke on the matter considered that the mistake and the rectification needed to be apparent on the face of the document containing the mistake, without referring to extrinsic documents (see the summary by the Chair of the sixth session, document PCT/R/WG/6/12, paragraphs 51). Among those delegations which favored reliance on extrinsic documents in some circumstances, there was a widespread feeling that it would usually not be acceptable to refer to extrinsic documents in relation to mistakes in the description, claims, drawings and abstract (see the summary by the Chair of the sixth session, document PCT/R/WG/6/12, paragraphs 52).

10. It is therefore no longer proposed, as in document PCT/R/WG/6/3, that the competent authority should always be obliged to take into account, when making the finding whether an alleged mistake is "obvious", documents other than the document containing the mistake, irrespective of the question in which part of the international application the mistake occurred in. Under the revised proposal for an amendment of Rule 91 contained in the Annex, the question whether the competent authority could rely on extrinsic documents would depend on which part of the international application is involved:

(a) Where the mistake is in the description, claims, drawings or abstract or in a correction thereof, or in an amendment under Article 19 or 34, the finding by the competent authority whether an alleged mistake is obvious would have to be made only on the basis of all the international application itself and, where applicable, the correction or amendment concerned, without any possible reliance on extrinsic documents.

(b) Where the mistake is in the request part of the international application or in a correction thereof, or in a document referred to in paragraph 7(d), above, the finding by the competent authority would have to be made only on the basis of the international application itself and, where applicable, the correction concerned, or the document referred to in

paragraph 7(d), above, together with any other documents submitted with the request, correction or document, as the case may be, and any other document contained in the authority's international application file as at the applicable date referred to in paragraph 11, below. It is not proposed that extrinsic evidence should be able to be used in a more liberal way, as had been suggested in a comment received on the preliminary draft document for the seventh session of the Working Group which had been made available for comment on the WIPO website as PCT/R/WG/7 Paper No. 6, noting that that view did not find any support in other comments received.

11. *Applicable date*. As was already proposed in document PCT/R/WG/6/3, it is proposed that the applicable date to be used in determining the allowability of a rectification of a mistake should be:

(a) where the alleged mistake is in a part of the international application as filed — the international filing date; or

(b) where the alleged mistake is in a document other than the international application as filed, and including a correction or an amendment of the international application — the date on which the document containing the alleged mistake was received.

12. *Added matter*. At the sixth session of the Working Group, a number of delegations expressed the view that it should be explicit in Rule 91 itself, rather than left to PCT International Search and Preliminary Examination Guidelines, that a rectification was not permitted to go beyond the disclosure in the international application as filed. One delegation considered that this should be expressed as a limitation of the legal consequences of a rectification rather than as a component of the test for whether a mistake was obvious and thus rectifiable (see the summary of the session by the Chair, document PCT/R/WG/6/12, paragraph 53). A related question concerns the way in which the International Searching Authority would handle requests for rectification of obvious mistakes in Article 19 amendments, noting that the question of whether the amendments themselves add new matter may arise in the course of deciding whether a rectification should be authorized.

13. The rectification of obvious errors in the description, claims and drawings, and also (although rarely in practice) in Article 19 amendments, is of course provided for under the present provisions of Rule 91. It is proposed that procedures for handling such cases be addressed in the International Search and Preliminary Examination Guidelines, which need to be set up straight forward guidance to Authorities, taking into account the fact that Authorities' practices may vary somewhat. To attempt to deal with the matter expressly in the Rule itself would overburden what is intended to be a simple procedure for dealing with obvious mistakes.

#### *Mistakes not Rectifiable Under Rule 91*

14. *Omission of entire sheets, etc.* As in document PCT/R/WG/6/3, it is proposed to maintain the existing provision that the omission of an entire element or sheet shall not be rectifiable under Rule 91. In view of the proposal to provide expressly for the furnishing of missing parts of the description, claims or drawings (see PCT/R/WG/7 Paper No. 1 Rev.), it would not seem appropriate to change the existing provisions of Rule 91 in this respect. Furthermore, it is proposed to clarify what is meant by an "entire element" by referring expressly to the elements of the international application listed in Article 3(2) (request, description, claims, drawings and abstract).

15. *Mistakes in priority claims and corrections and additions thereof.* Upon consideration, it would not appear imperative to generally exclude particular kinds of mistakes from being rectifiable under Rule 91 where other, more specialized Rules offering correction procedures existed (for example, for the correction of priority claims under Rule 26*bis* or the correction of declarations under Rule 26*ter*), as had been suggested by one delegation at the sixth session of the Working Group (see the summary of the session by the Chair, document PCT/R/WG/6/12, paragraph 49). Noting that Rule 91, being the more general Rule, applies in particular circumstances only and to different kinds of mistakes than the more specialized Rules, it would appear justified, as at present, to apply Rule 91 (with one exception, see paragraph 16, below) in addition to other correction procedures, such as the correction procedures offered under Rule 26*bis* or 26*ter*.

