

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY

GENEVA

## **PATENT COOPERATION TREATY**

### **INTERIM COMMITTEE FOR TECHNICAL ASSISTANCE**

**Third Session: Tokyo, October 24 to 27, 1973**

REPORT CONCERNING DRAFT REGULATIONS UNDER CHAPTER IV OF THE PCT

*prepared by the International Bureau*

#### Introduction

1. At its second session the PCT Interim Committee for Technical Assistance (hereinafter called "the Interim Committee") decided to ask the International Bureau to prepare a first draft of regulations under Chapter IV (Technical Services) of the PCT and to submit that draft to the third session of the Interim Committee (see document PCT/TAS/II/6, paragraph 28).
2. In making the proposal which led to this decision, the Delegation of Egypt suggested that "the proposed regulations should contain implementing rules with respect to the patent information services provided for in Article 50 of the PCT and the technical assistance provided for in Article 51 of the PCT. The preparation of such regulations would be of considerable importance for developing countries. Their existence would encourage such countries to adhere to the PCT" (document PCT/TAS/II/6, paragraph 27).
3. Before the preparation of a draft is undertaken, it appears however necessary to examine the legal form to be chosen for such implementing provision under Chapter IV and to study the question whether and to what extent it seems to be useful and necessary at this stage of the PCT interim period to prepare such implementing provisions, this particularly in the light of the contents of Chapter IV itself and of the institutional framework and mandate of the Technical Assistance Program of WIPO in general.

#### Basis for Chapter IV Regulations

4. It is recalled that Chapter IV of the PCT itself does not contain any express reference to further implementation by Regulations and that the Regulations annexed to the PCT (and adopted by the Diplomatic Conference), while comprising detailed rules concerning Chapters I, II, III and V of the Treaty, do not deal with the other Chapters, including Chapter IV.

5. This would, however, not exclude the adoption of Regulations under Chapter IV since, in accordance with Article 58 of the PCT, the Regulations contain Rules concerning not only matters in respect of which the Treaty expressly refers to the Regulations but also concerning other administrative requirements, matters or procedures and any details useful in the implementation of the Treaty. The Assembly may amend the Regulations, subject to certain requirements as to voting majorities.

6. On the other hand, Chapter IV seems to offer another solution for its implementation. Both Article 50 (Patent Information Services) and Article 51 (Technical Assistance) provide that the details concerning the implementation of the provisions in question shall be governed by decision of the Assembly and, within the limits to be fixed by the Assembly, of such working groups as may be set up by the Assembly for that purpose.

7. It would therefore appear that, in order to satisfy the wishes expressed at the second session of the Interim Committee, two alternative approaches could be explored, once a decision is taken as to the subject matter, if any, required to be covered by any implementing provisions under Chapter IV:

- (a) The implementing provisions could be prepared as a draft of a PCT Assembly decision which would implement Chapter IV of the PCT and which would be taken at the first session of the Assembly after the entry into force of the Treaty. This procedure would avoid going through the necessarily more cumbersome process of amending the Regulations by a whole set of new provisions; or
- (b) The implementing provisions could be prepared as a draft for a new chapter of the Regulations, to be incorporated in the latter by a decision of the PCT Assembly, once it is established, to amend the Regulations in this respect. Such decision would have to comply with the requirements of qualified majority stipulated for amendments of the Regulations in Article 58 of the PCT (normally a three-fourths majority). It would probably require more time since the Assembly would perhaps wish to review also the existing text of the Regulations before determining the contents of a first revision of the Regulations, this in order to avoid too frequent changes of the Regulations.

#### Contents of Chapter IV and relationship to other technical assistance activities of WIPO

8. Before any useful determination could be made as to possible contents of any implementing provisions to Chapter IV, a careful analysis is needed to ascertain to what extent the rather detailed provisions of the Treaty need further implementation at this stage i.e., before sufficient experience with the practical application of the technical assistance chapter of the Treaty is available.

9. In addition to that analysis, a review of the existing and envisaged other technical assistance activities of WIPO is needed in order to avoid any duplication of effort between the PCT Technical Assistance Program and other technical assistance activities. Two other activities of WIPO require particular attention in this context: the WIPO legal-technical assistance program and the proposed WIPO legal-technical program for the acquisition by developing countries of technology related to industrial property.

### The WIPO Legal-Technical Assistance Program

10. Article 4(v) of the Convention establishing WIPO provides that WIPO “shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property”. A program of legal-technical assistance has been established by the Conference and the Coordination Committee of WIPO.

