

Patent Cooperation Treaty (PCT) Working Group

Fourteenth Session
Geneva, June 14 to 17, 2021

REPORT

adopted by the Working Group

1. The Patent Cooperation Treaty Working Group held its fourteenth session in Geneva from June 14 to 17, 2021. 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): Albania, Algeria, Armenia, Australia, Austria, Azerbaijan, Belarus, Benin, Brazil, Burkina Faso, Canada, Chile, China, Colombia, Côte d'Ivoire, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, El Salvador, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lesotho, Lithuania, Madagascar, Malaysia, Mexico, Namibia, New Zealand, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saudi Arabia, Singapore, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uzbekistan (76); 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: Burundi, Iraq, Nepal, Pakistan, Uruguay (5).

4. The following intergovernmental organizations were represented by observers: African Intellectual Property Organization (OAPI), African Union (AU), European Union (EU), Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC Patent Office), South Center (SC) (5).

5. The following international non-governmental organizations were represented by observers: Asian Patent Attorneys Association (APAA), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Intellectual Property Attorneys (FICPI), Institute of Professional Representatives before the European Patent Office (EPI), Intellectual Property Owners Association (IPO) (5).

6. The following national non-governmental organizations were represented by observers: American Intellectual Property Law Association (AIPLA), Arab Society for Intellectual Property (ASIP), Brazilian Association of Intellectual Property (ABPI), European Chemical Industry Council (CEFIC), European Law Students' Association (ELSA International), Intellectual Property Latin American School (ELAPI), Inter-American Association of Industrial Property (ASIPI), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), National Intellectual Property Organization (NIPO) (11).

7. The list of participants is contained in the Annex.

OPENING OF THE SESSION

8. Ms. Lisa Jorgenson, Deputy Director General, Patents and Technology Sector, opened the session and welcomed the participants on behalf of Mr. Daren Tang, Director General of WIPO. Mr. Michael Richardson (WIPO) acted as Secretary to the Working Group.

9. The Deputy Director General recalled that the thirteenth session of the Working Group in October 2020 had also been a hybrid meeting. Despite the global economic recession resulting from the COVID-19 pandemic, the number of PCT applications grew by 4 per cent in 2021. The special theme in the PCT Yearly Review 2021 published on June 11, 2021 offered a first insight into the impact of the COVID-19 pandemic on PCT applications by comparing the effect of the pandemic on PCT filing activity with the global economic downturn following the 2008 financial crisis, looking at filing activity in selected fields of technology. The special theme also reported on a survey of 28 large PCT applicants in the top five countries of origin on how the COVID-19 pandemic was affecting their R&D and IP filing activity.

10. The Deputy Director General continued by referring to the agenda and observed that the COVID-19 pandemic was a common thread through several of the items. The present session of the Working Group would return to the subject of safeguards in case of general disruption, where there were two documents for discussion. In addition to the proposal to amend the PCT Regulations that had been revised after discussions at the thirteenth session, the International Bureau would be reporting on its findings relating to the experience of Offices in implementing the Interpretative statement and Recommended PCT Practice Changes as the Working Group had requested at its thirteenth session. The COVID-19 pandemic had also required the International Bureau to adapt the content and delivery of technical assistance to Offices and applicants. In this regard, the International Bureau would report on technical assistance activities during 2020. The Working Group would also discuss continuing work on developing a competency framework and learning management system for patent examiner training. On this subject, the International Bureau had made a recording available on the WIPO website of a virtual side event that took place on June 10, 2020, which included an interesting account from the Intellectual Property Office of the Philippines on its own learning management system for examiners. As travel opportunities began to open up again, it was important to consider how the International Bureau could optimize training and assistance activities to benefit from lessons learnt during the pandemic and provide assistance in an effective manner, adapted to the needs of individual States and Offices.

11. The Deputy Director General highlighted a further theme in the agenda, how to improve the processing of international applications. At the thirteenth session, the Working Group agreed on amendments to the PCT Regulations to implement WIPO Standard ST.26 for the processing of sequence listings in XML format. In the present session, the Working Group would discuss a progress report and recent developments. As the Assembly would not be able to adopt these amendments until its next session in October 2021, Member States would need to determine the date for IP Offices to transition from WIPO Standard ST.25 to ST.26 and the entry into force of the amendments to the PCT Regulations – the so-called “big bang” date. Member States would need to take this decision very soon, and the International Bureau was ready to support that decision. Another document related to full-text processing of international applications. A key step to meet the goals in this document was more XML filings, where the share of around 28 per cent of international applications had remained largely unchanged in the past few years. The document set out a number of principles to go forward in developing new software and processes. The International Bureau looked forward to comments on the proposals for future work in this area to meet the needs of both Offices and applicants.

