

## **Patent Cooperation Treaty (PCT) Working Group**

**Thirteenth Session**  
**Geneva, October 5 to 8, 2020**

### **REPORT**

*adopted by the Working Group*

1. The Patent Cooperation Treaty Working Group held its thirteenth session in Geneva from October 5 to 8, 2020. The session took place as a hybrid meeting due to the COVID-19 pandemic.
2. The following members of the Working Group were represented at the session: (i) the following Member States of the International Patent Cooperation Union (PCT Union): Algeria, Armenia, Australia, Austria, Azerbaijan, Belarus, Brazil, Cameroon, Canada, Chile, China, Colombia, Czech Republic, Denmark, Djibouti, Dominican Republic, Egypt, El Salvador, Finland, France, Georgia, Germany, Ghana, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Japan, Kazakhstan, Kuwait, Lithuania, Madagascar, Malaysia, Mexico, Morocco, New Zealand, Nigeria, North Macedonia, Norway, Panama, Philippines, Poland, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Slovenia, Spain, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States of America, Uzbekistan, Viet Nam, Zimbabwe (65); and (ii) the following intergovernmental organizations: the European Patent Office (EPO), the Nordic Patent Institute (NPI), the Visegrad Patent Institute (VPI) (3).
3. The following Member States of the International Union for the Protection of Industrial Property (Paris Union) participated in the session as an observer: Bolivia (Plurinational State of), Burundi, Pakistan, Uruguay (4).
4. The following intergovernmental organizations were represented by observers: Eurasian Patent Organization (EAPO), European Union (EU), South Centre (SC) (3).

5. The following international non-governmental organizations were represented by observers: Asian Patent Attorneys Association (APAA), Institute of Professional Representatives Before the European Patent Office (epi), Intellectual Property Owners Association (IPO), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Intellectual Property Attorneys (FICPI), Patent Information Users Group (PIUG) (6).
6. The following national non-governmental organizations were represented by observers: American Intellectual Property Law Association (AIPLA), Japan Intellectual Property Association (JIPA) (2).
7. Other observers participating in the session: Palestine (1).
8. The list of participants is contained in the Annex.

### **OPENING OF THE SESSION**

9. Mr. Daren Tang, Director General of WIPO, opened the session, together with the thirty-first session of the Committee for Technical Cooperation, and welcomed the participants. Mr. Michael Richardson (WIPO) acted as Secretary to both meetings.
10. The Director General informed the Working Group that, since its twelfth session, Samoa had acceded to the PCT, becoming the 153rd Contracting State on October 2, 2019. While Samoa had no confirmed cases or deaths from COVID-19 reported to the World Health Organization, it had experienced the damaging social and economic impact from the pandemic like the other States. Referring to his acceptance speech following his appointment in May, the Director General emphasized that the most important challenges faced simply could not be tackled or solved without a common global effort. The present circumstances highlighted the call to work together in developing an IP ecosystem that could continue to encourage creativity and innovation in the current crisis and other situations in the future. Considering the particular global challenge of COVID-19, it was necessary to look at the IP ecosystem and at how to meet this challenge by encouraging innovation and by sharing technical information. This was a broad issue and during the week ahead, it would only be possible to touch on a few aspects. The PCT System itself had so far stood up fairly well to the current situation, both in demand and in performance. The strong rise in international applications in recent years had moderated somewhat so far, but overall levels of applications had not fallen, though the picture varied across receiving Offices and areas of technology. Many IP Offices had maintained their processing effectively, typically by moving to largely remote working and using online systems. The International Bureau had maintained productivity in almost all areas through the swift and effective adaptation of new IT systems and the dedication of processing staff, allowing a smooth transition to home working with little disruption. However, the International Bureau was aware that some Offices had to shut down for significant periods and many applicants suffered difficulties and disruptions. That particular point was the reason behind the proposal on the draft agenda for the Working Group on Strengthening PCT Safeguards, but other items of the agenda were also relevant and the overall situation would need careful monitoring for some time to come.
11. The Director General continued by stating that the joint sessions of the Working Group and Committee for Technical Cooperation marked several firsts. As the first meeting of the WIPO Member States during his mandate as Director General, he was pleased to open the sessions that were dedicated to the development of the PCT, which had been a critical part of WIPO since its inception in 1970. Since then, the PCT had grown to become a key element of the international patent system and a beacon of success in multilateral cooperation, serving not just members, but also the enterprises, entrepreneurs and innovators in its member States. The PCT had experienced record numbers of filings in almost every year since operations had begun in 1978, reaching 265,800 in 2019, an increase of 5.2 per cent over the previous year.

Early in 2020, the PCT System had received its four millionth international application, less than four years after the three millionth application. In recent years, around 57 per cent of non-resident patent filings worldwide had originated from an international application filed under the PCT. The PCT was also a vital organ in ensuring the healthy financial state of WIPO, making up nearly three quarters (74 per cent) of revenue to the Organization. The Director General paid tribute to his predecessors, especially his immediate predecessor, Mr. Francis Gurry, whose leadership had brought the PCT System to what it was today, both as Director General over the past 12 years, and in his earlier posts in charge of the Sector. The Director General also thanked his colleagues at the International Bureau as well as Member States for their support for the PCT System over the past decades. He underlined his wish to work with all stakeholders to improve the PCT System to optimize further the services it provided to users, and facilitate its accessibility to innovators, notably in developing and least developed countries.

12. The Director General also stated that the sessions were the first in a new series of meetings scheduled to take place over the coming weeks in hybrid format, postponed from earlier in the year due to the pandemic. The WIPO Assemblies and the Program and Budget Committee the previous month had both on-site and remote participation. Building on the success of both these meetings, the PCT Working Group and PCT Committee for Technical Cooperation would be the first WIPO meetings of a more technical nature to take place in hybrid format. The Director General looked forward to the discussions and hearing from experts based in IP Offices around the world participating remotely and their national delegations, as well as the views from users representing observer organizations participating in the Working Group. With a single two-hour session each day, he thanked all the remote participants in advance for their efforts in attending the meetings. Referring to the agenda for the two sessions, due to the hybrid nature of the meeting and a single two-hour session each day, there was a reduced number of items. Nonetheless, there were several important subjects.

13. The Director General continued by highlighting some of these subjects. First, the Committee for Technical Cooperation was invited to provide its advice on the Appointment of the Eurasian Patent Office as an International Searching and Preliminary Examining Authority under the PCT. The Eurasian Patent Office had submitted its application for appointment as an International Searching and Preliminary Examining Authority in March with the request for the application to be considered by the PCT Assembly at its session in September. Unfortunately, due to the postponement of the session of the Committee that had been due to meet in May, the PCT Assembly had not been able to consider the appointment. However, the week ahead brought the opportunity for the Committee to consider the application and provide its advice to the extraordinary session of the PCT Assembly, which would be held in the first half of 2021. Second, there was the implementation in the PCT of WIPO Standard ST.26 for the presentation of sequence listings. The new standard would bring the format of nucleotide and amino acid sequence listings in patents into line with that used in the wider scientific community. Implementation in the PCT would therefore make it easier for applicants to disclose sequence listings in their patent applications, and for listings to be provided to public databases. The Committee on WIPO Standards had decided that all IP Offices would transition to ST.26 on January 1, 2022. For successful implementation in the PCT on this date, the Working Group would need to reach a consensus on the necessary changes to the PCT Regulations at this session to allow their adoption by the PCT Assembly before the end of June next year. Third, as previously mentioned, the Working Group needed to consider how the International Bureau and IP Offices acting in their various capacities under the PCT had dealt with the COVID-19 pandemic, looking at lessons learnt and what changes could be made to deal with any future disruptions that might happen at a national, regional or global level. Furthermore, the Working Group needed to review how parts of the PCT System were working and activity with regard to training and technical assistance. Items in these areas included a review of the supplementary international search system and a report on the review of the PCT minimum documentation. Furthermore, there were reports on coordination of patent examiner training and the

coordination of technical assistance. Together, these aimed to improve the ability of national Offices and the PCT System to provide effective services to the benefit of all Member States.

14. The Director General concluded by stating that he looked forward to the discussions on these subjects over the next few days, and hoped that, despite the physical separation, the Working Group and Committee for Technical Cooperation would be able to make progress and reach decisions on the matters under consideration.

#### **ELECTION OF A CHAIR AND TWO VICE-CHAIRS**

15. The Working Group unanimously elected Ms. Dong Cheng (China) as Chair and Ms. Rekha Vijayam (India) and Mr. Charles Pearson (United States of America) as Vice-Chairs for the session.

#### **ADOPTION OF THE AGENDA**

16. The Working Group adopted the revised draft agenda as set out in document PCT/WG/13/1 Prov. 3.

#### **IMPLEMENTATION OF WIPO STANDARD ST.26 IN THE PCT**

17. Discussions were based on document PCT/WG/13/8.

18. The Secretariat introduced the document by explaining the background of the proposals to amend the PCT Regulations to require the use of WIPO Standard ST.26 for the presentation of sequence listings in international applications, instead of WIPO Standard ST.25. In 2017, the Committee on WIPO Standards agreed on a simultaneous translation to ST.26, with effect for all national and international applications filed on or after January 1, 2022 in a so-called “big bang”. Many Member States and Offices had been preparing their laws and IT systems accordingly and these changes were required to implement the PCT parts of these arrangements. Twenty-three IP Offices had already provided the International Bureau with their implementation roadmap for ST.26. The changes to the Regulations reflected two issues, as set out in paragraph 6 of the document. First, it would no longer be possible to file a sequence listing on paper or in an electronic format other than an XML file. The document therefore proposed to delete the provisions relating to handling of paper sequence listings. This change would not prevent applicants from obtaining a filing date for international applications with sequences on paper or in other formats that were not part of an ST.26-compliant sequence listing, and the proposal retained parts of Rule 13*ter* to allow an International Searching Authority to invite the applicant to furnish an ST.26-compliant sequence listing in this situation. Second, the proposal removed the requirement for the applicant to repeat language-dependent free text contained in the sequence listing in the main body of the description. Rather, the free text should be included in the sequence listing itself, where it could be properly understood in the context of the related sequences and fed into public databases. The proposed amendments to Rule 12 allowed receiving Offices to specify the languages in which they would permit the submission of language-dependent free text. By default, this would be the languages permitted for the main body of the description, but Offices would be free to offer more flexible options if they so wished. Moreover, in some cases, the Office might allow an applicant to submit the sequence listing in two languages at the time of filing, most likely in order to match the language of filing and to provide a second language accepted by the competent International Searching Authority. Proposed amendments to Rules 12.3 and 12.4 would ensure that translated sequence listings would be provided in case the sequence listing as filed did not include the free text in a language acceptable to the International Searching Authority, or else in a language of publication. For the national phase, Rule 49 provided for any designated Office to require a translated sequence listing if the language required for national processing was not already included in a listing provided during the international phase. In addition, a special provision was included to allow designated Offices to invite a translation into English if that language was not already available and was needed for the Office to supply the listing to database providers. The

WIPO Sequence software tool would assist with preparation of sequence listings, and it was hoped that this would make translations easier to handle than the present arrangements, both for applicants and Offices. The language-related provisions were dependent on technical revisions to WIPO Standard ST.26, which had been provisionally agreed and were expected to be adopted by the Committee on WIPO Standards at its eighth session, scheduled to take place from November 30 to December 4, 2020. The Secretariat highlighted that WIPO Sequence, WIPO Sequence Validator and ePCT would offer significant assistance to Offices in processing sequence listings. However, receiving Offices that did not have the infrastructure and expertise would not be expected to check the contents of sequence listings received. Most potential defects should be identified and eliminated prior to filing through effective use of the relevant tools by applicants and integration of validations into the main filing tools. However, if occasional defects did occur without being noticed by the receiving Office, Rules 13<sup>ter</sup> and 28 allowed them to be handled by the International Bureau and International Authorities with minimal assistance from the receiving Office. Moreover, Rule 19.4 allowed for applications to be transferred to the International Bureau as receiving Office for certain cases where the Office was not able, or not permitted for language reasons to process the application. All of the proposed changes had been discussed over the last two years, both in the Working Group and the Sequence Listings Task Force of the Committee on WIPO Standards, taking into account a wide range of concerns over linguistic and procedural issues. The Secretariat believed that the Rules as presented would allow a successful implementation of WIPO Standard ST.26 in line with the requirements expressed by Member States.