16. However, so as not to add further complexity to the system with regard to the computation of time limits calculated on the basis of the priority date, it is proposed, as was already proposed in document PCT/R/WG/6/3, that a mistake in a priority claim or in a notice correcting or adding a priority claim (submitted under Rule 26*bis*) should not be rectifiable under Rule 91 where the rectification of such a mistake would cause a change in the priority date of the international application. Such a mistake should only be correctable by way of submitting a (further) notice of correction or addition under Rule 26*bis* of the priority claim in question, within the applicable time limit under that Rule.

17. There would appear, however, to be the need to fill a gap in the present Regulations with regard to the correction of a priority claim in the particular case where the Office of filing of the priority application corrects certain indications relating to the priority application, such as the date of filing of the priority application, only after the expiration of the time limit under Rule 26*bis*.1(a), that is, too late for the applicant to file a request for the correction of the priority claim, where the applicant had relied on the correctness of those indications and used them as the basis for the priority claim in the international application. Rule 91 would also appear not to be available in such a case, noting the requirements for the rectification of "obvious mistakes" under Rule 91.1(c) to (e) as proposed to be amended and the fact that Rule 91.1(f) as proposed to be amended expressly excludes mistakes in a priority claim from being rectifiable under Rule 91 where a rectification would cause a change in the priority date.

18. While it would not be desirable to allow the applicant to correct such a priority claim after the expiration of the time limit under Rule 26*bis*.1(a), noting the possible impact of a change in the priority date on the international procedure, and in particular on the result of the international search and the written opinion by the International Searching Authority, it is proposed to allow the applicant to request the International Bureau to publish information concerning the corrections made by the Office of filing of the priority application with a view to pursuing the matter further in the national phase before the designated or elected Offices. While the main reason for dealing with this matter relates to the occurrence of a defect attributable to an official error on the part of the authority responsible for issuing the priority document, there does not seem to be any reason to restrict the proposal to such a circumstance. A proposal to amend Rule 26*bis*.2 to enable the publication of information where the applicant wishes to add or correct a priority claim for any reason, but the time limit under Rule 26*bis*.1 has expired, is contained in Annex I.



*Request for Rectification*

19. *Timelimit; effect of authorization on written opinions and reports*. While there were no objections to the notion of a single timelimit for the requesting of rectifications (see proposed Rule 91.2(a)), several delegations at the sixth session of the Working Group felt that the proposed timelimit of 28 months from the priority date was too late to enable completion of all the necessary actions before the end of the international phase, in particular, republication of the international application where the rectification of an obvious mistake had been authorized (see the summary of the session by the Chair, document PCT/R/WG/6/12, paragraph 56). It is therefore proposed to set the timelimit for the requesting of rectifications at 26 months from the priority date, which should leave sufficient time for the International Bureau, following the competent authority's decision to authorize the rectification, to prepare for the "republication" of the international application (see paragraph 21, below).

20. In general, as outlined in document PCT/R/WG/6/3, it would appear not to be necessary to require a request for rectification of an obvious mistake be submitted before the International Searching Authority has begun to draw up the international search report or the written opinion or (under Chapter II) before the International Preliminary Examination Authority has begun to draw up the written opinion or the international preliminary examination report. Since a mistake may only be rectified if both the mistake and the rectification are obvious, a rectification should not affect the substance of any written opinion or report.

21. On the other hand, it is proposed to expressly provide that any rectification authorized after the International Searching Authority or the International Preliminary Examining Authority has begun to draw up a written opinion or a report would not need to be taken into account by that Authority for the purposes of establishing the opinion or the report in question. The International Searching Authority or the International Preliminary Examining Authority, as the case may be, would be required in such a case to indicate whether or not the rectification has been taken into account for the purposes of preparing the written opinion or report. Such information would then be published together with the rectification (either as part of the pamphlet or together with the statement reflecting all rectifications).

22. *Rectifications under Rule 91 and amendments under Article 34*. See the summary of the sixth session by the Chair, document PCT/R/WG/6/12, paragraph 57. Upon further consideration, it is not proposed to require that, after the start of the international preliminary examination procedure, obvious mistakes be remedied not by way of rectification under Rule 91 but rather under Article 34, as was suggested at the sixth session of the Working Group. Rather, it is proposed to maintain, as under many national and regional laws, a clear legal distinction between amendments and rectifications, noting particularly that the rectification of an obvious mistake in the international application would be effective from the international filing date.