12. The Deputy Director General concluded by stating that she looked forward to the discussions and hoped that the Working Group could reach productive outcomes during the session.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

13. 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

14. The Working Group adopted the revised draft agenda as set out in document PCT/WG/14/1 Prov. 2.

MEETING OF INTERNATIONAL AUTHORITIES UNDER THE PCT

15. Discussions were based on document PCT/WG/14/2.

16. The Secretariat introduced the document by highlighting some of items discussed by the Meeting of International Authorities and its Quality Subgroup. The China National Intellectual Property Administration was analyzing responses to a questionnaire to improve the layout, content and format of the international search report and written opinion with the aim of discussing a detailed report at the next session of the Meeting. The paired review sessions of quality management systems of International Authorities in the Quality Subgroup took place remotely. While this limited participating Office pairings to those located in similar time zones, these remote sessions allowed more experts to be involved. Finally, the Secretariat informed the Working Group that the International Bureau would issue a new version of the International Search and Preliminary Examination Guidelines to incorporate examples using the “minimum reasoning” methodology to determine unity of invention, and modifications to paragraph 15.09 relating to international search referred to in paragraphs 37 and 38 of the Annex to the document.

17. The Working Group noted the contents of document PCT/WG/14/2.

INTERNATIONAL APPLICATIONS LINKED TO UNITED NATIONS SECURITY COUNCIL SANCTIONS

18. Discussions were based on document PCT/WG/14/3.

19. The Working Group noted the contents of document PCT/WG/14/3.

STRENGTHENING PCT SAFEGUARDS IN CASE OF GENERAL DISRUPTION

20. Discussions were based on documents PCT/WG/14/9 and PCT/WG/14/11.

21. The Representative of the European Patent Office (EPO) introduced document PCT/WG/14/9 and reminded the Working Group that the EPO and its co-authors had tabled the proposal at the thirteenth session of the Working Group in October 2020 (document PCT/WG/13/10), and a revised version of the proposal at the twenty-eighth session of the Meeting of International Authorities in March 2021 (document PCT/MIA/28/8). In order to learn from experiences during the COVID-19 pandemic, the proposal aimed at further strengthening the system of safeguards for the benefit of the users and PCT Offices. Regarding the implementation of the *Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID-19 Pandemic* ("the Interpretative statement") that the International Bureau issued on April 9, 2020, the EPO perceived that there were shortcomings. The EPO believed that these shortcomings could only be addressed, first, by further adapting Rule 82*quater*.1 along the lines of the Interpretative statement, and second, by providing for an additional option at the disposal of Offices that were not closed for business and yet affected by a *force majeure* event, which was the aim of the proposed new Rule 82*quater*.3. The Representative thanked delegations that had provided feedback on previous versions of the proposal and explained the changes of substance from the thirteenth session of the Working Group. First, the document included a proposal to adapt Rule 82*quater*.1 by adding a new paragraph (d) allowing Offices to waive the need for evidence, in line with the Interpretative statement. This provision was aligned to similar modifications introduced to the Madrid and Hague Systems, namely by requiring applicants to submit a statement in every case when an excuse of a delay was requested. Second, the document included a proposal for a new Rule 82*quater*.3 to allow Offices to extend time limits if two conditions were met. The first condition would require the State where the Office was located to be experiencing a general disruption due to an event of *force majeure* as defined in Rule 82*quater*.1, and, the second condition would require such event to have affected operations of the Office to interfere with the ability of parties to perform actions before that Office. The first condition would be met where, for instance, local or national Authorities were issuing orders affecting public life, such as lockdowns, and this would be clear to the Office, as it would affect its own staff. The second condition would be met where users would be affected, for example, staff not being able to come to the office of that user. This second condition would apply irrespective of where the users were located. If the Office concerned had several locations, that Office would determine the extent to which its operations were affected and whether the second condition had been met or not depending on the situation. This double-layer approach had been introduced to take into account the comments from the Delegation of the United States of America at the thirteenth session of the Working Group, namely that, in order to benefit from the extension of time limits, users had to be affected by the *force majeure* event. Since Offices could trigger a notification under Rule 82*quater*.3 only when this was indeed the case, then no statement or action would be required on the side of applicants, thus also ensuring the automatic nature of the safeguard measure, which was at the core of the proposal. Even if the stakes for an Office to be in a position to trigger that Rule were somewhat higher in the revised proposal, it would nevertheless be a useful tool at the disposal of Offices in extreme situations of *force majeure*. Paragraph (b) of the proposed new Rule 82*quater*.3 further clarified the possible renewal of the period of extension, which would be normally limited to a maximum of two months, a period that appeared reasonable in light of practice under the PCT. The principle in this regard was that the same conditions set in paragraph (a) should apply for any additional period of extension that an Office wished to trigger. This would require an Office to send a new notification, which the International Bureau would publish. Paragraph 17 of document PCT/WG/14/11 provided a concrete example as to how the system would be construed. The effect of any extension of time limits would eventually end on national phase entry under Article 22 or 39, as these time limits could not be extended. The proposed paragraph (c) of Rule 82*quater*.3 also made it clear that the period of extension could not go beyond the entry into the national phase. There was therefore no reason to have