19. The Delegation of China stated that the proposed amendments to the Regulations gave a clear direction for the implementation of WIPO Standard ST.26, and the Delegation had no objection to the proposals in the document.

20. The Delegation of Singapore supported the proposed implementation of WIPO Standard ST.26 in respect of international applications filed on or after January 1, 2022 and the proposed amendments to the PCT Regulations in the document. The Delegation, however, requested clarification on the wording of the proposed amendments. The definition of free text was currently in paragraph 33 of Annex C of the Administrative Instructions, but there was no definition of language-dependent free text. The Delegation therefore requested this term to be defined in the Administrative Instructions for clarity.

21. The Delegation of the Russian Federation, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC) noted that the PCT had maintained filings over the first six months of 2020 despite the COVID-19 pandemic and hoped that the PCT System would continue to develop and achieve new heights. CACEEC also acknowledged that the activities of the Working Group had had considerable impact on progress in meeting current and strategic challenges for the development of the PCT System. CACEEC also supported the efforts of the International Bureau and Member States to improve further the PCT legal framework, develop IT services and carry out new and ongoing patent cooperation, technical assistance and training projects. With regard to the document, CACEEC supported the proposed amendments to Rules 5.2 to require sequence listings in compliance with WIPO Standard ST.26 with language-dependent free text in the listing. CACEEC also agreed with the amendments to Rule 12 in relation to the requirements of receiving Office for the language of the free text, and for the amendments to Rule 49 to require translations at the designated Office for national phase processing, or in English for database providers.

22. The Delegation of the United States of America thanked the European Patent Office for leading the Sequence Listings Task Force, which had worked diligently over several years to arrive at the proposals in the document. The proposals addressed all the issues raised at the twelfth session of the Working Group, especially those related to the language of free text. The Delegation looked forward to working with the International Bureau and the Task Force on the

drafting of modifications to the Administrative Instructions that would be necessary for implementation of WIPO Standard ST.26.

23. The Delegation of Germany welcomed the proposed amendments to the Regulations, which provided a sufficient degree of flexibility for receiving Offices in applying the new rules. The Delegation had submitted some detailed comments to the International Bureau before the session, mainly related to the wording of the proposed amendments, and it thanked the International Bureau for having taken these comments into account and providing further clarification.

24. The Delegation of the United Kingdom confirmed its support for the proposed amendments to the Regulations in the document, and stated that it had been pleased to work in the Sequence Listings Task Force in the implementation of WIPO Standard ST.26 in the PCT System.

25. The Delegation of Japan supported the proposed amendments to the Regulations in the document and enquired about the timescale for the consequent modifications to the Administrative Instructions. The Delegation stated that changes to the DTDs for the needed to be fixed well in advance, as this would affect the development of IT systems at the Japan Patent Office that would be required to be in place from January 2022.

26. The Delegation of Portugal supported the proposal, adding that this would result in the presentation of sequence listings in patent applications in a machine-readable form that would allow examiners to perform better searches. However, the Delegation had minor concerns regarding the implementation of WIPO Standard ST.26, both for the Portuguese Institute of Industrial Property and applicants that were not accustomed to XML. It would therefore be helpful if IP Offices could be provided with training in the WIPO Sequence software tool, which would allow Offices to provide support to applicants.

27. The Representative of the European Patent Office (EPO), as leader of the Sequence Listings Task Force, thanked the International Bureau and all Task Force members for their work in the implementation of WIPO Standard ST.26. A major achievement in this regard concerned the development of the WIPO Sequence authoring and validation tool. A first stable version of the tool had been released and the Task Force continued actively to provide feedback to fine tune it. The second major milestone, the proposed amendments to the PCT regulations in the document, were the results of intensive rounds of discussions within the Task Force, in particular, on the handling of free text in sequence listings. The EPO was confident that the proposal combined with the technical progress made on the WIPO Sequence tool would contribute to simplifying the procedure for applicants, while at the same time contributing to the wider dissemination of sequences in English by third party database providers. The EPO supported the proposal and hoped it could be adopted at the next session of the Assembly to enter into force on January 1, 2022.

28. The Delegation of India expressed support for the proposed amendments to the Regulations in the document.

29. The Delegation of Egypt supported the proposed amendments to the Regulations in the document, based on the recommendations of the Sequence Listings Task Force of the Committee on WIPO Standards.

30. The Secretariat, in response to the comment on free text from the Delegation of Singapore, confirmed that the International Bureau intended to propose a definition of language-dependent free text in the Administrative Instructions. WIPO Standard ST.26 included definitions of the terms relating to free text. The Secretariat believed that the Administrative Instructions should include explicit mention of the terms by referring to ST.26,

and that this would be part of the next draft of the Administrative Instructions. In terms of a work schedule for the preparation of the modifications to the Administrative Instructions and forms that had been requested by the Delegation of Japan, the Secretariat would continue work after this session, building on earlier drafts that it had circulated to the Task Force. The Secretariat hoped that there would be few changes to the forms, if any, but it would make this a priority and inform the Japan Patent Office and other Offices at the earliest possible stage to allow for necessary changes to IT systems. The Secretariat also confirmed that the International Bureau intended to provide training on the WIPO Sequence software tool, as requested by the Delegation of Portugal. The International Bureau would propose a program of training and allow the opportunity for Offices to give feedback to ensure that the training would be sufficient.

31. The Working Group approved the proposed amendments to Rules 5, 12, 13<sup>ter</sup>, 19 and 49 of the Regulations, as set out in the Annex to document PCT/WG/13/8, with a view to their submission to the Assembly for consideration at its next session in the first half of 2021.

### **STRENGTHENING PCT SAFEGUARDS IN CASE OF GENERAL DISRUPTION**

32. Discussions were based on document PCT/WG/13/10.

33. The Representative of the European Patent Office (EPO) introduced the document by explaining that the proposal aimed to complement existing safeguard mechanisms in the PCT based on experiences from the COVID-19 pandemic. As described in paragraphs 4 to 7 of the document, the Representative explained that the legal remedies available in cases where an applicant could not meet a time limit set in the PCT Regulations had unfortunately fallen short in addressing the extraordinary circumstances of the COVID-19 outbreak in an efficient manner. Under Rule 82<sup>quater</sup>.1, applicants were required to present a request in order to be excused for not having met a time limit, which must, in turn, be assessed by the competent Office. This safeguard mechanism proved to be so incomplete and such a burden for applicants in the extraordinary situation of COVID-19 that the International Bureau issued the Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID-19 Pandemic on April 9, 2020. The Interpretative statement, first, confirmed that the pandemic should be considered as a *force majeure* falling under the purview of Rule 82<sup>quater</sup>.1 and, second, recommended Offices to adopt a flexible practice under that Rule, namely by waiving the requirement for applicants to provide evidence when submitting a request. Under this more flexible and open approach, applicants needed to submit a request for an Office to process. The Representative believed that this was still too heavy a burden for applicants and Offices confronted with a general disruption due to the COVID-19 outbreak. Moreover, the case-by-case excuse mechanism under Rule 82<sup>quater</sup>.1 was not adapted to a situation where an Office remained open for business, with online filing tools fully functioning, whilst the State in which it was located suffered from a general disruption to public life following a lockdown decided by local or national authorities. In other words, in a situation where the Office was not officially closed, but business was heavily disrupted, Offices might face great difficulties in dealing with many requests under Rule 82<sup>quater</sup>.1. It was also burdensome and costly for applicants to prepare such requests. The Representative therefore considered it apparent that PCT applicants and Offices alike needed an automatic safeguard mechanism in addition to the existing case-by-case safeguard mechanism. The document therefore proposed changes to Rule 82<sup>quater</sup> to align Rule 82<sup>quater</sup>.1 to the Interpretative statement of April 9, 2020. In addition, the document proposed a new Rule 82<sup>quater</sup>.3 to provide for an automatic safeguard mechanism through a general extension of time limits. As far as the proposed changes to Rule 82<sup>quater</sup>.1 were concerned, the document proposed adding the word "epidemic" in the list of cases of *force majeure* in paragraph (a). An epidemic could happen at national level, at regional level, or even at global level, in which case it would be a pandemic, as experienced since March 2020. The proposal also added a paragraph (d), which would ensure that Offices could waive, if they so wished, and under certain conditions, the need for applicants to provide evidence when requesting a time limit to be excused. Offices would have to notify the