*Authorization of Rectification*

23. *Effect on written opinions and reports*. See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 109(i). With regard to the question of what, if any, further action would be necessary where a mistake in the international application, other

than the request, is rectified after the International Searching Authority or the International Preliminary Examining Authority has begun to draw up the written opinion or any report, see paragraph 19, above.

24. *Effect on designated/elected Offices where national processing has started*. See the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 109(g). It is proposed to expressly provide that the rectification of an obvious mistaken need not be taken into account by any designated or elected Office in which processing or examination of the international application has already started prior to the date on which the designated or elected Office is notified of the authorization of the rectification by the competent authority.

#### RECTIFICATION BY DESIGNATED OR ELECTED OFFICES OF ERRORS MADE BY THE RECEIVING OFFICE OR BY THE INTERNATIONAL BUREAU

25. At its fifth session, the Working Group invited the International Bureau to study suggestions that Rule 82ter be amended to require designated and elected Offices to rectify certain decisions taken by the receiving Office or the International Bureau during the international phase if that Office or the International Bureau accepted that the decision taken was in error (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraphs 110(a)). The Working Group also invited the International Bureau to study suggestions that Rule 82ter be amended to avoid designated and elected Offices having to decide disputes between the applicant and the receiving Office or the International Bureau as to whether certain decisions taken by the receiving Office or the International Bureau during the international phase were erroneous (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraphs 110(b)).

26. Upon further consideration, it seems that Rule 82ter does not need to be burdened with express provisions for review of decisions taken during the international phase under Rule 91.1. Rather, it appears preferable to leave the matter to designated and elected Offices to deal with under their general power to decide whether and on what basis to grant a patent, in the course of which it would be open to an Office to decide upon whether a given rectification (like an amendment) had been made in accordance with the Treaty, noting particularly the provisions of Article 26.

27. *The Working Group is invited to consider the proposals contained in the Annexes.*

[Annex follows]

## ANNEXI

PROPOSED AMENDMENTS OF THE PCT REGULATIONS: <sup>2</sup>

## RECTIFICATION OF OBVIOUS MISTAKES

## TABLE OF CONTENTS

Rule 11 Physical Requirements of the International Application .....	2
11.1 to 11.13 [No change] .....	2
11.14 <i>Later Documents</i> .....	2
Rule 12 Language of the International Application and Translation for the Purposes of International Search and International Publication .....	3
12.1 [No change] .....	3
12.2 <i>Language of Changes in the International Application</i> .....	3
12.3 and 12.4 [No change] .....	3
Rule 26 <i>bis</i> Correction or Addition of Priority Claim .....	4
26 <i>bis</i> .1 <i>Correction or Addition of Priority Claim</i> .....	4
26 <i>bis</i> .2 <del><i>Invitation to Correct – Defects in Priority Claims</i></del> .....	5
<u>26 <i>bis</i>.3</u> [see document PCT/R/WG/7/3] .....	6
Rule 48 International Publication .....	7
48.1 [No change] .....	7
48.2 <i>Contents</i> .....	7
48.3 to 48.6 [No change] .....	10
Rule 66 Procedure Before the International Preliminary Examining Authority .....	11
66.1 to 66.4 <i>bis</i> [No change] .....	11
66.5 <i>Amendment</i> .....	11
66.6 to 66.9 [No change] .....	11
Rule 70 International Preliminary Report on Patentability by the International Preliminary Examining Authority (International Preliminary Examination Report) .....	12
70.1 to 70.15 [No change] .....	12
70.16 <i>Annex to the Report</i> .....	12
70.17 [No change] .....	12
Rule 91 [“marked -up” copy] <u>Rectification of Obvious Mistakes</u> <del>Errors</del> in <u>the</u> <u>International Application and Other Documents</u> .....	13
91.1 <i>Rectification of Obvious Mistakes</i> .....	13
<u>91.2 Requests for Rectification</u> .....	18
<u>91.3 Authorization and Effect of Rectifications</u> .....	20

<sup>2</sup> 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 11

### Physical Requirements of the International Application

11.1 to 11.13 [No change]

11.14 *Later Documents*

Rules 10, and 11.1 to 11.13, a) also apply to any document — for example, [replacement sheets](#) ~~corrected pages~~, amended claims, translations — submitted after the filing of the international application.

[COMMENT: It is proposed to amend Rule 11.14 so as to align the terminology (“replacement sheets” instead of “corrected pages”) with that used in Rule 26.4, which applies *mutatis mutandis* under Rule 91.2(b) as proposed to be amended (see below).]