11. The present legal-technical assistance program for developing countries includes training of government officials, advice and assistance to national and regional administrations concerned with industrial property and copyright, the preparation of model laws for developing countries and the organization of regional seminars on intellectual property questions.

### Proposed WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property

12. At its second ordinary session in November 1973, the WIPO Conference will consider a recommendation, prepared by a Provisional Committee convened for that purpose in June 1973, for the adoption of a draft resolution establishing the WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property. Draft organizational rules for the proposed program are attached to the draft resolution (see Annex to this document).

13. The said draft organizational rules provide that the objective of the proposed program is to promote and facilitate, by all means within the competence of WIPO, the acquisition by developing countries, under fair and reasonable terms and conditions, of technology related to industrial property.

14. The means proposed include:

- (i) the promotion of contacts between potential partners in license agreements,
- (ii) the study and recommendation of means designed to facilitate the conclusion of license agreements,
- (iii) the organization, and the assistance in the organization, of easier access, appropriate to the needs of developing countries, to the relevant information contained in technological documentation issued or systematically arranged by industrial property offices and to the documents themselves,
- (iv) assistance in the organization, or the organization, of the publication of demands and offers for licensing concerning technologies of interest to developing countries,
- (v) in cooperation, where appropriate, with other international organizations, the establishment, and assistance in the establishment, of general guidelines and model provisions for license agreements appropriate to the needs of developing countries, and the giving to such countries, on request, of general advice in respect of the formulation of such agreements,
- (vi) assistance in the training of qualified personnel of developing countries in the field of industrial property, particularly licensing,
- (vii) the drafting of model provisions for the national industrial property laws of developing countries designed to facilitate, in such countries, the acquisition through licensing of technology protected by such laws,

- (viii) in cooperation, where appropriate, with other international organizations, the study of the desirability and feasibility of adopting new international arrangements, particularly on licensing of technology related to industrial property, and, where appropriate, the promotion of the adoption of such arrangements.

15. The proposed program would be reviewed by a Permanent Committee open to all States members of WIPO. It would form part of the legal-technical assistance program of WIPO, and the expenses of the International Bureau connected with it would be covered by the budget of the WIPO Conference.

#### Conclusions

16. It would appear that the question of the legal form of the implementing provisions under Chapter IV would require further consideration.

17. A careful review of the relationship of the PCT Technical Assistance Program with the other WIPO technical assistance activities is needed in order to determine the scope of and framework for technical assistance activities under Chapter IV in a way avoiding any duplication of effort.

18. In this context, the proposed WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property deserves particular attention, since it covers to a certain extent the same problem area as Chapter IV, but in a more general framework of a program of the Conference of WIPO.

19. Since the said Program so far exists only in draft form and a decision on its contents will only be taken at the November 1973 session of the Conference of WIPO, no definitive conclusions as to its relationship with the PCT Technical Assistance Program can be drawn at present. The study of the said relationship as a condition for determining the need for and possible contents of implementing provisions under Chapter IV will therefore have to await a final decision on the said Program by the Conference of WIPO.

20. *The Interim Committee is requested*
- (i) to take cognizance of this report;*
  - (ii) to present, in the light of the conclusions of this report, its views on the problems referred to therein and on the continuation of this study.*

[Annex follows]

## RECOMMENDATION

The Provisional Committee on the WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property, in its meeting held from June 25 to 29, 1973, recommends that the Conference of the World Intellectual Property Organization, at its next session, adopt the following

### Resolution

The Conference of the World Intellectual Property Organization (WIPO),

Recognizing the importance of the acquisition by developing countries of appropriate technology under fair and reasonable terms and conditions,

Noting the work being done by other intergovernmental bodies with respect to facilitating the transfer of technology to developing countries, and emphasizing the need for the closest possible cooperation and coordination with them in this field,

Bearing in mind the importance of the industrial property system for commerce in technology,

Desiring to contribute to the international efforts to facilitate the transfer of technology to developing countries by measures relating to the industrial property system,

Recalling Articles 2, 3, 4, 6 and 7 of the Convention Establishing the World Intellectual Property Organization,

Noting the Recommendation adopted on June 29, 1973, by the Provisional Committee on the WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property,

Establishes the WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property and

Adopts the attached Organizational Rules of that Program.

## ORGANIZATIONAL RULES OF THE WIPO LEGAL-TECHNICAL PROGRAM FOR THE ACQUISITION BY DEVELOPING COUNTRIES OF TECHNOLOGY RELATED TO INDUSTRIAL PROPERTY

### Article 1

#### Objective of the Program

(1) The objective of the WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property (hereinafter referred to as "the Program") is to promote and facilitate, by all means within the competence of the World Intellectual Property Organization (WIPO), the acquisition by developing countries, under fair and reasonable terms and conditions, of technology related to industrial property.