concern over an unlimited effect of the extension of PCT time limits under the proposed Rule 82*quater*.3. It was important to clarify that there would be no difference in the further processing for any time limit benefitting from the extension under proposed Rule 82*quater*.3, with respect to the excuse of delay under Rule 82*quater*.1, namely, a time limit not being met but either excused or extended would be considered as met by the Authority concerned. Finally, the Representative considered that there was no ground for Offices to abuse the extension of time limits under Rule 82*quater*.3 since the image of the Office concerned was at stake as well as its operations and finances with regard to potential delays in receiving payments. As the International Bureau would publish all notifications under the provision, the system was transparent and subject to public scrutiny. Finally, the EPO had experienced no abuse from users benefitting from a similar measure that it had implemented between March and June 2020. By nature, users generally performed all their acts on time in order to avoid any inconvenience and delays in the processing of their applications with only those in real need, generally small applicants, paying fees somewhat later than the applicable time limit. The Representative concluded by expressing hope that the revised proposal would meet with consensus at the present session of the Working Group to submit them to the Assembly at its next session in October 2021 for quick entry into force as the provisions could still prove useful for some Offices during the COVID-19 pandemic. In this regard, the Representative urged the International Bureau to consult on modifications to the Administrative Instructions and the Receiving Office and International Search and Preliminary Examination Guidelines regarding implementation of the proposal as soon as possible.

22. The Delegation of France, as a co-author of document PCT/WG/14/11, stated that the Director General of the National Institute of Industrial Property (INPI) issued a decision on March 16, 2020 to extend all upcoming deadlines by a maximum of four months. A government decision on March 25, 2020 then extended all deadlines occurring between March 12 and June 23, 2020 to July 23, 2020 if the original deadline had been one month, and to August 23, 2020 if the original deadline had been two months or more. The applicant did not need to make an explicit request or provide evidence to benefit from these extensions. These extensions gave time for both the Office and applicants to reorganize themselves, especially with remote working. INPI had been using distance working for several years, and transitioning to remote working was relatively straightforward from the IT side, but there were some problems like choosing a videoconference software license or dealing with specific personal situations. There was no need to extend the deadlines further after August 23, 2020. The decisions to extend the deadlines had been widely appreciated by applicants, with 2,400 national applications benefitting from them, without any signs of abuse from applicants. Concerning PCT applications, only a few applicants took advantage of the Interpretative statement on Rule 82*quater*.1, and INPI had received some questions from applicants who had difficulties with understanding the Interpretative statement and its practical consequences. The proposed amendments to Rule 82*quater* would introduce flexibility and legal certainty into the PCT where the Delegation believed that current legal framework was still unsatisfactory in the light of the recent pandemic. The amendments to Rule 82*quater*.1 would give Offices the choice of whether or not to request evidence from the applicant in exceptional situations, potentially removing a significant administrative processing burden. With the proposed Rule 82*quater*.3, this proposal would provide a legal framework for the extension of time limits for PCT applications. The provisions would be flexible, as IP Offices would be able to decide whether, in emergency cases, to extend their deadlines and potentially harmonize their extension of time limits for PCT applications with those for national applications. Harmonization would also simplify the use of the patent system for users, who needed help in exceptional situations like a pandemic. For all of these reasons, the Delegation supported the revised proposal.

23. The Delegation of Spain, as a co-author of document PCT/WG/14/11, recalled that the arrival of the COVID-19 pandemic in Europe was uneven. The first country seriously affected was Italy, followed by Spain 10 days later. On March 14, 2020, the Spanish Government declared a national state of emergency, which included the suspension of time limits before all public administrations. The headquarters of the Spanish Patent and Trademark Office

remained closed from March to June, with all staff working from home. While national patents had their time limits suspended during the state of emergency, this did not apply to the international phase of the PCT. The International Bureau issued the Interpretative statement on April 9, 2020. Until then, the Spanish Patent and Trademark Office had to analyze applications individually where an applicant had missed a time limit in order to excuse the delay under Rule 82*quater*.1, the only remedy available. Instead, the Spanish Patent and Trademark Office would have liked a mechanism that would have allowed it to react to the circumstances, rather than waiting for the Interpretative statement. For all these reasons, the Delegation believed that the proposed amendments to Rule 82*quater* could be very useful for IP Offices, as it would allow them to react flexibly to unexpected situations such as the ongoing COVID-19 pandemic.

24. The Delegation of Switzerland, as a co-author of document PCT/WG/14/11, stated that the issue of the COVID-19 pandemic remained relevant, and while some countries appeared to see the tail end of the pandemic, others had been affected more by the second and third wave than they were at the beginning. The Delegation expressed appreciation to the European Patent Office and other co-authors of the document for their work in addressing concerns raised at the thirteenth session of the Working Group. IP Offices had experienced different situations during the pandemic. While there had been little impact on the work at the Swiss Federal Institute of Intellectual Property, other IP Offices had only been able to operate at reduced capacity while simultaneously dealing with a flood of extension requests. It was therefore difficult to predict if and how an event such as the current pandemic would affect Offices around the world and the proposal would provide greater flexibility for IP Offices to address their specific situation. With the proposed Rule 82*quater*.1(d), Offices could waive the need for evidence, but they would still need to process a request to excuse a delay on a case-by-case basis. Depending on the crisis, an Office might not have the resources to process such requests, which would create uncertainties for applicants and Offices alike. The proposed Rule 82*quater*.3 would therefore allow for an Office that was impacted by a general disruption, but was not closed, to extend deadlines, minimizing administrative workload. There was no requirement for Offices to use the provisions of Rule 82*quater*.3. Offices could assess the situation and evaluate whether they could deal with a situation under Rule 82*quater*.1 requiring the applicant to request an excuse of delay and provide evidence, whether the Office wished to waive the need for evidence under the proposed Rule 82*quater*.1(d), or to use the option provided by the proposed Rule 82*quater*.3. In conclusion, the proposed amendments would give Offices the flexibility for a tailored approach to their own situation. They would also align the PCT Regulations of Rule 82*quater*.1 with the proposed modifications of Rule 5 of the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement and Rule 5 of the Regulations under the Protocol relating to the Madrid Agreement.