**Rule 12**

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

12.1 [No change]

12.2 *Language of Changes in the International Application*

(a) [No change]

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

[COMMENT: The proposed amendment of paragraph (b) is consequential on the proposed amendment of Rule 91 (see below).]

(i) and (ii) [No change]

(c) [No change]

12.3 and 12.4 [No change]

**Rule 26 bis**

**Correction or Addition of Priority Claim**

*26 bis.1 Correction or Addition of Priority Claim*

(a) The applicant may correct [a priority claim](#) or add a priority claim [to the request](#) by a notice submitted to the receiving Office or the International Bureau within a time limit of 16 months from the priority date or, where the correction or addition would cause a change in the priority date, 16 months from the priority date as so changed, whichever 16-month period expires first, provided that such a notice may be submitted until the expiration of four months from the international filing date. The correction of a priority claim may include the addition of any indication referred to in Rule 4.10.

[COMMENT: It is proposed to amend Rule 26 bis.1(a) so as to clarify that any addition of a priority claim would be made “to the request”, as is the case also for any addition of declarations under present Rule 26 ter.1(a). In the context of “obvious mistakes,” the proposed amendment would also clarify that the receiving Office would be the competent authority to authorize the rectification of an obvious mistake made in a notice correcting or adding a priority claim (provided that such correction or addition would not cause a change in the priority date, in which case a rectification under Rule 91.1 would not be possible (see Rule 91.1(f)(ii) as proposed to be amended, below).]

(b) and (c) [No change]

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

[COMMENT: The proposed amendment of the title of Rule 26bis.2 is consequential on changes proposed in document PCT/R/WG/7/3 (restoration of the right of priority) and on the proposed addition of paragraph (e) (see below).]

(a) to (c) [No change]

[COMMENT: No change is proposed to paragraphs (a) to (c) in the context of this document. See, however, amendments to paragraphs (a) to (c) proposed in document PCT/R/WG/7/3 (restoration of the right of priority).]

(d) [see document PCT/R/WG/7/3]

[COMMENT: The addition of a new paragraph (d) is proposed in document PCT/R/WG/7/3 (restoration of the right of priority).]

(e) Where the applicant wishes to correct or add a priority claim but the time limit under Rule 26 bis.1 has expired, the applicant may, prior to the expiration of 30 months from the priority date and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, request the International Bureau to publish information concerning the matter, and the International Bureau shall promptly publish such information.

[COMMENT: See paragraphs 17 and 18 in the main body of this document. The Administrative Instructions might provide for a variable amount of the fee, depending on the volume of the information to be published, and for a waiver of the fee in cases where the applicant relied on information contained in the priority document, or information otherwise provided by the authority responsible for issuing the priority document, that later turned out to be erroneous.]

[26bis.3](#) [seedocumentPCT/R/WG/7/3]

[COMMENT: The addition of new Rule 26bis.3 is proposed in document PCT/R/WG/7/3 (restoration of the right of priority).]



## Rule 48

### International Publication

48.1 [No change]

[COMMENT: Not that amendments of Rule 48.1 are proposed in the context of “international publication and PCT Gazette in electronic form” (see document PCT/R/WG/7/8).]

48.2 *Contents*

(a) The publication of the international application ~~The pamphlet~~ shall contain:

[COMMENT: The proposed amendments of the chapeau of paragraph (a) are consequential on the proposed deletion of the term “pamphlet” throughout the Regulations (see Rule 48.1 as proposed to be amended in document PCT/R/WG/7/8 “international publication and PCT Gazette in electronic form”).]

(i) to (vi) [No change]

[COMMENT: Not that amendments of items (i) to (vi) are proposed in the context of “international publication and PCT Gazette in electronic form” (see document PCT/R/WG/7/8).]

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

[Rule 48.2(a), continued]

(viii) and (ix) [No change]

[COMMENT: Note that amendments of items (viii) and (ix) are proposed in the context of “international publication and PCT Gazette in electronic form” (seed document PCT/R/WG/7/8).]

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

[COMMENT: Note that further amendments of item (x) are proposed in the context of “international publication and PCT Gazette in electronic form” (seed document PCT/R/WG/7/8).]

(xi) any information concerning the authorization of a rectification of an obvious mistake referred to in the second sentence of Rule 91.3(b).

(b) to (h) [No change]

[COMMENT: Note that amendments of paragraphs (b), (f), (g) and (h) are proposed in the context of “international publication and PCT Gazette in electronic form” (seed document PCT/R/WG/7/8).]