(2) Such means shall include in particular:

- (i) the promotion of contacts between potential partners in license agreements,
- (ii) the study and recommendation of means designed to facilitate the conclusion of license agreements,
- (iii) the organization, and the assistance in the organization, of easier access, appropriate to the needs of developing countries, to the relevant information contained in technological documentation issued or systematically arranged by industrial property offices and to the documents themselves,

- (iv) assistance in the organization, or the organization, of the publication of demands and offers for licensing concerning technologies of interest to developing countries,
- (v) in cooperation, where appropriate, with other international organizations, the establishment, and assistance in the establishment, of general guidelines and model provisions for license agreements appropriate to the needs of developing countries, and the giving to such countries, on request, of general advice in respect of the formulation of such agreements,
- (vi) assistance in the training of qualified personnel of developing countries in the field of industrial property, particularly licensing,
- (vii) the drafting of model provisions for the national industrial property laws of developing countries designed to facilitate, in such countries, the acquisition through licensing of technology protected by such laws,
- (viii) in cooperation, where appropriate, with other international organizations, the study of the desirability and feasibility of adopting new international arrangements, particularly on licensing of technology related to industrial property, and, where appropriate, the promotion of the adoption of such arrangements.

#### Article 2

##### Permanent Committee

(1) A Permanent Committee for the Acquisition by Developing Countries of Technology Related to Industrial Property (hereinafter referred to as “the Permanent Committee”) is hereby established.

(2) The Permanent Committee shall keep the Program under review and shall make recommendations to the WIPO Conference and, between sessions of that Conference, to the WIPO Coordination Committee.

(3) (a) The Permanent Committee shall consist of all States members of WIPO which have informed the Director General of WIPO of their desire to be members of the Permanent Committee.

(b) States members of the Paris Union for the Protection of Industrial Property but not members of WIPO shall be members of the Permanent Committee until the third (1976) ordinary session of the WIPO Conference if they inform the Director General of their desire to be members of the Permanent Committee.

(4) (a) The Director General may, and, if so requested by the Permanent Committee, shall, invite States which are eligible to be members of WIPO in accordance with Article 5 of the WIPO Convention but which are not members of the Permanent Committee to be represented by observers at meetings of the Permanent Committee.

(b) The Director General shall invite intergovernmental organizations having an interest in questions concerning the objective of the Program, of which at least one of the member States is a member of the Permanent Committee, to be represented by observers at meetings of the Permanent Committee.

(c) The Director General may, and, if so requested by the Permanent Committee, shall, invite other intergovernmental and international non-governmental organizations to be represented by observers at the sessions of the Permanent Committee where the nature of the questions inscribed in the agenda makes their participation desirable.

### Article 3

#### Program and Budget

- (1) The Program shall form part of the legal-technical program of WIPO.
- (2) When preparing the triennial and annual draft budgets and programs of legal-technical assistance, the Director General shall take into account relevant proposals made by the Permanent Committee.
- (3) The expenses of the International Bureau connected with the Program shall be covered by the budget of the WIPO Conference.

### Article 4

#### Meetings; Expenses of Representatives

- (1) The Permanent Committee shall meet at least once in every year.
- (2) The expenses of each delegation or representative shall be borne by the government or organization which has appointed it, except to the extent that special budgetary provisions have been approved for the purpose of facilitating participation by developing countries which are members of the Permanent Committee.

### Article 5

#### Voting

- (1) Each member State of the Permanent Committee shall have one vote.
- (2) One-half of the members of the Permanent Committee shall constitute a quorum.
- (3) The decisions of the Permanent Committee shall require a simple majority of the States represented and voting. Abstentions shall not be considered as votes.

### Article 6

#### Application of the General Rules of Procedure of WIPO

In addition to the provisions of these Organizational Rules, the General Rules of Procedure of WIPO and the Annex to those Rules shall apply--in so far as they concern "bodies"--to the Permanent Committee and--in so far as they are applicable to "subsidiary bodies"--to any subsidiary body of the Permanent Committee, provided such General Rules are not in conflict with these Organizational Rules.

Article 7

Amendment of the Organizational Rules

(1) These Organizational Rules may be amended by the WIPO Conference or the WIPO Coordination Committee in accordance with the rules governing the amendment of the rules of procedure of those bodies.

(2) The Permanent Committee may make proposals for amendment of these Organizational Rules.

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