25. The Delegation of the United Kingdom, as a co-author of document PCT/WG/14/11, recalled that, at the beginning of the COVID-19 pandemic, IP Offices had to establish new ways of working quickly. This had caused a great deal of disruption for both staff and customers alike. Legislation in the United Kingdom had allowed the United Kingdom Intellectual Property Office (UKIPO) to declare a period of interruption, which automatically extended all upcoming deadlines until the day after that period had ended. This extension did not require any request or evidence from the applicant. The proposal in the document provided a similar benefit. While the feedback to the UKIPO had confirmed that the extension of all time periods had been helpful to applicants, the Delegation believed that the real benefit was for Offices who would not be working at full capacity due to the emergency. Under the current Rule 82*quater*.1, an applicant could request an extension to a time limit by filing evidence, but in such a situation, the Office might not have the time or resources to process such a request. In turn, this created uncertainty for applicants and more work for the Office to deal with follow-up correspondence. While the Interpretative statement undoubtedly helped with this matter, it was uncertain whether the International Bureau would release such a statement if an epidemic centered on a small group of countries. Without such a statement, affected Offices could find themselves with many extension requests to consider at a time when they are least able to deal with them. Finally, the Delegation stressed that the amendments to the PCT Regulations were optional and intended

to give greater flexibility to Offices. It was not compulsory for an Office to declare a period of extension under the proposed Rule 82*quater*.3. If the Office continued to function normally, that Office could instead advise applicants to submit requests with evidence under Rule 82*quater*.1. Alternatively, if an Office were functioning as normal, but was aware of an emergency, it could use the proposed amendment to Rule 82*quater*.1 to negate the requirement for evidence and therefore ease the burden on applicants who might have been negatively impacted by the emergency. The Delegation therefore urged the Working Group to support the proposed amendments. While it was unlikely that the Offices would often use the provisions, it provided options when needed and allowed for IP Offices to remain open, when in the past, these Offices would have closed when faced with an emergency.

26. The Secretariat introduced document PCT/WG/14/9, which responded to the request from the Working Group, at its thirteenth session, for the International Bureau to assess the experiences of Office in the implementation of the Interpretative statement and to report to the present session. On December 8, 2020, the International Bureau had issued Circular C. PCT 1612 with a questionnaire for receiving Offices, and International Searching and Preliminary Examining Authorities on their experiences in implementing the Interpretative statements. All Offices agreed that Rule 82*quater*.1 was relevant in situations of the COVID-19 pandemic. The number of requests to excuse delays under this provision had been low. In line with the Interpretative statement, Offices that had received such requests had waived the need for the applicant to provide evidence, but one Office had required the applicant to provide a statement that the delay related to the COVID-19 pandemic as part of the request for relief. Most offices also followed the recommendation not to issue notifications that an international application was considered withdrawn until at least two months after the deadline had expired. However, one Office that did not strictly follow this recommendation did issue applicants with an informal warning before issuing any notification of withdrawal. A few Offices indicated that they had either granted a general extension to time limits between certain dates or else had declared all days across a certain period as excluded days for the purposes of time limits. As such, the question of delaying the issue of notifications that an international application was considered withdrawn was not relevant to those Offices. In only a few cases was it necessary to consider whether an earlier action could be reversed, but these cases did cause much difficulty, with one Office concerned believing that more clarity was desirable on the procedures for extending deadlines and issuing notifications. In relation to related measures for national processes, Offices indicated a wide range of measures that had been applied, including excuse of delays, general extensions for time limits, waving of late payment fees, and deferment of actions that would have caused applications to be considered withdrawn. On offering restoration of rights, just over one third of the Offices responding indicated that their Office had been closed at some stage within the pandemic. The applicable dates for Office closures and availability of relief varied considerably between Offices. In summary, the Interpretive statement appeared to have achieved the aim of avoiding international applications being considered withdrawn when this was not the applicant's intention, even if not all receiving Offices had delayed issuing notifications of withdrawal until May 31, 2020, in line with the practice of the International Bureau. The number of cases where the measures were needed in relation to the international phase of applications had been low in this particular case of disruption, although the use of related national measures at some Offices appeared to have been significantly higher.

27. The Delegation of Saudi Arabia supported the proposed amendment to the Regulations, which would undoubtedly help applicants by providing additional safeguards during times of disturbance such as the COVID-19 pandemic. Saudi Arabia had adopted several initiatives of an exceptional nature, including the extension of deadlines for applicants, and these measures gave flexibility for the Saudi Authority for Intellectual Property to organize its work.