*[Rule 48.2, continued]*

(h-bis) If the authorization of a rectification of an obvious mistake in the international application referred to in Rule 91.1 is received by or, where applicable, given by the International Bureau after completion of the technical preparations for international publication, a statement reflecting all the rectifications (containing any information referred to in paragraph (a)(xi)) shall be published, together with the sheets containing the rectifications, or the replacement sheets and the letter furnished under Rule 91.2(b), as the case may be, and the front pages shall be republished.

(i) [No change]

[COMMENT: Note that the deletion of paragraph (i) is proposed in the context of “international publication and PCT Gazette in electronic form” (see document PCT/R/WG/7/8).]

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

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

48.3 to 48.6 [No change]

[COMMENT: Note that Rule 48 is proposed to be further amended in the context of proposed amendments of the Regulations relating to missing elements and parts of the international application (seedocument PCT/R/WG/7/2), relating to the restoration of the right of priority (seedocument PCT/R/WG/7/3), relating to the publication in multiple languages (seedocument PCT/R/WG/7/4), relating to the international publication and PCT Gazette in electronic form (seedocument PCT/R/WG/7/8), and relating to the addition of Arabic as a language of publication (seedocument PCT/R/WG/7/10).]

## Rule 66

### Procedure Before the International Preliminary Examining Authority

66.1 to 66.4*bis* [No change]

66.5 *Amendment*

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

[COMMENT: The proposed amendment of Rule 66.5 is consequential on the proposed amendment of Rule 91 (see below).]

66.6 to 66.9 [No change]

## Rule 70

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

70.1 to 70.15 [No change]

70.16 *Annexes to the Report*

(a) Each replacement sheet under Rule 66.8(a) or (b), each replacement sheet containing amendments under Article 19 and subject to Rule 91.3(b), each replacement sheet containing the rectification ~~rectifications~~ of an obvious ~~mistake~~ ~~errors~~ authorized under Rule 91.1(b)(iii) ~~91.1(e)(iii)~~ shall, unless superseded by later replacement sheets or amendments resulting in the cancellation of entire sheets under Rule 66.8(b), be annexed to the report. Replacement sheets containing amendments under Article 19 which have been considered as reversed by an amendment under Article 34 and letters under Rule 66.8 shall not be annexed.

(b) [No change]

70.17 [No change]

Rule 91[“marked -up”copy]<sup>3</sup>

Rectification of Obvious Mistakes Errors in the  
International Application and Other Documents

91.1 *Rectification of Obvious Mistakes*

(a) An obvious mistake ~~Subject to paragraphs (b) to (g) — *quater*~~, obvious errors in the international application or another document ~~other papers~~ submitted by the applicant may be rectified in accordance with this Rule if the applicant so requests.

(b) ~~(e)~~ The rectification of a mistake shall be subject to authorization by the “competent authority”, that is to say ~~No rectification shall be made except with the express authorization~~:

(i) in the case of a mistake ~~the receiving Office if the error is~~ in the request part of the international application or in a correction thereof ~~—~~ by the receiving Office; ~~;~~

(ii) in the case of a mistake in the description, claims, drawings or abstract ~~the International Searching Authority if the error is in any part of the international application~~ ~~other than the request~~ or in a correction thereof, or in an amendment under Article 19, unless the International Preliminary Examining Authority is competent under item (iii) ~~—~~ by the International Searching Authority; ~~or in any document papers submitted to that Authority,~~

---

<sup>3</sup> A “clean” copy of the text of Rule 91 as it would stand after an amendment is contained in Annex II.

[Rule 91.1(b), continued]

[COMMENT: It is proposed to modify the Administrative Instructions to provide that, where the International Searching Authority receives a request for rectification of an obvious mistake, it should check with the International Bureau as to whether it is (still) the competent authority under item (ii) or whether the International Preliminary Examining Authority has become the competent authority under item (iii).]

(iii) in the case of a mistake in the description, claims, drawings or abstract ~~the International Preliminary Examining Authority if the error is in any part of the international application other than the request~~ or in a correction thereof, or in an amendment under Article 19 or 34, where a demand for international preliminary examination has been made and has not been withdrawn and the date on which international preliminary examinations shall start in accordance with Rule 69.1 has passed ~~— by the International Preliminary Examining Authority; or in any document papers submitted to that Authority, —~~

(iv) in the case of a mistake in a document not referred to in items (i) to (iii) submitted to the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or of the International Bureau — by that Office, Authority or Bureau, as the case may be ~~if the error is in any paper, other than the international application or amendments or corrections to that application, submitted to the International Bureau —~~.