International Bureau accordingly if they wished to use this possibility. As for the proposed Rule 82*quater*.3, this new Rule was based on the principles of legal certainty, predictability and transparency. Offices could extend the time limits set under the PCT Regulations in a standardized and transparent manner, thus ensuring that the rights of applicants who had benefitted from such extension of time limits would be protected throughout the international and national phases. As the extension of time limits would apply only if Offices notified the International Bureau, users and third parties could rely and refer to the corresponding publication by the International Bureau at any point in time. The proposal was also based on the principles of proportionality and subsidiarity. Each Office would have full discretion to decide whether to apply this automatic safeguard mechanism under the circumstances at stake in the State where that Office was located. The decision by an Office to trigger Rule 82*quater*.3 could be based, for example, but not necessarily, on a comparable extension of time limits applicable for national applications. The reason could be to ensure equal treatment among national and PCT applicants, which would also greatly facilitate the operations of the Office in question. In terms of the construction of proposed Rule 82*quater*.3, paragraph (a) provided that an Office could extend time limits which were set under the PCT Regulations if it experienced, in the State where it was located, a general disruption caused by events of *force majeure* listed in Rule 82*quater*.1, now explicitly extended to epidemics, and thus to pandemics. The scope was limited to the State where the Office was located since extending the approach to other States would be too far-reaching and difficult to administer in practice, for example, if the disruption only applied to a State other than the one where the Office was located, or if there were multiple applicants residing in different States. The extension of a time limit in paragraph (a) of the proposed Rule 82*quater*.3 would be limited to two months, but could be further extended. This aimed to prevent abuse even though it would be unlikely that Offices would extend time limits including the payments of fees for a period longer than was strictly necessary under the circumstances. The need for users to comply with their legal obligations one day after the period ended followed the wording of Rule 82*quater*.2. As the information on the end of the period would be widely available in advance, applicants would have enough time to put their affairs in order. After the safeguard mechanism under Rule 82*quater*.3 no longer applied, the Rule 82*quater*.1 extension became applicable for Offices to use if desired. Both mechanisms were therefore complementary. Paragraph (b) of the proposed Rule 82*quater*.3 aimed to replicate the provision under Rule 82*quater*.1(c) to ensure that designated Offices would not be bound by decisions taken during the international phase after the entry into the national phase. However, some designated Offices allowed completion of certain acts under Articles 22 and 39 after national phase processing had begun, for example, the provision of an English translation at the United States Patent and Trademark Office. Rule 82*quater*.3(b) had therefore been modified compared to Rule 82*quater*.1(c) in order to ensure that designated Offices were not bound by decisions taken by Offices in the international phase and published after the start of the national stage processing when not yet all acts under Article 22 or Article 39 had been completed before that designated Office. If the wording in Rule 82*quater*.3(b) were accepted, there might be a need to align Rule 82*quater*.1(c) and Rule 82*quater*.2(b) with this provision. If the new Rule were adopted, the Administrative Instructions and Receiving Office and International Search and Preliminary Examination Guidelines could provide detailed information along the lines of the explanations contained in the document PCT/WG/13/10. The Representative stated that the proposed legal remedy could help many applicants and Offices as the COVID-19 pandemic continued to unfold and believed that the earlier the provision would be adopted, the better. The document also proposed for the PCT Assembly to adopt an Understanding concerning the extension of time limits due to general disruption in a State in which the Office or organization was located. Such an Understanding would cover the timeframe prior to the entry into force of the proposed new Rule 82*quater*.3 and provide legal certainty and predictability to applicants where Offices had extended time limits by applying a more favorable national or regional law. The Understanding would also provide clear guidance and transparency for designated Offices dealing with such files later in the national phase



procedure. The Representative therefore hoped that the Assembly could adopt the proposed changes to Rule 82 *quater* at its next session.

34. The Delegation of the United Kingdom was pleased to co-sponsor the proposal in the document. During the pandemic, the United Kingdom Intellectual Property Office had adopted a similar approach for its domestic applications by declaring a period of interruption to normal operations with the effect of extending deadlines on domestic patent applications until the end of the period. Customer feedback to these measures had been positive; 92 per cent were pleased with the measures to help stakeholders during these difficult times. However, some customers wanted the period of interruption also to include international applications for a consistent approach on deadlines, which the proposal intended to provide for. The Delegation therefore supported the proposed modifications to Rule 82 *quater*.

35. The Delegation of France, as a cosponsor to the proposal, believed that the proposal was well-developed and added that it would provide receiving Offices with more possibilities to excuse delays in meeting time limits on a case-by-case basis by allowing them to waive the requirement for evidence. The proposal also enabled Offices to extend time limits for PCT applications, for instance, in a pandemic situation, until the end of the disruption, given that it was not possible to apply national provisions that extended such time limits to the PCT. The National Institute of Industrial Property (INPI) in France had extended time limits for national applications during the pandemic, which users had appreciated. The Delegation supported the changes to add epidemics to the list in Rule 82 *quater*.1 and to allow for flexibility and legal certainty in the PCT in light of the Interpretative statement issued by the International Bureau in April 2020. The Delegation believed that the proposal was appropriate to ensure legal certainty for international applications, which could allow for a uniform approach to time delays. The Delegation also pointed out that delays under the Madrid and the Hague Systems could also be considered, which would allow for a uniform approach to time delays.

36. The Delegation of Switzerland supported the proposal to strengthen the safeguards in case of general disruptions such as the present COVID-19 pandemic. The Delegation believed that the current framework did not have sufficient regulations to deal with the present situation. The proposal would enhance both legal certainty and predictability for applicants and users alike while at the same time providing Contracting States and IP Offices with the necessary discretion and desirable degree of flexibility to decide when to make use of the proposed Rule 82 *quater*.3. The Delegation emphasized that the decision to declare a period of general disruption rested at the discretion of each Office, which was a pragmatic and well-balanced approach. In conclusion, the Delegation was pleased to co-sponsor the proposal to amend Rule 82 *quater*.1 and introduce Rule 82 *quater*.3.

37. The Secretariat welcomed the proposal as a step towards identifying and addressing problems where applicants and Offices faced difficulties in the PCT that were outside their control. While the International Bureau had been generally aware of these issues for many years, the COVID-19 pandemic had thrown them into sharp relief. In particular, the scale of the recent disruptions had emphasized that the provisions in Rule 82 *quater*.1 were only suitable for isolated problems. It was impractical for an Office to excuse delays in meeting time limits on a large scale with applicants remaining uncertain of their position until they had received a notification from the Office that it had excused the delay. Consequently, in principle the International Bureau would agree that it was desirable to allow an extension of time limits in suitable situations. However, the Secretariat wished to point out a number of concerns about the specific details of the proposal. The Secretariat reminded the Working Group that the former Director General had considered making similar proposals, save that the extensions of time limits would have been subject to a notification by the Director General on the request of Member States or Offices, rather than unilateral decisions by the Offices. However, in informal discussions on this idea, Member States had raised the following significant concerns about the proposal: there needed to be a more consistent definition of emergency to ensure that the

powers would be used consistently; there needed to be a limit on the duration of extensions that could be made without seeking approval from the Member States for further extensions; and there needed to be careful consideration on which time limits should be extended beyond a limited period, noting the effects that some actions had on other Offices and on actions whose timing was set by the Articles of the Treaty and could not be changed by the Rules. All of these issues deserved further consideration as the PCT was an international system and the actions of the receiving Office, International Searching or Examining Authority, or of the International Bureau had consequences for other States and Offices, not only on the Office wishing to extend a time limit. The International Bureau had an additional concern about this proposal in that it referred to national law in order to help define the scope of an Office's ability to extend time limits. The Secretariat stated that it was desirable for both applicants and Offices to have sufficient flexibility for an Office to announce extensions that were, as far as possible, the same for both national and international applications. However, the international phase should not depend on differences in national laws to determine whether Offices could offer a particular form of relief to applicants when facing equivalent levels of disruption. Moreover, with respect to paragraph (b) of proposed Rule 82*quater*.3, the effect of any action or failure to take an action in the international phase on designated Offices was a complicated issue. Further consideration therefore needed to be given both to the question of potential extensions of time limits beyond the 30-month period referred to in Article 22, and to the case of applicants requesting national processing to begin before that period had expired. In summary, the Secretariat welcomed input on this issue to determine the extent and conditions that Member States considered appropriate for the extension of time limits, but believed that the drafting and details needed further consideration before submitting a proposal to the Assembly. Ideally, this would build on the analysis in paragraph 22 of the document to consider whether the complex set of existing provisions, with their overlaps and holes, could be addressed to deliver a simpler and more complete and consistent approach across the board. The Secretariat nevertheless recognized that speed of review was also important to bring new safeguards into force so that they could be useful.

38. The Delegation of Singapore supported the efforts to strengthen the safeguards to protect applicants' rights in the midst of a general disruption. The COVID 19 pandemic had caused major inconveniences to work routines and to Offices maintaining business continuity. In order to help applicants through difficult situations brought about by the pandemic, the Intellectual Property Office of Singapore had declared excluded days for two months and made legislative changes to national law to put in place relief measures allowing extensions to pending deadlines in special circumstances and to provide alternative modes of filing and serving of documents. The Delegation agreed that the proposed amendment to the PCT Regulations would provide legal certainty and transparency for applicants and Offices for the handling of PCT applications. However, the Delegation sought clarification on the definition of the term "national processing" in the wording of the proposed Rule 82*quater*.3(b). In addition, the Delegation enquired whether, after Rule 82*quater*.3 had entered into force, the Understanding in paragraph 21 of the document would prevent the Office or Authority from applying its national law for providing for such a relief, or would there would still be flexibility for the Office or Authority to decide on which law should apply in such circumstances.

39. The Delegation of the United States of America agreed on the need to be able to provide appropriate relief to applicants wherever possible in dealing with situations like the current global pandemic, especially in meeting time limits for both international and national applications before Offices. With this in mind, the United States of America passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Under the CARES Act, the United States Patent and Trademark Office (USPTO) provided relief for applicants affected by the COVID-19 and who, as a result, were unable to take certain actions before the USPTO such as meeting time limits or submitting fees. The general relief provided under the CARES Act was largely directed to national applications filed at the USPTO, with CARES Act relief in PCT applications primarily limited to the waiver of certain fees. For relief with respect to time limits in

international applications, the USPTO had relied upon Rule 82 *quater*.1 following the guidance issued by the International Bureau. The application of Rule 82 *quater*.1 had been smooth. The number of requests for relief had been manageable with very few issues or problems arising. With this in mind, the Delegation supported the adoption of the proposed changes to Rule 82 *quater*.1, which would make the application of the rule even easier. However, regarding proposed Rule 82 *quater*.1(d), it needed to be understood that an Office's waiver of any requirement for the submission of "evidence" under proposed Rule 82 *quater*.1(d) was not a waiver of the fact that an applicant must have been affected by the event in order to request relief under that Rule, and that it would be expected that any applicant not affected by an event must continue to meet the time limits of the Treaty. The Delegation therefore urged that this principle be made clear in the Administrative Instructions upon adoption of the proposed Rule. Regarding proposed Rule 82 *quater*.3, while the Delegation agreed with and supported the intended outcome, it had some concerns and questions with regard to the proposed language that it believed needed to be addressed before the proposal was forwarded for adoption. First, the Delegation noted that the proposed Rule 82 *quater*.3 provided for extending time limits under the Regulations, whereas under Rules 82 *quater*.1 and 82 *quater*.2, the delay in meeting time limits were excused. The Delegation questioned the distinction between the language of the two provisions, and requested the Secretariat whether extending a time limit, as opposed to merely excusing the delay, could have unintended downstream consequences. The Delegation also noted that the deadline could only be extended "up to the first day following the end of the disruption", only providing a single day for applicants to get affairs in order and submit whatever was necessary. This would be especially problematic for large law firms who could have numerous applications affected. Additionally, the structure of the provision regarding the extension could be problematic. Specifically, the proposed rule provided for the Office to be able to issue a notice extending the period for up to two months, which could be renewed, but it also provided that it could only be extended up to the first day following the end of the disruption. This could lead to a situation where an Office, expecting a disruption to exist for an extended period, issued a notice providing for a two-month extension, but then the disruption unexpectedly ceased after only a month. Under that scenario, it was not clear which time limit an applicant would legally need to meet. The proposal also only provided for an Office to offer this blanket relief if the disruption was in the State where it was located. The USPTO had issued a Notice providing relief to the victims of the 2011 earthquake and resulting tsunami in Japan. Under the present wording, the USPTO could not issue a general notice in PCT applications under this proposal. Further, it would seem that the proposal would be similarly constricting on regional Offices if there were a wide scale disruption in several of their Member States, but not in the State where their Offices were physically located. The questions raised by the EPO in its introduction concerning events in other States regarding the location of the applicant and whether they should be entitled to relief applied equally to the present wording, and needed to be addressed in either situation. The proposed language was also silent as to whether an Office could require that an applicant actually be affected by disruption in order to receive the provided relief. Under the CARES Act, applicants were required to indicate that the reason for requesting the relief was that they had been affected by the COVID-19 pandemic. It was not clear from the wording of the present provision whether such a requirement would be permissible. In general, when the USPTO provided relief for such events, the Office required an applicant to have been affected by the event; otherwise, applicants were expected to meet their obligations. The Delegation expected this to apply under the PCT, and this should be reflected in the proposed Rule. Furthermore, the Delegation requested clarification to the wording in Rule 82 *quater*.3: "in particular where the national law applicable by that Office or Authority provides, in respect of national applications, for a comparable extension of time limits." The European Patent Office had indicated that such language was merely exemplary of an "other like reason". However, it could also be interpreted as a requirement of the Rule, and therefore that an Office could only provide such relief in international applications if the national law applicable to the Office provided similar relief under its national practice. In that regard, the Delegation questioned whether such wording was appropriate. In the past, it had been an