28. The Delegation of Colombia supported the proposed amendments to Rule 82*quater*. The Superintendence of Industry and Commerce had experienced disruptions during the COVID-19 pandemic, and the proposals would enable it to follow more precise rules in the future. At the same time, their optional nature would offer more flexibilities for Offices in the case of general

disruption. The Delegation of Colombia also raised a question about the Spanish translation of the term “waived” in the proposed Rule 82*quater*.1(d).

29. The Delegation of India thanked the International Bureau for conducting the study on the implementation of the Interpretative statement and Offices for giving their input to the study. The outcome of the study had shown that Rule 82*quater*.1, when amended to give effect to the Interpretative statement could effectively address situations of general disruption. The number of requests received by Offices to excuse the delay had been low and Offices had not found the step of processing such requests to be resource-intensive or time-consuming. The Delegation therefore supported the proposed amendments to Rule 82*quater*.1. However, the Delegation suggested that for Rule 82*quater*.1(d), the notification of a waiver should state the reason for the waiver and its duration, and it should be considered whether there should be provision to extend a waiver. It could be explored whether these aspects should form part of the Regulations or whether these could be taken care of by a prescribed Form for such waiver notifications. Under the proposed Rule 82*quater*.3, the Delegation noted that the Rule specified that it was applicable when the disruption affected the operations of the Office, Authority or International Bureau, thereby affecting the ability of parties to meet time limits. In this situation, the purpose was to provide remedies to the affected parties. However, the Delegation believed that a similar effect could be achieved by amending Rule 82*quater*.1(a) to include “or where the Office, the Authority or the International Bureau is located” after the text “in the locality where the interested party resides, has his place of business or is staying”. This would have the advantage that the only the parties affected by a disruption could avail the remedy, while those who are not affected would continue to be encouraged to meet the time limits. This would also minimize the number of events that cross the time lines, which would help the PCT System to function predictably. This proposal would also eliminate the need for Offices to issue notifications of extensions as envisaged under Rule 82*quater*.3. Since a single Rule would take care of all situations, the problem of overlap as mentioned in paragraph 19 of document PCT/WG/14/11 would not arise, as it could be troublesome for applicants to keep track of Rule 82*quater*.3 notifications by Offices before availing relief under Rule 82*quater*.1. Nevertheless, if there were agreement at the session for the proposed changes, the Delegation suggested that if the new Rule 82*quater*.3 were added, it should begin with the words “Without prejudice to Rule 82*quater*.1” to be clear that the existing remedies available to the applicants would not be affected by the proposed changes.

30. The Delegation of the Russian Federation welcomed the proposals in document PCT/WG/14/11 and supported the amendments to add “epidemic” to the list of situations of force majeure in Rule 82*quater*.1(a), and to add Rule 82*quater*.1(d) to allow Offices to waive the requirement for parties to present evidence when requesting an excuse of delay. While the Delegation was supportive of the concept behind the proposed Rule 82*quater*.3 to extend time limits in the case of emergencies, it was not clear from the provision how the extension of time limits at one Office would be harmonized with other Offices or the International Bureau. For example, in the case of a receiving Office declaring an extension of time limits due to *force majeure*, the Delegation asked for clarification on whether the time limits applied by the International Bureau and the International Searching Authority would also be extended.

31. The Delegation of Israel supported the amendments to Rule 82*quater*.1 and the addition of Rule 82*quater*.3, which would provide for additional safeguards for applicants in meeting time limits in emergencies such as the COVID-19 pandemic.

32. The Delegation of China stated that the proposed amendments to the PCT Regulations would be beneficial to safeguard against the impact of general disruptions. The Delegation supported the proposed Rule 82*quater*.1(d) and pointed out that not only did the China National Intellectual Property Administration grant requests to excuse delays, but a recent provision in China relating to IP law had added a clause for an Office to extend the deadlines to improve their operability. In this regard, the Delegation suggested that in the event of general disruption, the Working Group could discuss how to simplify the content with regard to supplying evidence.