[COMMENT: See paragraph 7 in the main body of this document. It is envisaged that the Administrative Instructions be modified to provide that, where the applicant has the choice of submitting a document either to the International Bureau or to the receiving Office or the International Preliminary Examining Authority, which would then forward it to the International Bureau, the “competent authority” for the purposes of Rule 91 would be the “final addressee” of the document, that is, the International Bureau.]



*[Rule 91.1, continued]*

(c) ~~(b)~~ The competent authority shall authorize the rectification under this Rule of a  
mistake if, and only if, it is obvious to the competent authority that, as at the applicable date  
under paragraph (e), something else was intended than what appears in the document  
concerned and that nothing else could have been intended than the proposed rectification.  
~~Errors which are due to the fact that something other than what was obviously intended was~~  
~~written in the international application or other papers shall be regarded as obvious errors. The~~  
~~rectification itself shall be obvious in the sense that anyone would immediately realize that~~  
~~nothing else could have been intended than what is offered as rectification.~~

[COMMENT: See paragraphs 8 to 13 in the main body of this document.]

(d) In the case of a mistake in the description, claims, drawings or abstract or in a  
correction or amendment thereof, the competent authority shall, for the purposes of  
paragraph (c), only take into account the contents of the international application itself and,  
where applicable, the correction or amendment concerned.

[COMMENT: See paragraphs 9 and 10(a) in the main body of this document.]

*[Rule 91.1, continued]*

(e) In the case of a mistake in the request part of the international application or a correction thereof, or in a document referred to in paragraph (b)(iv), the competent authority shall, for the purposes of paragraph (c), only take into account the contents of the international application itself and, where applicable, the correction concerned, or the document referred to in paragraph (b)(iv), together with any other documents submitted with the request, correction or document, as the case may be, and any other document contained in the authority's international application file at the applicable date under paragraph (f).

[COMMENT: See paragraphs 9 and 10(b) in the main body of this document.]

(f) The applicable date for the purposes of paragraphs (c) and (e) shall be:

(i) in the case of a mistake in a part of the international application as filed — the international filing date;

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

[COMMENT: See paragraph 11 in the main body of this document.]

[Rule 91.1, continued]

(g) (e) A mistake shall not be rectified under this Rule if:

(i) the mistake lies in the omission of one or more entire elements of the international application referred to in Article 3(2) or one or more entire sheets of the international application; or, even if clearly resulting from inattention, at the stage, for example, of copying or assembling sheets, shall not be rectifiable.

(ii) the mistake lies in a priority claim or in a notice correcting or adding a priority claim under Rule 26bis.1(a), where the rectification of the mistake would cause a change in the priority date;

provided that this paragraph shall not affect the operation of Rules 20.4, 20.5 and 26 bis.

[COMMENT: See paragraphs 14 and 15 in the main body of this document. See also proposed new Rule 26bis.2(e), above. Note that the reference to Rules 20.4 and 20.5 in the text of those Rules as proposed to be amended in document PCT/R/WG/7/2. Note further that the proposed deletion of the words “ even if clearly resulting from inattention, at the stage, for example, of copying or assembling sheets, shall not be rectifiable” is not intended to modify the principle but is merely a drafting change.]

[Rule 91.1, continued]

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

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

## 91.2 Requests for Rectification

A request for rectification under Rule 91.1 shall be submitted to the competent authority within 26 months from the priority date. It shall specify the mistake to be rectified and the proposed rectification, and may, at the option of the applicant, contain a brief explanation. Rule 26.4 shall apply *mutatis mutandis* as to the manner in which the proposed rectification shall be indicated.

[COMMENT: See paragraphs 19 to 21 in the main body of this document. See also PLT Rule 18(1)(a)(i), (iii) and (iv). The indication under PLT Rule 18.1(a)(ii) (the number of the application or patent concerned) is not included here since the request for rectification must be in the form of, or accompanied by, a letter identifying the international application to which it relates (see PCT Rule 92.1(a)). The indication under PLT Rule 18.1(a)(v) (the name and address of the requesting party) is not included since rectification may be made only on

*[Rule 91.2, continued]*

the request of the applicant (see Rule 91.1(a) as proposed to be amended, above). Not that the furnishing of a "brief explanation" is at the option of the applicant, consistent with PLT Rule 18(5), which expressly prohibits PLT Contracting States to require compliance with formal requirements other than those referred to in PLT Rule 18(1) to (4).]