underlying principle to ensure, as much as possible, that PCT practice was not dependent on national practice in order to provide as much uniformity as possible for applicants across all Contracting States. Finally, the Delegation expressed concern with the proposed Understanding of the Assembly in paragraph 21 of the document. Specifically, the Understanding would apply to situations “where the national or regional law applicable by such Office provided for relief”. This was not a requirement for relief to be provided under Rule 82*quater*.1. As such, it was not clear why it had been included as a requirement for the proposed Understanding. Inclusion of such language might in fact create legal uncertainty, contrary to the purpose for adopting the Understanding, by suggesting such national or regional laws were a prerequisite for providing relief provided under Rule 82*quater*.1. Furthermore, as Rule 82*quater*.1 provided for “excusing delay” in meeting time limits fixed in the Regulations, the Delegation questioned whether, in line 4, “extending time limits” should be changed to “excusing delay in meeting time limits” for accuracy. In principle, the Delegation fully supported changes to the PCT Regulations that would make it easier for Offices to provide relief to applicants in situations such as the current worldwide pandemic. However, for the time being, Rule 82*quater*.1 appeared to be functioning satisfactorily. The Delegation therefore proposed to continue to operate under Rule 82*quater*, while working to get the drafting of this proposal correct.

40. The Delegation of Japan supported the proposed amendments to Rule 82*quater*.1 to clarify that an epidemic falls within the scope of this provision since the COVID-19 pandemic could continue to affect PCT procedures and the amendments would improve predictability for users if a similar epidemic happened in the future. The Delegation also supported the amendment to waive the need for evidence by the receiving Office since it would contribute to the effectiveness of remedies in a situation of emergency such as the COVID-19 pandemic, whose critical situation was crystal-clear. Establishment of Rule 82*quater*.3 would also contribute to the effectiveness of remedies for users. In particular, the wording of the provision defined the conditions of general disruption and the extension period. In addition, the proposal clarified the obligations of an Office to publish information related to remedies and to notify the International Bureau accordingly. The Delegation could support these provisions in terms of transparency. However, the Delegation had concerns that, if the extension period were renewed repeatedly, it would affect PCT procedures including the publication of international patent applications. It would therefore be advisable to establish a condition in the PCT Administrative Instructions to monitor whether the renewal of the extension period had properly been done by the Office. In addition, the Delegation proposed some modifications to the drafting of the proposed amendments for consistency with existing provisions and clarification of their scope. With regard to the final sentence of Rule 82*quater*.1(d) and Rule 82*quater*.3(a), the Delegation proposed that the phrase: “the International Bureau shall be notified by the Office or Authority” be replaced with the phrase: “the Office or Authority shall notify the International Bureau”, in light of the wording of Rule 82*quater*.2. In addition, the phrase: “Office or Organization” in the second sentence of Rule 82*quater*.3(a) could be replaced with the phrase “Office or Authority” in light of the first sentence. With regard to the wording of Rule 82*quater*.3(b), the Delegation stated that it was not clear if the proposed amendments dealt with each international application individually and therefore proposed that the phrase: “With respect to an international application” be added at the beginning of the sentence, and the phrase: “for that application” be added after “national processing”.

41. The Delegation of Iran (Islamic Republic of) noted the effects of the COVID-19 pandemic on the functioning of national IP Offices, International Searching and Preliminary Examining Authorities and the International Bureau and underlined the need to undertake any necessary initiatives and measures to help relevant stakeholders better respond to the constraints and restrictions imposed by the pandemic. The Working Group should therefore spare no efforts to provide applicants and rights holders with the opportunity to have their rights be well protected nationally and internationally in the time of the emergencies, including the pandemic. The Delegation concluded by stating the view that some kind of flexibility should be given to national

Offices for application of such a rule due to the potentially different situations in any given country in the case of emergency.

42. The Delegation of Saudi Arabia expressed support for the proposals to amend the regulations in order to ensure the protection of rights of applicants in extreme situations. The Delegation also informed the Working Group that Saudi Arabia would be holding a specialized forum in the margins of the G20 summit. This forum would pay close attention to intellectual property and within the framework of COVID-19 pandemic in order to highlight initiatives of the Saudi Authority for Intellectual Property (SAIP), including extending time limits for receiving applications and the payment of fees.

43. The Representative of the European Patent Office (EPO) responded to the questions and comments on the proposal. First of all, regarding the concerns with regard to an Office having comparable extensions for national applications to draft Rule 82*quater*.3(a), the Representative agreed that this should not be a requirement. To clarify this matter, the words "in particular" could be replaced by "for instance" in order to highlight that it would be left to the discretion of Offices to decide whether the circumstances were met for them to trigger the proposed new safeguard mechanism. The reference to the national laws was only illustrative. As to the length of the period of extension, the Representative believed that two months appeared reasonable, and an Office could decide on a shorter period when notifying the International Bureau that it intended to use the provision. The period could also be longer if the Office notified an extension of the first period of extension if the circumstances still required the safeguard mechanism to be in place. The Representative did not expect an Office to trigger such mechanism, or extend the period, unless the situation was difficult as this might severely affect incoming work and payments. Besides, the information would be available on the WIPO website. In terms of the questions from the Delegation of Singapore, the Representative agreed that the definition of "national processing" in the proposed Rule 82*quater*.3(b) could be further clarified in the Administrative Instructions, or Receiving Office or International Search and Preliminary Examination Guidelines, if need be, and could leave this matter to the International Bureau to consider. As to the Understanding contained in paragraph 21 of the document, the Representative confirmed that the aim was to protect rights for applicants prior to the entry into force of the proposed safeguard mechanism. Once the safeguard mechanism under Rule 82*quater*.3 had entered into force, Offices could trigger it and thus ensure a similar protection for PCT applicants. In relation to the comments from the Delegation of Japan, the Representative noted their support for the proposal. The EPO would address the comments from the Delegation, which were all drafting issues, and would improve the wording of the provision, if necessary. The Representative continued by providing some clarifications to the comments from the Delegation of the United States of America. First, the distinction between the language of the Rule 82*quater*.3 and Rules 82*quater*.1 and 82*quater*.2 could be explained by the different underlying concepts. The safeguard mechanism of Rule 82*quater*.3 followed the concept of an "automatic" extension of periods and did not require a request, whereas Rules 82*quater*.1 and 82*quater*.2 provided for an excuse requiring an "individual" request. The aim of Rule 82*quater*.3 was to provide for a safeguard mechanism involving minimal administrative burden with no need for applicants to submit a request, and therefore no need for Offices to decide on such individual requests. The publication of the notification by the International Bureau, including the period in which the safeguard mechanism applied, ensured transparency and offered predictability and reliability for Offices, applicants and third parties alike. Whilst the safeguard mechanism was different between Rule 82*quater*.3 and Rule 82*quater*.1, the legal effect in terms of protection of the rights of the applicant was similar. In other words, the extension of time limits was comparable to a general excuse mechanism with no need to submit a request. The experience in Europe had been positive with such a relief system in place for national applications. At the EPO, the extension of time limits until May 4, 2020, did not significantly affect incoming work and payments, as most users managed to perform their acts within the time limits. However, those who could not, because of the situation, did not have the additional burden of submitting requests for a delay to be excused.

Besides, as the proposed safeguard mechanism was optional, no Office would be obliged to trigger that Rule. The practice at the USPTO could therefore continue, unchanged. The Representative repeated the explanation to limit the scope of the approach to the State where the Office was located as the measure would otherwise be too far-reaching and difficult to administer. As to the requirement for applicants to comply with their legal obligations one day after the period was taken from the wording of Rule 82 *quater*.2. Offices defined the period when the safeguard mechanism applied, and information of the public would be ensured through the notification of the International Bureau and the respective Offices' own channels of information. This information would be available well in advance and it would be reasonable to assume that applicants had enough lead-time to put their affairs in order. Besides, the proposal used the same concept agreed under Rule 82 *quater*.2. Finally, once the safeguard mechanism under Rule 82 *quater*.3 no longer applied, the safeguard mechanism under Rule 82 *quater*.1 became applicable for Offices to use.

44. The Delegation of the Russian Federation, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), noted the restrictions on the movement of people, the dramatic changes in public life and the suspension of many services due to the COVID-19 pandemic. There had also been a major impact on economic activity, causing significant changes in international trade and ways of working. While the PCT System provided safeguards in protecting applicants' rights, including the restoration of the priority right, excuse of delays and the extension of time limits under numerous circumstances, CACEEC believed that the COVID-19 emergency had shown that the PCT Regulations did not take into account all possible circumstances that might create a need to extend time limits. The proposal would allow Offices, International Authorities and the International Bureau, depending on circumstances, to take independent decisions and waive the need to provide evidence of failure by applicants to meeting the time limits specified by them, notifying the International Bureau accordingly. Obtaining or providing evidence justifying the failure to meet time limits could be nearly impossible given the epidemic and might entail additional costs and be time-consuming for applicants, as well as generating extra work for the Offices themselves to process the relevant correspondence. By introducing Rule 82 *quater*.3, it would be possible to extend PCT time limits when the State in which the Office was located was undergoing a general disruption owing to, for instance, an epidemic. Time limits fixed in the Regulations could be extended to the first working day following the interval of the disruption, but not exceeding two months from the date of notification of any such disruption, but allowing for further extension. CACEEC therefore supported the inclusion of Rule 82 *quater*.3 as it would benefit applicants and Offices. It would allow Offices to decide independently on time limit extensions and would lay the groundwork early on for working under the conditions arising as a result. Offices could decide to apply, or not, the provisions of the rule depending on the particular circumstances.