33. The Delegation of the United States of America informed the Working Group that in order to deal with issues arising from the COVID-19 pandemic, the United States of America had passed the Coronavirus Aid, Relief, and Economic Security Act or CARES Act. The general relief provided under the CARES Act largely concerned national applications filed at the United States Patent and Trademark Office (USPTO), with the CARES Act relief for PCT applications primarily limited to the waiver of certain fees for relief. With respect to time limits in international applications, the USPTO relied upon Rule 82*quater*.1 following the guidance issued by the International Bureau. Similar to the worldwide results reported in document PCT/WG/14/9, the application of Rule 82*quater*.1 at the USPTO had run smoothly. The number of requests for relief under this Rule had been extremely manageable with very few problems arising. While the situation had not returned to a normal state of affairs with regard to the COVID-19 pandemic, based on the report on the implementation of the Interpretative statement, the PCT Regulations had functioned as intended, with the PCT System emerging relatively unscathed with no significant or unsurmountable issues having arisen as a result of the pandemic. In what could arguably be the worst and most extensive worldwide crisis since the beginning of the PCT, the PCT System had handled the situation well. With regard to the proposals in document PCT/WG/14/11, the Delegation agreed that in dealing with situations like the global pandemic, there was a need to be able to provide relief to applicants in appropriate circumstances, especially in the area of meeting time limits in both international and national applications before Offices. Under the CARES Act, the USPTO had had no problem in dealing with the pandemic under that provision. In discussing this proposal at the thirteenth session of the Working Group and the twenty-eighth session of the Meeting of International Authorities, the Delegation had indicated a fundamental difference of opinion with respect to how the proposed Rule 82*quater*.3 should function, and specifically whether an applicant needed to have been affected by the event in order to receive relief. The Delegation thanked the European Patent Office in particular for the modifications to the proposal presented for the present session in order to address this difference of opinion. The language in the proposed Rule 82*quater*.3 in the document required that an Office could only invoke the provisions in the limited situation where the *force majeure* event had affected the operations at the Office to the extent that it had interfered with the ability of the parties to perform actions before that Office. As such, the Delegation considered that it was no longer necessary for an applicant to indicate that they had been affected by the event since the provision could only be enacted where that event had affected the ability of all applicants to perform actions before that Office. The Delegation nevertheless continued to have concerns with regard to the proposed Understanding of the Assembly in paragraph 22. Specifically, the Understanding provided that “neither Rule 82*quater*.1 nor any other provision of the PCT prevented an Office from extending time limits under the Regulations in situations of *force majeure* as defined by Rule 82*quater*.1, where the national law as defined in Article 2(x) that is applicable by the Office concerned provided for such a relief.” If the intent of this Understanding was to sanction an excuse of delay by an Office in its capacity as a designated or elected Office, then the Understanding was unnecessary since Article 48.2 and Rule 82*bis*.2 expressly provided for designated and elected States to be able to excuse delay for reasons provided under their national laws. However if the intent of the Understanding was to sanction use of national law to excuse delays in the international phase, the Delegation stressed that this would not be proper under the Treaty. The PCT provided for specific conditions for excusing delay in the international phase that had been agreed by Contracting States. An Office should not be allowed to supplant these provisions in the international phase by its national law with effect for all designated States. This was consistent with Article 48(2) and Rule 82*bis*.2, which provided for excuse of delay under national law only by designated and elected States and only with effect for that State. The Delegation concluded that it would no longer block a consensus on Rule 82*quater*.3, but proposed that the draft Understanding not to be forwarded to the Assembly for adoption.

34. The Delegation of Canada supported the amendments to Rule 82*quater*.1 to cater for similar situations to the COVID-19 pandemic, noting that this would reflect practice in light of the Interpretative statement. The Delegation also supported the proposed new Rule 82*quater*.3 to allow a receiving Office, International Searching Authority or International Preliminary Examining

Authority to extend time limits in situations where applicants had difficulties interacting with an Office but did not necessarily cause the Office to close. With regard the proposed Understanding of the Assembly, the Delegation had some concerns regarding the language as it was not clear whether the draft was limited to the interpretation of the pandemic by Offices in the context of Rule 82*quater*.1, or if the Understanding was intending to broaden the scope of that Rule. Additionally, the Delegation had concerns whether the draft Understanding intended to apply retroactive measures that might have affected past decisions. As such, the Delegation therefore could not support the draft Understanding and suggested that it should not be proposed to the Assembly.

35. The Delegation of Germany noted that the proposed amendment to Rule 82*quater*.1(a) and new Rule 82*quater*.1(d) would increase legal certainty, especially with regard to the Interpretive statement. At the same time the proposed new Rule 82*quater*.1(d) would create flexibility for Offices and the possibility to reduce effort in the interest of IP Offices and applicants. The consistency with corresponding changes to the legal framework in the Madrid and Hague Systems would also lead to coherence of the legal provisions of the three IP protection systems. With regard to the proposed new Rule 82*quater*.3, the Delegation raised several questions. First, the Delegation asked what was meant by the term “general disruption”. According to paragraph 11 of document PCT/WG/14/11, a general disruption was described as a circumstance in which there were restrictions on the movement of persons, as well as on certain services and public life in general. As this was one of the central terms in the provision, the Delegation suggested that a further clarification or definition of this term could be useful. Second, the Delegation asked whether it would be possible to extend only some time limits under the proposed Rule 82*quater*.3, or would an extension of time limits under this Rule always cover all time limits fixed in the Regulations that expired in a certain period. In this context, it was important to note that any extension of time limits fixed in the Regulations, according to Rule 82*quater*.3, should in no way have the effect of directly or indirectly extending time limits for the entry into the national phase. Third, the Delegation asked why the second sentence in the version of Rule 82*quater*.3 presented to the thirteenth session of the Working Group “any time limit extended under this paragraph may be extended up to the first day following the end of disruption” had been removed from the proposal. From paragraph 15 of the document, it was clear that this concept should remain, and the Delegation believed that this important question needed to be addressed at the level of the Regulations. The Delegation further remarked that based on the analysis of the responses to Circular C. PCT 1612 in document PCT/WG/14/9, from a global perspective during the COVID-19 pandemic, there was no specific need for such a provision. This was not to say, however, that from the perspective of some Offices, a need for such a provision might not exist, and possibly to a significant extent. In the view of the Delegation, the proposed Understanding raised questions of compatibility with the PCT as there was no explicit legal basis in the current legal framework of the PCT for the extension of time limits fixed in the Regulations by Offices. Instead, the Assembly was responsible for amendments to the PCT Regulations. The Delegation therefore requested the authors of document PCT/WG/14/11 to provide information regarding the compatibility of the proposed Understanding with the current legal framework of the PCT, especially with regard to Article 58(2)(a). Overall, it was decisive that the assessment of compliance with a certain time limit and the determination of possible grounds for excuse could be made with legal certainty. Against this background, the Delegation could support the proposed amendment of Rule 82*quater*.1(a) and the proposed new Rule 82*quater*.1(d). With regard to the proposed Rule 82*quater*.3 and the proposed Understanding, the Delegation requested the European Patent Office or the co-authors of document PCT/WG/14/11 to provide more information.