~~{91.1(g)} The authorization for rectification referred to in paragraph (c) shall, subject to paragraphs (g-bis), (g-ter) and (g-quater), be effective:~~

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

~~(ii) where it is given by the International Preliminary Examining Authority, if it is given before the establishment of the international preliminary examination report;~~

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

91.3 Authorization and Effect of Rectifications

(a) ~~{91.1}(f)~~ The competent authority shall promptly decide whether to authorize or  
refuse to authorize a rectification under Rule 91.1 and ~~Any authority which authorizes or~~  
~~refuses any rectification~~ shall promptly notify the applicant and the International Bureau of  
the authorization or refusal and, in the case of refusal, of the reasons therefor. The  
International Bureau shall proceed as provided for in the Administrative Instructions. ~~The~~  
~~authority which authorizes a rectification shall promptly notify the International Bureau~~  
~~accordingly.~~

[COMMENT: The proposed amendments would align the wording with that used elsewhere in the amended Rule. The Administrative Instructions would have to be modified to require the International Bureau to notify the receiving Office, the International Searching Authority and/or the International Preliminary Examining Authority, and the designated and elected Offices accordingly, as required by the circumstances.]

(b) The rectification under Rule 91.1 of an obvious mistake need not be taken into  
account by the International Searching Authority for the purposes of the international search  
report or the written opinion by that Authority, or by the International Preliminary Examining  
Authority for the purposes of a written opinion by that Authority or the international  
preliminary examination report, if the Authority concerned gives, or is notified of, the  
authorization of the rectification after it has begun to draw up the written opinion or report  
concerned. The notification under paragraph (a) shall include information as to whether the  
rectification has been or will be taken into account.

[COMMENT: See paragraph 21 of the main body of this document.]

*[Rule 91.3, continued]*

(c) Where the rectification of an obvious mistake has been authorized under Rule 91.1, the document concerned shall be rectified in accordance with the Administrative Instructions.

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

(d) Where the rectification of a non-obvious mistake has been authorized, it shall be effective:

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

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

[COMMENT: Proposed new paragraph (d) would clearly spell out the effective date of a rectification once authorized. It is proposed to modify the Administrative Instructions to provide that, where an international application has been transmitted to the International Bureau as receiving Office under Rule 19.4 because the Office with which the application was originally filed found that it was not competent to receive it, but as subsequent rectification under Rule 91.1 would retrospectively make the Office competent, the international applications should continue to be processed by the International Bureau.]

[Rule 91.3, continued]

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

[COMMENT: Under paragraph (e) as proposed to be amended, upon request of the applicant, the International Bureau would publish information with regard to a request for rectification which was refused by the International Preliminary Examining Authority, even if the request for publication is received after international publication. This would fill a gap which exists under the present Regulations: under present Rule 91.1(f), any request for publication of information with regard to a refused request for rectification has to be received by the International Bureau prior to completion of technical preparations for international publication. In practice, this means that information concerning a request for rectification which has been refused by the International Preliminary Examining Authority after international publication is neither published nor mentioned in the international preliminary examination report: only authorized rectifications are annexed to that report (see present Rule 70.16; see also Rule 70.16 as proposed to be amended, above). One comment received on the preliminary draft made available for comment on the WIPO website as PCT/R/WG/7 Paper No. 6 suggested that it would be better to make the reasons and comments available by way of file inspection rather than publication (if possible with the application). Such an approach would certainly be appropriate when suitable on-line file inspection and publication systems have been introduced, but pending the development of such systems, it seems preferable to publish the information as at present in order to ensure that the information concerned is made available to designated and elected Offices in the most convenient way.



[Rule 91.3, continued]

(f) The rectification of an obvious mistake need not be taken into account by any designated Office in which the processing or examination of the international application has already started prior to the date on which that Office is notified under Rule 91.3(a) of the authorization of the rectification by the competent authority.

[COMMENT: See paragraph h 24 in the main body of this document.]

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

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

*[Rule 91.3, continued]*

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

[Annex II follows]

ANNEXII

PROPOSEDAMENDMENTSOFTHEPCTREGULATIONS:

RECTIFICATIONOFO BVIOUSMISTAKES

RULE91“CLEANCOPY”<sup>4</sup>

Rule91[“clean”copy]RectificationofObviousMistakesintheInternational ApplicationandOtherDocuments .....	2
91.1 <i>RectificationofObviousMistakes</i> .....	2
91.2 <i>RequestsforRectification</i> .....	5
91.3 <i>AuthorizationandEffectofRectifications</i> .....	5

---

<sup>4</sup> Comments on particular provisions appear only in the “marked -up” copy contained in Annex I.

**Rule 91[“clean” copy]**

**Rectification of Obvious Mistakes in  
the International Application and Other Documents**

91.1 *Rectification of Obvious Mistakes*

(a) An obvious mistake in the international application or another document submitted by the applicant may be rectified in accordance with this Rule if the applicant so requests.