45. The Delegation of China acknowledged the global issues and the impact on applicants resulting from the COVID-19 pandemic. The China National Intellectual Property Administration (CNIPA) had issued orders to extend time limits and adopt other measures, as well as easing the burden on applicants under the framework of the PCT. The Delegation believed that the proposal would generally help to phase the problems brought by the COVID-19 pandemic and protect the rights of applicants impacted by a general disruption. The Delegation therefore supported the intent and principle of the proposal. However, it requested further clarification and discussion on certain issues, such as the extent of the duration of the extension, coordination between the international and national phases, as well as how to provide relevant documents. The Delegation supported the principle of transparency and fairness and believed in taking into account the interest of applicants and making the procedure as easy as possible for them.

46. The Delegation of Denmark considered the proposal to be a sensible one, and provided two comments for further consideration. First, in the proposed wording of Rule 82 *quater*.3, the phrase "any time limit extended under this paragraph may be extended up to the first day

following the end of the disruption” could increase the risk of many deadlines arriving at the same time, on the first day following the end of the disruption. This might potentially give rise to practical and technical challenges for applicants, receiving Offices or the International Searching and Preliminary Examining Authority. Second, the lack of a clear cutoff date or provision on how many times a deadline could be extended or to what point in time a deadline may be extended, might prompt a challenge, for instance, that deadlines should not be extended beyond the deadline for national phase entry. However, the Delegation had a positive view of the proposal, as it was flexible and addressed local circumstances.

47. The Delegation of Australia acknowledged the worldwide difficulties for patent applicants due to the COVID-19 pandemic. IP Australia had publicly announced its relief measures on April 22, 2020. In the same spirit as the proposal, IP Australia offered streamlined extensions of time limits by up to three months and eased the requirements for evidence from the applicant. The availability of these relief measures was currently set to expire on October 31, 2020, but the expiry date was reviewed every month. The Delegation further thanked the International Bureau for issuing the Interpretative statement of April 9, 2020, which provided guidance and certainty on the application of Rule 82*quater*.1 during the current crisis. The Delegation supported the intent behind the proposal and believed that it showed how the PCT could adapt to current challenges, but raised two points that it believed were not clear in the wording of proposed PCT Rule 82*quater*.3(a). First, in the term “renews” towards the end of the provision, it was not clear whether the time limit or the notification was being renewed. Second, the provisions were not clear on whether a time limit would be extended relative to the due date of an associated deadline or the notification date of the general extension of deadlines.

48. The Delegation of Germany supported the proposed amendments to the PCT Regulations in the Annex of the document, which would extend the legal remedies available under the PCT in emergencies. They would also increase legal certainty and transparency for the users of the PCT System and provide more flexibility for Offices in the interest of users. Since the proposed Rule 82*quater*.3 was a far-reaching granting of powers to the Offices, the Delegation stated that this provision should only be applied in exceptional and strictly limited cases. As both the proposed Rule 82*quater*.1(d) and Rule 82*quater*.3 were drafted as “may” provisions, the Delegation understood that Offices would not be obliged to apply these provisions and would be able to take into account all relevant aspects when deciding to apply these provisions, such as the legitimate interests of users, third parties, and Offices. Overall, the Delegation believed the proposal to be a welcome contribution to the further development of the PCT System in the interest of users and Offices.

49. The Delegation of India agreed that the current pandemic arising from the spread of COVID-19 had presented hurdles in meeting the time limits. In principle, the Delegation agreed on the need for a mechanism to take care of the timelines and to ensure that PCT applications did not lose their legal effect in certain situations. However, the Delegation noted that the proposed Rule 82*quater*.3 allowed an Office, International Authority or the International Bureau to issue notifications in case of general disruption for the same reasons as those listed in Rule 82*quater*.1. As disruptions might happen in different States at different times due to reasons of *force majeure*, many Offices and Authorities could issue such notifications at different times, resulting in an unpredictable situation regarding timelines in the PCT. Rule 82*quater*.1 provided a remedy to an interested party to address the hurdles in meeting time limits in cases of *force majeure*. In order to address the situation of the COVID-19 pandemic, the International Bureau issued the Interpretative statement to make use of this possibility without the need to ask for evidence. The Delegation suggested that the International Bureau should assess the experiences of IP Offices in implementing the Interpretative statement so that any future changes to the PCT Regulations could be based on this experience. As the underlying reasons behind the proposed Rule 82*quater*.3 were the same as Rule 82*quater*.1, it might be possible to address hurdles in meeting time limits by amending Rule 82*quater*.1 without introducing a new provision. In relation to the wording of

proposed Rule 82*quater*.3, the possibility to extend any time limit up to the first day following the end of the disruption might not be a practical solution as it could result in a huge burden on applicants and electronic systems of Offices if many pending actions needed to be performed on a single day. The Delegation therefore suggested that the time limit could run for a longer period after the end of the notification period, for example, 15 days. An applicant would therefore not face the uncertainty of waiting until the end of a notification period before knowing whether an Office would extend the period and then facing many deadlines on the same day. Moreover, it was not clear whether national laws required amendment to implement the proposal given the reference in the drafting to applicable national law. In addition, it was not clear in the draft whether the proposed Rule 82*quater*.3 was without prejudice to Rule 82*quater*.1. While a notification under Rule 82*quater*.3 issued by one Office could be presented as evidence under Rule 82*quater*.1 in another Office, such a notification should not be a requirement for excuse under Rule 82*quater*.1. A further paragraph in Rule 82*quater*.1 could state that an applicant could use a notification under Rule 82*quater*.3 as evidence under Rule 82*quater*.1. Furthermore, the existing Rule 82*quater*.1 and the proposed Rule 82*quater*.3 did not address the problems arising from the inability of an office to comply with certain time limits that affected the time for an applicant to comply with future actions. Any changes in Regulations could address such hurdles when the Office, even when open for business, was unable to comply with the timelines. In conclusion, the Delegation suggested further consultation to ensure that any changes to the Regulations were clear and addressed all concerns.

50. The Delegation of Spain noted that there were different aspects to take into account, with regard to disruptions caused by the COVID-19 pandemic. The Spanish Patent and Trademark Office needed to establish special measures in dealing with the pandemic, and the proposals in the document provided greater flexibility to Offices to respond to crises. The Delegation therefore supported the proposal.

51. The Delegation of the Philippines supported the principle behind the proposal. The Delegation recognized the need to consider expanding Rule 82*quater*, not only due to the recent experience of the COVID-19 pandemic, but also in recognition of some other intermittent circumstances that may happen in the future, which might cause general disruptions. These events could limit normal operations at an IP Office as well as pose restrictions on applicants being able to comply with procedural and documentary requirements within the prescribed periods. The Delegation agreed that both IP Offices and applicants should not be further burdened by the effects of such occurrences. Similar to the experiences of other patent Offices, the Intellectual Property Office of the Philippines (IPOP HL) had issued adjustments and extensions to deadlines for applicants in recent months to alleviate the extraordinary conditions and restrictions suffered by applicants. While IPOP HL had expanded its electronic systems to alleviate the effects in terms of access to its services, the Delegation recognized that situations and access conditions were not the same for applications considering that the Philippines was an archipelago. The Delegation therefore believed that there should be relief given to applicants and that patent Offices should have the flexibility to extend time limits in light of the prevailing conditions. In view of the experiences with the current pandemic and future unprecedented circumstances that might occur, the Delegation believed that this proposal had merits to eliminate or lessen possible operational issues. While the PCT System functioned exceedingly well and had been at the core in promoting innovation globally, any system had limitations, and the amendment offered a solution to both applicants and patent Offices in cases of general disruption, providing relief to applicants and flexibility to Offices. The Delegation therefore supported the amendments, which would provide greater legal certainty and predictability for both the PCT users so that they could continue with their PCT applications and for the Patent Offices that had to contend with administrative challenges and constraints.

52. The Delegation of the United States of America pointed out the difference between the need for an applicant to perform an action on the next working day after an electronic means of



communication had become available again under Rule 82 *quater*.2, and the proposal in Rule 82 *quater*.3 to extend a time limit to the day following the end of a disruption. Rule 82 *quater*.2 concerned an event affecting an Office, so the applicant should be able to perform the action as soon as the electronic service became available at the Office to allow submissions again. By contrast, Rule 82 *quater*.3 related to events affecting applicants. In this case, a one-day period for an applicant to meet a time limit after the events no longer affected the applicant would appear too short, a point that the Delegations of Denmark and India had also raised. Further, the Delegation noted that the explanation of the European Patent Office did not address the apparent discrepancy as to what happens if there were a difference between the period set in a notice by the Office and in the one day following the end of the event. The Delegation further underlined a fundamental difference that the United States Patent and Trademark Office (USPTO) had with the European Patent Office (EPO) in terms of excusing a delay in meeting a time limit. The proposal appeared to intend to make the relief provided by Rule 82 *quater*.3 available to an applicant regardless of whether that applicant had been affected by an event listed in Rule 82 *quater*.1. By contrast, the Delegation emphasized that the USPTO required an applicant at least to make a statement with the reason for a late submission, even supporting evidence was not required. If an applicant that had not been affected by the event, the applicant would still be required to meet the time limits.

53. The Delegation of the Republic of Korea agreed with the proposals in the document, which would help applicants in situations such as the COVID-19 pandemic and further improve the usefulness of the PCT System.

54. The Delegation of Canada supported the principle of the proposal, which would strengthen safeguards in cases of outages due to general disruptions such as the COVID-19 pandemic and further protect applicants. The Delegation did, however, have some concerns related to the drafting of the proposed amendments to Rule 82 *quater* and had passed its suggestions for improvement to the provisions to the European Patent Office for consideration.

55. The Delegation of Egypt agreed with the proposed amendments to the PCT regulations to strengthen safeguards in cases of outages due to general disruptions.