36. The Delegation of Portugal supported the proposal to amend Rule 82*quater*.1, especially the addition of paragraph (d), and the addition of the proposed Rule 82*quater*.3, noting that these amendments would give flexibility to both users and Offices at times such as the COVID-19 pandemic when there were restrictions on movement and working.

37. The Representative of the Intellectual Property Latin American School (ELAPI) emphasized the importance of predictability for applications and flexibility to safeguard the rights of users in situations such as the COVID-19 pandemic. Acknowledging the Interpretative statement, the Representative thanked Offices that had allowed requests to excuse delay under Rule 82*quater*.1. The Representative indicated the ELAPI was ready to offer assistance and support with regard to the proposed amendments to Rule 82*quater*.

38. The Representative of the European Patent Office (EPO) thanked delegations for their comments for the proposal in document PCT/WG/14/11. In response to comments from the Delegation of India regarding the waiver in Rule 82*quater*.1(d), the Representative stated that some further explanations could be provided in either the Administrative Instructions or the Receiving Office Guidelines on how to re-apply the waiver, but this would in effect be a re-initiation of the waiver. The Representative, however, did not believe there was a need to amend Rule 82*quater*.1(d) to explain how an Office could extend the application of the waiver. With regard to Rule 82*quater*.3, the Representative emphasized that, unlike Rule 82*quater*.1 where the applicant had to request an Office to allow an excuse a delay, Rule 82*quater*.3 provided an automatic extension, thereby giving greater legal certainty to the applicant. It was therefore important to distinguish between these two concepts. The Representative acknowledged the request from the Delegation of India to include text at the beginning of Rule 82*quater*.3 that this provision was without prejudice to Rule 82*quater*.1. The document itself included text that clarified that there was no overlap between the two provisions. The EPO believed that further text to make this distinction could be included in Guidelines rather than the Regulations, but would leave this matter to the International Bureau to determine how best to make this clarification. In response to the question from the Delegation of the Russian Federation on how time limits at other Offices would be affected by any extension under Rule 82*quater*.3, the Representative explained that only time limits in the Regulations could be extended, just as delays could only be excused in Rule 82*quater*.1 for these time limits. Rule 82*quater* therefore did not cover time limits such as the priority period or national phase entry. In general, a time limit related to an action before a particular Office. Whether that time limit had been excused under Rule 82*quater*.1, or extended under the proposed Rule 82*quater*.3, the effect on other Offices would be the same. With regard to the comment from the Delegation of China regarding supplying evidence, the Representative explained that a key difference between Rule 82*quater*.1 and Rule 82*quater*.3 was that an applicant under the former provision would need to submit a request to excuse the delay and statement to explain that they had been affected by the *force majeure* event. Regarding the question raised by the Delegation of the United States of America on the intent of the proposed Understanding, the Representative explained that the Understanding aimed to ensure legal certainty for users who would have benefitted from measure to extend time period since March 2020 before Rule 82*quater*.3 would enter into force. However, noting the comments on the proposed Understanding from the Delegations of the United States of America, Canada and Germany and the consequent lack of consensus, the Representative agreed not to submit the draft Understanding for adoption by the Assembly and therefore remove it from the proposal. With regard to the questions from the Delegation of Germany, the Representative acknowledged the difficulties of defining a general disruption, and the document included some explanation of what might constitute such a disruption. The proposed Rule 82*quater*.3 also referred to the list of events in Rule 82*quater*.1 that could be *force majeure*. The Administrative Instructions or Receiving Office and International Search and Preliminary Examination Guidelines could also include text from the description of the document and further examples in order to provide guidance on this question. As for the question concerning whether an Office could extend only certain time limits under the proposed Rule 82*quater*.3, the Representative explained that the scope of the provision intended to correspond to Rule 82*quater*.1, which covered all time limits provided under the Regulations. Since all such time limits could be affected by *force majeure*, the Representative did not believe that the proposed Rule 82*quater*.3 should allow Offices to apply extensions only to selected time limits. Regarding the period of extension of time limits, the Representative clarified that this could be a maximum of two months, and an Office would be required to notify the International Bureau of a further extension if needed in the same way

as the notification for the first extension. Further details of this procedure could be included in Guidelines to help Offices apply the provision in the future.