(b) The rectification of a mistake shall be subject to authorization by the “competent authority”, that is to say:

(i) in the case of a mistake in the request part of the international application or in a correction thereof — by the receiving Office;

(ii) in the case of a mistake in the description, claims, drawings or abstract or in a correction thereof, or in an amendment under Article 19, unless the International Preliminary Examining Authority is competent under item (iii) — by the International Searching Authority;

(iii) in the case of a mistake in the description, claims, drawings or abstract or in a correction thereof, or in an amendment under Article 19 or 34, where a demand for international preliminary examination has been made and has not been withdrawn and the date on which international preliminary examinations shall start in accordance with Rule 69.1 has passed — by the International Preliminary Examining Authority;

*[Rule 91.1(b), continued]*

(iv) in the case of a mistake in a document not referred to in items (i) to (iii) submitted to the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau — by that Office, Authority or Bureau, as the case may be.

(c) The competent authority shall authorize the rectification under this Rule of a mistake if, and only if, it is obvious to the competent authority that, as at the applicable date under paragraph (e), something else was intended than what appears in the document concerned and that nothing else could have been intended than the proposed rectification.

(d) In the case of a mistake in the description, claims, drawings or abstract or in a correction or amendment thereof, the competent authority shall, for the purposes of paragraph (c), only take into account the contents of the international application itself and, where applicable, the correction or amendment concerned.

(e) In the case of a mistake in the request part of the international application or in a correction thereof, or in a document referred to in paragraph (b)(iv), the competent authority shall, for the purposes of paragraph (c), only take into account the contents of the international application itself and, where applicable, the correction concerned, or the document referred to in paragraph (b)(iv), together with any other documents submitted with the request, correction or document, as the case may be, and any other document contained in the authority's international application file at the applicable date under paragraph (f).

*[Rule 91.1, continued]*

(f) The applicable date for the purposes of paragraphs (c) and (e) shall be:

(i) in the case of a mistake in a part of the international application as filed — the international filing date;

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

(g) A mistake shall not be rectified under this Rule if:

(i) the mistake lies in the omission of one or more entire elements of the international application referred to in Article 3(2) or one or more entire sheets of the international application; or

(ii) the mistake lies in a priority claim or in a notice correcting or adding a priority claim under Rule 26bis.1(a), where the rectification of the mistake would cause a change in the priority date;

provided that this paragraph shall not affect the operation of Rules 20.4, 20.5 and 26bis.

*[Rule 91.1, continued]*

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

### 91.2 *Requests for Rectification*

A request for rectification under Rule 91.1 shall be submitted to the competent authority within 26 months from the priority date. It shall specify the mistake to be rectified and the proposed rectification, and may, at the option of the applicant, contain a brief explanation. Rule 26.4 shall apply *mutatis mutandis* as to the manner in which the proposed rectification shall be indicated.

### 91.3 *Authorization and Effect of Rectifications*

(a) The competent authority shall promptly decide whether to authorize or refuse to authorize a rectification under Rule 91.1 and shall promptly notify the applicant and the International Bureau of the authorization or refusal and, in the case of refusal, of the reasons therefor. The International Bureau shall proceed as provided for in the Administrative Instructions.

*[Rule 91.3, continued]*

(b) The rectification under Rule 91.1 of an obvious mistake need not be taken into account by the International Searching Authority for the purposes of the international search report or the written opinion by that Authority, or by the International Preliminary Examining Authority for the purpose of a written opinion by that Authority or the international preliminary examination report, if the Authority concerned gives, or is notified of, the authorization of the rectification after it has begun to draw up the written opinion or report concerned. The notification under paragraph (a) shall include information as to whether the rectification has been or will be so taken into account.

(c) Where the rectification of an obvious mistake has been authorized under Rule 91.1, the document concerned shall be rectified in accordance with the Administrative Instructions.

(d) Where the rectification of an obvious mistake has been authorized, it shall be effective:

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

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



*[Rule 91.3, continued]*

(e) Where the competent authority refuses to authorize a rectification under Rule 91.1, the International Bureau shall, upon requests submitted to it by the applicant within two months from the date of the refusal, and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, publish the request for rectification, the reasons for refusal by the authority and any further brief comments that may be submitted by the applicant, if possible together with the international application. A copy of the request, reasons and comments (if any) shall if possible be included in the communication under Article 20 where a copy of the pamphlet is not used for that communication or where the international application is not published by virtue of Article 64(3).

(f) The rectification of an obvious mistake need not be taken into account by any designated Office in which the processing or examination of the international application has already started prior to the date on which that Office is notified under Rule 91.3(a) of the authorization of the rectification by the competent authority.

[End of Annex II and of document]