56. The Representative of the European Patent Office (EPO) stated that the EPO believed that there was consensus to act in support of the user community, to protect applicants' rights and provide them with relief in these difficult times of the COVID-19 pandemic. The Representative also noted the full support to the proposed changes to Rule 82 *quater*.1, subject to clarifications in the Administrative Instructions, in the Receiving Office Guidelines and/or in the International Search and Preliminary Examination Guidelines, as the case may be. The International Bureau could deal with this matter. As far as Rule 82 *quater*.3 was concerned, the Representative suggested to turn the words "in particular" into "for instance" in Rule 82 *quater*.3(a) in order to make it clear that there was no direct linkage with national laws, thus dealing with the concerns expressed, in particular, by the International Bureau and the Delegation of the United States of America. In addition, the Representative stated that the EPO was open to minor adjustments in the language of Rule 82 *quater*.3 in order to address drafting issues raised by some delegations. The Representative also observed that some issues raised by delegations would be included in the Administrative Instructions, Receiving Office Guidelines and/or International Search and Preliminary Examination Guidelines. For example, with respect to the comments raised by the Delegation of Australia, the Representative confirmed that it was the notification from the Office that needed to be renewed and the Administrative Instructions could indicate this process, as had recently happened with the implementation of Rule 82 *quater*.2. In addition, where the Office had extended a time limit, the due date was the date on which the notification under Rule 82 *quater*.3 was no longer applicable. In terms of the concerns expressed by the Delegation of the United States of America about an applicant only having one day to make submissions after the period was no longer applicable, the Representative clarified the procedure under the proposal. An Office would notify the

International Bureau about the period during which time limits would be extended (or about the extension of the period for another period). The period could be up to two months. The safeguard under Rule 82*quater*.3 would cease to have effect on the following working day after the end of the period. However, this would be a smooth transition, as Rule 82*quater*.1 would then be applicable, should an Office decide to make use of it. Therefore, in particular cases where the applicant could not comply with the “new” time limit as extended under Rule 82*quater*.3, it would be possible for the applicant to request the Office to excuse the delay under Rule 82*quater*.1. The Representative explained that the transition at end of the period for extension of time limits, which happened at the EPO on May 4, 2020, went smoothly for both applicants and the EPO. In relation to comments from the Delegation of India regarding the applicability of Rule 82*quater*.1 and Rule 82*quater*.3, there was no overlap between the two provisions. An Office would apply one or the other, but could not apply both at the same time. The Administrative Instructions, Receiving Office Guidelines and/or International Search and Preliminary Examination Guidelines should indicate that a notification under Rule 82*quater*.3 by an Office should serve as evidence under Rule 82*quater*.1 before another Office. Finally, the Representative addressed the question of the need for applicants to inform the Office that they had been affected by the situation of *force majeure* in order to benefit from the safeguard, as raised by the Delegation of the United States of America. The Representative stated that an Office would not trigger the safeguard mechanism under Rule 82*quater*.3 unless it was clear that this would potentially affect a majority of the user community, like the COVID-19 pandemic. As small and medium-sized enterprises and individual applicants did not have the resources of large companies, the provision intended to dispense with the need for applicants to use the mechanism of Rule 82*quater*.1 which the EPO considered was too formalistic and not helpful for applicants or Offices in such extreme situations. The experience in Europe with extending time limits had been positive, and only applicants in clear difficulty had paid fees or submitted documents after the expiry of the normal time limit. As the proposed mechanism was optional, no Office was obliged to trigger it if it believed Rule 82*quater*.1 to be sufficient. The Representative believed that there was consensus on the principle of the proposal, with only minor drafting improvements needed in light of feedback. In order not to delay the proposal, the Representative proposed that the International Bureau conduct a written consultation with a final revised version of the proposed changes to the Regulations by the end of 2020. If this text were agreeable, it could be possible to table the proposal at the session of the Assembly, to take place in the first half of 2021.

57. The Delegation of the United States of America underlined that it continued to have concerns with the proposal. In particular, it stressed the importance of an applicant needing to be affected by an event in order to get relief due to that event. This had been standard long-standing legal practice at the United States Patent and Trademark Office (USPTO) when dealing with natural emergencies, hurricanes, tornadoes, and the like. The Delegation did not believe this to be substantial burden on applicants; for the most part, the USPTO accepted a statement of a few sentences to explain that the applicant was affected, which would go on the record. If an applicant had not been affected by a situation, the Delegation strongly believed that that applicant should be required to meet its obligations with regard to the Treaty. Moreover, the Delegation disagreed with the European Patent Office that the outstanding drafting issues were only minor in nature. Some of the issues that the Delegation had raised along with other delegations were significant drafting problems. Furthermore, the Delegation reminded the Working Group that in agreeing on a truncated hybrid session for the meeting, Regional Coordinators had understood that there would be no substantive exchanges with regard to legal drafting; discussions on any proposal that did not meet with outright agreement would be deferred to the following session. On this basis, the Delegation could not support the consultation and tabling of amendments at the next session of Assembly proposed by the European Patent Office. The Delegation emphasized that the application of Rule 82*quater*.1 was working well at the USPTO in its capacity as a receiving Office. There had been no problem dealing with the numbers of requests for relief under this provision, and it believed that the International Bureau, in its capacity as a receiving Office, did not have any difficulties with

this provision during the current emergency arising from the COVID-19 pandemic. The Delegation therefore did not perceive a need to make the proposed changes to Rule 82*quater* at the next session of the Assembly in the first half of 2021, and underlined that further work was necessary on the provision. The Delegation therefore proposed to suspend discussions on the proposal and return to the matter at the next session of the Working Group in 2021, which it hoped would take place in person. The Delegation supported the concept of the proposal, but Rule 82*quater*.3 was not ready to be adopted or passed to the International Bureau to resolve drafting issues.

58. The Chair acknowledged that all delegations supported the principle that the PCT legal framework should provide adequate mechanisms to safeguard against the loss of rights of an application from failure of an applicant to meet a time limit fixed in the PCT Regulations due to the COVID-19 pandemic and similar situations such as those listed in Rule 82*quater*.1(a). Some concerns had, however, been raised with regard to details of safeguard measures, such as how to maintain flexibility for Offices, and how to ensure they work in practice. The European Patent Office had addressed these concerns and proposed a written consultation on the proposal. However, some delegations had underlined that the concerns would require further consideration at the next session of the Working Group. The Chair therefore proposed that the European Patent Office and the cosponsors of the document submit a revised proposal to the next session of the Working Group, and that the International Bureau assess the experiences of Offices in the implementation of the Interpretative statement issued on April 9, 2020.

59. The Working Group expressed support for the principle of providing for better safeguards for applicants and Offices in cases of general disruption outside their control and:

(a) invited the European Patent Office, France, Switzerland and the United Kingdom to submit a revised proposal to the next session of the Working Group, taking into account the comments made by delegations; and

(b) requested the International Bureau, in cooperation with the Member States, to assess the experiences of Offices in the implementation of the Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID-19 Pandemic that it issued on April 9, 2020 and to submit a report to the next session of the Working Group.

## **REVIEW OF THE SUPPLEMENTARY INTERNATIONAL SEARCH SYSTEM**

60. Discussions were based on document PCT/WG/13/4 Rev.

61. The Secretariat introduced the document by explaining the supplementary international search had been available to applicants since January 1, 2009. Since then, there had been two reviews of the supplementary international search system, the first in October 2012 and the second in October 2015. At the more recent of these reviews, the Assembly had decided to review the supplementary international search system again in 2020. As the session of the Assembly that had taken place from September 21 to 25, 2020 did not consider any substantive items on the PCT System, the review would pass to the extraordinary session of the Assembly due to take place in the first half of 2021. Paragraph 17 of the document presented two options for the Assembly to consider in the review. The first in paragraph 17(a) was to maintain the status quo and set a future date for the next review. The second in paragraph 17(b) was to abolish supplementary international search, probably from July 2023 at the earliest, noting the number of requests had always been very low. The Working Group was invited to comment on the supplementary international search system and issues relevant to its future, and consider the decision that the PCT Assembly could adopt following the review. In this regard, there were draft decisions in the document corresponding to the two options that the Working Group could

recommend to the Assembly. The decision to continue supplementary international search in paragraph 21 proposed the latest date for the next review to be 2027, but leaving the possibility for the International Bureau or Contracting State to request this review to take place at an earlier date.

62. The Representative of the European Patent Office (EPO) believed in continuing to monitor supplementary international search, despite the low uptake. Since the amendments entered into force in July 2017 to allow an applicant to request supplementary international search up to 22 months from the priority date, the number of supplementary international search requests at the EPO had more than doubled, from 40 in 2017 to 93 in 2019. Moreover, for the first time, nine out of the ten Authorities offering supplementary international search had received requests, showing some interest across the board. Even if the volumes were low, they were not negligible either, and supplementary international search could be an alternative for users who wished to have a second International Searching Authority to search their application. The costs to provide supplementary international search were significant in terms of IT development and staff training; abolishing supplementary international search would require additional IT costs to decommission modules providing support for supplementary international search, which the EPO was not ready to undertake at this stage. The EPO therefore strongly believed that supplementary international search should be maintained and further monitored, as proposed in paragraph 21 of the document.

63. The Representative of the Nordic Patent Institute (NPI) explained that it had offered supplementary international search since 2009 when the service had been launched. At the time, it was foreseen that the system would be a success, to the point that the NPI had added a safeguard clause to limit the number of requests to 500 per year. However, despite two reviews and efforts to increase interest from users, there have been very few requests. The NPI had performed five supplementary international searches: one in 2010, two in 2012, and two in 2019. The most recent requests presented several challenges in processing them due to the sporadic nature of requests. While the NPI had up-to-date processes for all its services, the resources required to handle the two recent cases involving supplementary international search had raised questions on whether to continue offering this service. The Representative suggested that an increase in the quality of international search and preliminary examination could be reason behind the low uptake of supplementary international search. The increased availability of commercial searching and free online resources coupled with quality of search tools, databases and increased reliability of machine translation could play a big part as well. In view of future IT development costs at the International Bureau, which would be disproportionate to the low volume of requests, the Representative believed that the Assembly should address the issue of whether to maintain the supplementary international search. The NPI was in favor of option (b) in paragraph 17 of the document, namely to abolish the supplementary international search system at this time.

64. The Delegation of China recognized that the uptake of supplementary international search had been low, but several regularly used the option and therefore found the supplementary international search system valuable and meaningful. Given the continuing interest from these applicants, the Delegation wished to maintain the system at this time, with the International Bureau continuing to monitor and assess the functioning of the system as necessary.

65. The Delegation of the Russian Federation, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), acknowledged that the extension of the period for requesting supplementary international search had made little difference to its use. However, despite the low uptake, CACEEC believed that the service should be retained because it enhanced the quality of international search, which could increase the probability of a patent being granted in the national phase. The Delegation added that the Federal Service for Intellectual Property (ROSPATENT) offered supplementary international search in some areas of subject matter listed in Rule 39 and had received

supplementary search requests for international applications containing methods of treatment of humans and animals where the main International Searching Authority had not performed a search. In these cases, supplementary international search was the only way an applicant could obtain prior art information from a search during the international phase. CACEEC therefore believed that it would be expedient to continue to monitor the uptake of supplementary international search and defer the decision on whether to discontinue the service at least until completion of the collaborative search and examination pilot by the IP5 Offices.

66. The Delegation of Spain stated that the Spanish Patent and Trademark Office had never participated in supplementary international search. The Delegation believed that offering the option of a second international search gave a negative image of the PCT to users as it suggested that the main international search could be inadequate. It was important to ensure that the quality of international search was sufficiently high not to require a supplementary search. Despite efforts of various Offices to popularize supplementary international search, it had never taken off in a big way. Nevertheless, this might not be linked to the quality of patents, or to the use of human and financial resources in maintaining supplementary international search.

67. The Delegation of Norway supported the statement made by the Nordic Patent Institute. While the Delegation was in favor of measures that could increase the quality of services offered to applicants, with regard to supplementary international search, it was important to consider both the low number of requests since the start of the service in 2009 and the possible rise in costs in the future. The Delegation therefore was of the opinion that the Working Group should recommend to abolish supplementary international search.

68. The Delegation of Egypt stated that while the Egyptian Patent Office, in its capacity as an International Searching Authority under the PCT, did not yet offer the supplementary international search service, the Delegation believed in maintaining this option and performing a further review in the future. Despite the low use of supplementary international search, there could be a useful role regarding the language specializations of the International Authorities willing to offer the service as a supplementary international search could cover documents of particular languages understood by the examiners at a particular International Searching Authority. Although search engines and machine translation facilities for reading documents in other languages had improved in recent years, data entry in some languages still resulted in a search examiner not being able to retrieve some relevant documents. The Egyptian Patent Office faced this issue with Arabic keywords, which could be represented in different ways in another language and therefore required examiners dealing with the Arabic language to perform the search. Supplementary international search could also be helpful for applicants seeking extra information during the international phase, for example, if the applicant were interested in a particular area of subject matter or technical field not searched by the main International Searching Authority in accordance with Article 17(2), such as methods of treatment in Rule 39.1(iv). The supplementary international search report could therefore expand on both the linguistic and technical scope of the main international search and reduce the risk of new prior art being cited in the national phase. The Delegation therefore agreed to continue monitoring the supplementary international search system and trying to make further developments. While moving the deadline for requesting supplementary international search from 19 to 22 months from the priority date had not significantly increased the number of requests, it was still possible to explore other ways to improve the service, rather than abolishing it. In addition, although there had been no agreement previously to provide the option for an Authority to issue a written opinion with its supplementary international search reports, this could be an incentive for applicants to request the service. In addition, the Authority specified for supplementary search was not obliged to agree with the main International Searching Authority on unity of invention, and need not invite the applicant to pay additional fees if it determined that the international application complied with the requirement of unity of invention. Furthermore, the Delegation suggested exploring the option of allowing

applicants to pay additional fees for extra inventions during supplementary international search where the applicant had missed this possibility in an invitation from the main International Searching Authority. In this case, the examiner could provide comments on the extra inventions searched during supplementary international search, which supported the need for the option to issue a written opinion with the supplementary international search report. The Delegation also hoped that other Authorities that did not offer supplementary international search could reconsider whether to offer the service in the near future in view of increasing the linguistic and technical scope of supplementary international search.

69. The Delegation of the United Kingdom stated that the supplementary international search system had been a worthy initiative, and was a useful way of an applicant obtaining information on prior art arising from different approaches of International Searching Authorities to the subject matter listed in Rule 39. However, given the very low usage of the system and need for special IT developments to achieve further automation of data transfer, the Delegation believed that most appropriate option was that stated in paragraph 17(b) of the document to abolish supplementary international search.

70. The Delegation of Denmark agreed with the comments from the Nordic Patent Institute and the Delegations of Norway and the United Kingdom. While Denmark had initially supported introducing supplementary international search, given the low uptake and the current state of the service, the Delegation supported the option to abolish supplementary international search in paragraph 17(b) of the document.

71. The Delegation of France stated that it was premature to abolish supplementary international search before the outcome of the collaborative search and examination pilot. European applicants regularly used the option of supplementary international search and a survey conducted by the National Institute for Industrial Property (INPI) in France had shown that users were in favor of maintaining this possibility for applicants. The Delegation therefore supported the option in paragraph 17(a) of the document to continue maintaining the system, as had been expressed by the European Patent Office.

72. The Delegation of Chile stated that the National Institute of Industrial Property (INAPI) of Chile did not provide the supplementary international search service. The Delegation believed that Contracting States should carefully study the option of eliminating supplementary international search. The service had seen very low use over more than 10 years of operations and the International Bureau had raised concerns about disproportionate costs of IT development to maintain the system. Furthermore, International Searching Authorities had achieved high search quality, which the Delegation considered was a key factor for applicants not regularly requesting supplementary international search.

73. The Chair summarized that some delegations were of the view that the costs of maintaining the supplementary international search were disproportionate to the use of the service and favored abolishing the service. Other delegations, however, wished to retain supplementary international search, recognizing that the option could be beneficial to the applicant and noted the ongoing work in the collaborative search and examination pilot and the possibility to provide more options in the system. The Chair noted that, in the absence of consensus, it was unlikely that agreement could be reached on amendments to the PCT Regulations. The Chair therefore suggested the Working Group to adopt the proposal in paragraph 21 of the document, noting that doing so maintained the possibility for any Contracting State to request a further review when it deemed that there was consensus for change.

74. The Working Group agreed to recommend to the Assembly to adopt the following decision:

"The PCT Assembly, having reviewed the supplementary international search system in 2012, 2015 and 2021, decided:

"(a) to invite the International Bureau to continue to monitor the system and report to the Meeting of International Authorities and the Working Group on significant developments; and

"(b) to review the system again at a time to be recommended by the International Bureau, or on request by a Contracting State, but no later than 2027."

#### **PCT MINIMUM DOCUMENTATION: STATUS REPORT**

75. Discussions were based on document PCT/WG/13/12.

76. The Representative of the European Patent Office (EPO) recalled that the PCT Minimum Documentation Task Force mandate was to undertake comprehensive review of the PCT minimum documentation for both patent and non-patent literature (NPL). The work of the Task Force had been divided into four objectives, namely: Objective A, creating an up-to-date inventory of the current PCT minimum documentation; Objective B, setting out criteria and standards for national patent collections in the PCT minimum documentation; Objective C, addressing bibliographic and text components of patent data in the collections; and Objective D, the establishment of criteria and standards for NPL and traditional knowledge-based prior art for inclusion in the PCT minimum documentation. Regarding Objective A, the discussions had successfully concluded in the last quarter of 2017, with an up-to-date inventory to be published soon on the WIPO website. Regarding Objectives B and C, the EPO had posted two documents for comments on the PCT Minimum Documentation Task Force wiki, namely document PCT/MD/1/2 Rev. 2 containing revised proposals for amendments to the PCT Regulations, and document PCT/MD/1/3 Rev., containing revised proposals for the technical accessibility requirements. The proposals in these documents were summarized in Annexes I and II of document PCT/WG/13/12. First, it was proposed to include in the PCT minimum documentation the patent collections of all International Searching Authorities, irrespective of their official languages, and to make it a requirement for International Searching Authorities to make their patent collections available for consultation under clearly-defined technical and accessibility requirements. These requirements still needed to be agreed. Second, it was proposed to include in the PCT minimum documentation the patent collection of an Office not appointed as an International Searching Authority, provided the Office had made its collection available in accordance with the technical and accessibility requirements and had expressly notified the inclusion of its collection to the International Bureau. Third, it was proposed to include utility model documents in the PCT minimum documentation only as an optional recommended part in view of the practical concerns expressed by several Authorities. Fourth, it was proposed to define a mechanism for patent Offices to publish relevant details about their collections and for International Authorities to search those collections. Under this mechanism, each IP Office whose patent collection belonged to the PCT minimum documentation would be required to provide the International Bureau with an Authority File of their patent documents conforming to WIPO Standard ST.37, at least annually. Finally, it was proposed to include the technical and accessibility requirements for patent and utility model data in an Annex to the Administrative Instructions, which Rule 34.1 would refer to. Regarding the next steps, the EPO would be preparing further revisions to the proposals in Annexes I and II of the document for discussion at a virtual meeting of the Task Force, due to take place from December 7 to 11, 2020.

77. The Delegation of the United States of America stated that the face-to-face meeting of the Task Force in 2019 had been successful and beneficial in making significant progress on the Task Force objectives, and looked forward to this continuing at the upcoming virtual meeting. Regarding the discussion in paragraph 19 of the document as to the status of Objective D led by the United States Patent and Trademark Office (USPTO), the USPTO was reviewing the comments received on the initial draft for criteria and standards regarding NPL and traditional knowledge-based prior art. The Delegation explained that the USPTO would post a revised draft on the Task Force wiki in time for the Task Force members to consider prior to the virtual meeting.

78. The Delegation of Japan thanked the European Patent Office and the United States Patent and Trademark Office for their work in the PCT Minimum Documentation Task Force. The Japan Patent Office would take part in the discussions during the virtual Task Force meeting and via the wiki.

79. The Delegation of France highlighted the differences between French utility certificates and utility models issued by other countries such as China, Germany or Japan. An applicant could file a utility certificate in France for the same kinds of invention as a patent application, while other utility models generally only protected products. The relevant prior art for issuing a utility certificate was the same as a patent, there was no specific grace period for utility certificates, and the inventive step requirements were no less stringent than patents. The Delegation further indicated that a recent change in the French law had extended the protection period for utility certificates to 10 years, with a possibility to turn a utility certificate into a patent until the beginning of the technical preparations for publication, that is, about 16 months from the filing date. The differences between patents and the utility certificates were small, and related primarily to the length of the protection period, which the Delegation believed justified the inclusion of French utility certificates in the PCT minimum documentation. The Delegation acknowledged that the integration of several millions of utility models in the minimum documentation could be a burden for certain Offices, but French utility certificates were already part of the minimum documentation, and only about 500 to 600 French utility certificates were filed each year. The Delegation therefore proposed to maintain French utility certificates in the mandatory part of the PCT minimum documentation.

80. The Delegation of the Russian Federation, speaking on behalf of the Group of Central Asia, Caucasus and Eastern Europe Countries (CACEEC) thanked the European Patent Office and the United States Patent and Trademark Office for their work leading the Task Force, and noted the significant progress in improving the minimum documentation, especially with regard to Objective A. With regard to objectives B and C, CACEEC supported the proposal to include patent collections of all the International Searching Authorities in the PCT Minimum Documentation, regardless of their official language(s). It also favored the easing of the language criteria set forth in Rule 34.1 and the inclusion of the patent collections of any Office that did not function as an International Searching Authority in the PCT Minimum Documentation, provided that such Offices had made their collections accessible in line with the technical and accessibility requirements to be specified in an annex to the Administrative Instructions. On objective D, CACEEC supported the continued development of criteria for the evaluation of non-patent literature, including traditional knowledge-based prior art, for inclusion in the Minimum Documentation list. CACEEC believed that all patent collections belonging to the PCT Minimum Documentation should be available free of charge to all International Searching Authorities.

81. The Delegation of China thanked the European Patent Office and United States Patent and Trademark Office for the work in leading the PCT Minimum Documentation Task Force, and stated that the China National Intellectual Property Administration looked forward to the further discussions in the Task Force.



82. The Delegation of India appreciated the work by the European Patent Office on Objectives A, B, and C. The Delegation suggested that the proposed revisions regarding the requirement of the availability in machine-readable form should apply to patent documents published as of the date of entry into force of the amended Rules 34 and 36. However, any Office appointed for the first time as an International Searching Authority could have the choice only to be required to make documents in machine-readable form from the date of appointment. Regarding Objective D, the Delegation reiterated that the special nature of traditional knowledge (TK) databases should be considered in establishing the criteria for the PCT minimum documentation. The Delegation underlined that TK resources were first considered for addition in the minimum documentation by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), which had discussed how to avoid erroneous grant of intellectual property rights on TK without adversely affecting the interests of the TK owners due to dissemination of TK data. The Delegation hoped the Task Force would consider these points in the development of criteria and standards for the inclusion of TK-based prior art in the PCT minimum documentation.

83. The Representative of the European Patent Office (EPO) announced that the comments from the Delegation of France would be taken into account in the future discussions in the Task Force wiki and during the upcoming virtual meeting in December 2020.

84. The Delegation of the United States of America stated that the United States Patent and Trademark Office would take the comments of the Delegation of India into consideration when drafting the next version of the document relating to Objective D.

85. The Working Group noted the contents of document PCT/WG/13/12.

#### **COORDINATION OF PATENT EXAMINER TRAINING**

86. Discussions were based on document PCT/WG/13/6 Rev.

87. The Secretariat provided an update on the project for improving the efficiency of donor sponsored examiner training carried out by the Regional Bureau for Asia and the Pacific (ASPAC). In light of the COVID-19 pandemic, work on the coordination of patent examiner training was proceeding through the commencement of a comprehensive review of existing competency-based patent examiner training models and examination means within the Asia and Pacific region. This was with a view to obtaining further information in order to facilitate the development of a strategic framework for possible linkage or alignment of these earlier patent examiner training models in the region with previous tools that had been developed, including the existing patent examiner skill framework in the existing learning management system (LMS) project. This work would be used to further benefit an understanding of how any existing competency models and training frameworks employed by the patent examination offices in the region may potentially interact or align with the generic competency model that would form part of any possible LMS. Referring to the “Work-sharing in the PCT national phase” e-learning module in paragraph 7 of the document, this was based on training workshops conducted onsite over the past few years. The International Bureau was consolidating the different skills that were part of this training to develop a module, which was due to be tested in November 2020. The Secretariat also described a remote course on computer-implemented inventions where 60 pending applications had been compiled for developing skills in examining applications in this field, taking into account work products available from the national phase in other jurisdictions.

88. The Delegation of the Philippines thanked the International Bureau and the bilateral partners of the Intellectual Property Office of the Philippines (IPOPHL) for their continued collaboration and support for patent examiner capacity building programs. The proficiency and competence of patent examiners were one of the critical elements that made the PCT an efficient and effective platform for protection of patent rights. IPOPHL valued the importance of a competency framework in providing capacity building for patent examiners developed through

the support of IP Australia, as well as ongoing collaboration with the International Bureau in developing a Learning Management System (LMS) to track the progress of examiners' competence. As a newly operating International Searching and Preliminary Examining Authority, it was important for IPOPHL to sustain an effective training program for patent examiners. The objective of exploring Moodle as an LMS tool complemented the current training infrastructure for IPOPHL patent examiners. The training for new patent examiners was based on the principles and concepts of the Regional Patent Examination Training (RPET) program developed and implemented by IP Australia. The RPET concepts and principles had been most useful for the institutionalization of capacity building programs for patent examiners. The LMS tool complemented the RPET e-learning contents, tracked the participation and completion of courses and generated reports, which were useful in managing the training of patent examiners. IPOPHL was currently maintaining a local Moodle site containing learning materials and modules accessible to patent examiners through the IPOPHL intranet. IPOPHL had also created another competency framework for new patent examiners based on the RPET principles and concepts. Moreover, IPOPHL continued to configure the functionalities and features to further develop such content and explore assessment techniques to track and monitor individual progress in learning and competencies. The Delegation looked forward to continuing the collaboration between IPOPHL and the International Bureau in developing a custom site of the LMS appropriate for the IPOPHL organizational structure and training needs. The Delegation also encouraged the International Bureau to continue developing the LMS and reporting to future meetings, and indicated that IPOPHL would be willing to share its experiences on this matter.

89. The Delegation of the United States of America stated that the United States Patent and Trademark Office (USPTO) continued to provide examiner training programs on search and examination procedures both at its headquarters and in various locations, often in the western hemisphere. The Delegation recognized the growing demand for such training programs and supported the continuing technical assistance to developing and least developed countries in the interest of improving the quality of both PCT and national work products. In view of the COVID-19 pandemic, the USPTO expressed support for expanded use of distance learning and web-based schemes, as well as the efforts of the International Bureau in coordinating this training.

90. The Delegation of Australia supported the development of the competency framework and learning management system to improve the coordination of training of patent examiners. The Delegation noted that many aspects of the project were being completed with the creation of the competency framework. There were many competences in the framework. From the experience of IP Australia, this might present a problem in determining whether an examiner had met all the competencies. However, with more competencies, it could be easier to ensure that the training delivered by a donor office had been appropriately tailored. The Delegation stressed that any potential beneficiary office that already had a tailored competency-based training framework needed to ensure the framework was consistent with what was envisaged under the project; a generic framework would not necessarily align with an existing tailored competency based training framework. The Delegation appreciated the update on the project carried out by the ASPAC Bureau for improving the efficiency of donor sponsored examiner training and looked forward to the future work in this area.

91. The Delegation of China appreciated the efforts by International Bureau in the coordination of patent examiner training and continued to support this work. The Delegation reported that the China National Intellectual Property Administration (CNIPA) would continue to make use of Funds-in-Trust to provide training to examiners in developing countries. The content of the training included some material and course in the English, which CNIPA also used internally in training its patent examiners.

92. The Delegation of Saudi Arabia thanked the donor offices for providing training and expressed interest in benefitting from training programs to enhance examination at the Saudi Authority for Intellectual Property. The Delegation looked forward to cooperation to improve the learning management system.

93. The Delegation of the Russian Federation, speaking on behalf of the Group of Central Asia, Caucasus and Eastern Europe Countries (CACEEC), appreciated the progress achieved in the work on creating a model of a competency framework in the field of substantive examination, as well as a learning management system. The Delegation also expressed satisfaction with the implementation of the proposal to improve coordination of the activities of beneficiary offices and donor offices for training patent examiners, originally presented at the tenth session of the Working Group.

94. The Delegation of Egypt expressed interest in representatives at the Egyptian Patent Office having test accounts to access the web-based learning management system referred to in the document.

95. The Working Group noted the contents of document PCT/WG/13/6 Rev.

#### **COORDINATION OF TECHNICAL ASSISTANCE UNDER THE PCT**

96. Discussions were based on document PCT/WG/13/7 Rev.

97. The Secretariat introduced the document by highlighting the PCT-related technical assistance activities in its Annexes I and II. In 2019, 64 activities had been delivered, attended by more than 5,000 participants from over 80 States. In 2020, 35 events had been organized so far, attended by more than 3,000 participants from over 70 States. While Annex II listed certain activities for 2020 as cancelled due to the COVID-19 pandemic, since the publication of the document, some of these had been rescheduled for the remainder of 2020 due to excellent coordination from the relevant stakeholders. As a result, only four events had to be cancelled without any alternative solution having yet been found. Considering the main highlights and lessons learnt from the transition from on-site to remote delivery of PCT technical assistance activities set out in paragraphs 5 to 7 of the document, the Secretariat stressed four main points. First, remote events had attracted more participants from a wider range of locations. Second, it had been possible to adjust the delivery format to allow effective virtual participation by showing flexibility and agility at all ends in the selection of delivery platforms, building on expertise and taking into account the needs of the audience as well as IT capacities and concerns. Third, the substantive content of some activities needed to be revisited to shorten the program for webinars and virtual study visits. And fourth, the COVID-19 pandemic had been an impetus for some IP Offices to migrate their PCT services to WIPO PCT online services at full speed with the International Bureau having received more than 100 requests for technical assistance to date in relation to PCT IT tools, some of which were reflected in Annexes I and II of the document.

98. The Delegation of Indonesia stated that the document showed how WIPO and Member States had been able to adapt to the challenges from the COVID-19 pandemic, mainly using online platforms. The document noted certain drawbacks in delivering technical assistance in a virtual format, but also highlighted that with adequate preparation, the virtual format offered advantages that would otherwise not be available. Earlier that week, in collaboration with the Technology and Innovation Support Division in the Global Infrastructure Sector, Indonesia had launched the Commercialization and Technology Transfer Training under the Development Agenda Framework. This training, which would normally be held for two to three full days, had been broken down into six webinar sessions to be held within three weeks from October 6 to 20, 2020. Out of the 11 subjects to be discussed, four were PCT-related, namely patent specification, key concept in patent search, patent search tools and strategies, as well as patent search demonstration. One important point was that the training was originally planned for 80

participants, but by using an online platform, over 160 people could participate, more than double the original number. It was important for WIPO to continue to be innovative in its delivery of technical assistance. With adequate preparation and strong commitment from both Member States and International Bureau, delivering technical assistance in the virtual format could provide advantages over traditional delivery of technical assistance. The Delegation therefore encouraged virtual delivery of technical assistance to continue, even when the situation had returned to normal.

99. The Delegation of Iran (Islamic Republic of) expressed appreciation for presentation of the document, in particular the technical assistance provided during the COVID-19 pandemic. The Delegation recalled the importance of technical assistance as a tool to enable IP Offices of the PCT Contracting States to better use of their IP for development and to increase the technical capacities of such Offices. Delivery of technical assistance stemmed from the mandate of WIPO, which was, inter alia, to promote the protection of IP throughout the world through cooperation among States. Cluster A of the Development Agenda recommendations was devoted to technical assistance and capacity building and PCT Article 51 mandated the Assembly to establish a Committee for Technical Assistance. In addition to the development divide, the digital divide had added a new dimension to the vulnerabilities in States, and the Delegation urged WIPO to expand the scope of technical assistance programs aimed at bridging the ever-increasing digital divide. Being mindful of the pandemic effects, the Delegation further encouraged WIPO to continue assisting Member States to develop and improve the capacities of national IP institutions through further development of infrastructures and other facilities with a view to making them more efficient.

100. The Delegation of the Russian Federation, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), noted the coordinated efforts of various WIPO committees to develop services for facilitating access to patent documents and the results of search and examination. In this regard, CACEEC highlighted the PATENTSCOPE database, the WIPO CASE system, and the effective work of the WIPO Academy. CACEEC also noted how well the WIPO external offices and the network of technology and innovation support centers (TISCs) were working. CACEEC was particularly grateful to WIPO Office in the Russian Federation for its essential work in raising awareness and promoting the global IP systems in the region. Since the COVID-19 pandemic, training programs had moved to a virtual format, but this possibility had made a considerable contribution in helping to sustain demand for services under the PCT at a time of economic instability.

101. The Delegation of India highlighted the major role of Technology and Innovation Support Centers (TISC) in India in delivering technical assistance. The eight TISCs in India were involved in conducting online webinars amidst the COVID-19 pandemic and thereby providing technical assistance to the public. The Indian Patent Office was also a depositing and accessing Office in WIPO Digital Access Service (DAS) and a providing and accessing Office in WIPO CASE. Regarding Program 11, the Indian Patent Office made use of the services provided by the WIPO Academy.

102. The Working Group noted the contents of document PCT/WG/13/7 Rev.

## **OTHER MATTERS**

103. The International Bureau indicated that the fourteenth session of the Working Group was tentatively scheduled to take place in May/June 2021.

## **SUMMARY BY THE CHAIR**

104. The Working Group noted the contents of the Summary by the Chair in document PCT/WG/13/14 and that the official record would be contained in the present report of the session.

**CLOSING OF THE SESSION**

105. The Chair closed the session on October 8, 2020.

*106. The Working Group adopted this report by correspondence.*

[Annex follows]



LISTE DES PARTICIPANTS/  
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