39. The Secretariat stated that, with regard to adding the phrase “Without prejudice to Rule 82*quater*.1” at the beginning of Rule 82*quater*.3, the International Bureau did not consider this phrase to be necessary, but indicated that it could be added if Contracting States believed this would facilitate the interpretation of the provision. The Secretariat acknowledged that no delegation had raised objections to the proposals to amend Rule 82*quater*.1. However, consensus at this stage was less clear with regard to the addition of Rule 82*quater*.3. In terms of the definition of “general disruption”, the Secretariat urged Offices to be flexible rather than searching for an ideal definition, which could later be either too vague or too narrow to cover a future event, given that an emergency or general disruption was easy to identify when the event itself happened. The Secretariat also clarified that if an Office granted an extension of time limits in view of the conditions at that Office, this did not affect time limits at other Offices. For example, if a receiving Office extended a time limit related to a particular application, this would not affect the time limits related to the application to perform actions at the International Search Authority or the International Bureau. The Secretariat therefore acknowledged that applicants would need to monitor carefully how different Offices had extended their respective time limits in the event of wide scale general disruption.

40. The Chair summarized that there was consensus in agreement with the proposals to amend Rule 82*quater*.1. However, there remained issues among some delegations with regard to the proposed Rule 82*quater*.3. There was also agreement not to submit the draft Understanding in paragraph 22 of document PCT/WG/14/11 to the Assembly.

41. The Delegation of Germany thanked the European Patent Office and the Secretariat for the further clarification regarding the questions that it had raised about the proposals. The Delegation agreed with the suggestion to provide more guidance for Offices and users on the application of the periods of extension and their consequences on time limits in the Administrative Instructions.

42. The Delegation of Japan supported the proposed amendments to Rule 82*quater*.1 and the introduction of Rule 82*quater*.3, which would enhance remedies available to users. However, the Delegation requested clarifying the definition of a general disruption under Rule 82*quater*.3 and the deadline for submitting a statement under Rule 82*quater*.1(d) in the Administrative Instructions and relevant documents such as the Receiving Office Guidelines.

43. The Secretariat responded to the points raised by the Delegations of Germany and Japan. In terms of clarifying the details of time requirements, the International Bureau could propose some details in the Administrative Instructions. However, the definition of a general disruption and examples of such events would be more appropriate for the Receiving Office Guidelines and International Search and Preliminary Examination Guidelines in order to provide guidance to Offices on interpretation at term in the Regulations. The International Bureau would be willing to work with the European Patent Office in preparing a Circular to consult on this matter.

44. The Delegation of India reiterated its suggestion to amend Rule 82*quater*.1(a) to include “or where the Office, the Authority or the International Bureau is located” after the text “in the locality where the interested party resides, has his place of business or is staying”. This amendment would remove many concerns with the proposed Rule 82*quater*.3 as only applicants affected by the disruption would be able to excuse a delay in meeting a time limit; applicants not affected by the disruption would be required to meet time limits. This would minimize cases crossing time limits, which would be beneficial to the PCT System. By only having one provision to deal with delays in meeting time limits, any issues relating to the overlap between Rule 82*quater*.1 and Rule 82*quater*.3 would disappear. The Delegation noted that this amendment could be a useful addition if all delegations believed it needed further consideration. Otherwise, the Delegation indicated that it could follow any consensus in the Working Group.

45. The Delegation of Germany clarified that it would accept the proposal from the Secretariat to include some of the additional information on the application of the provisions in the Receiving Office Guidelines.

46. The Delegation of the Russian Federation stated that further work on the question of how time limits would apply would make a consensus possible on the proposal.

47. The Delegation of India, in response to queries from the European Patent Office and the Delegation of the United States of America clarified that its proposed amendments to Rule 82*quater*.1(a) were intended as an alternative to adding Rule 82*quater*.3, rather than being additional to the new Rule 82*quater*.3.

48. The Secretariat introduced a non-paper with further amendments to Rule 82*quater*.1(a) in line with the suggestion from the Delegation of India. With regard to Rule 82*quater*.3, this non-paper included the text "Without prejudice to Rule 82*quater*.1," as the Delegation of India had proposed in the event of consensus to introduce Rule 82*quater*.3. However, the Secretariat acknowledged that the proposal from the Delegation of India was, in fact, to amend Rule 82*quater*.1(a) without introducing the provisions to add a new Rule 82*quater*.3 proposed in document PCT/WG/14/11.

49. The Delegation of India explained that its proposal to amend Rule 82*quater*.1(a) was an alternative drafting suggestion, which could obviate the concerns expressed about the implementation of the proposed Rule 82*quater*.3 yet achieve its intentions. The proposal to amend Rule 82*quater*.1(a) instead of introducing Rule 82*quater*.3 had several advantages. It would address the concerns that the implementation of Rule 82*quater*.3 would result in the extension of time limits set in the Regulations, thereby having the effect of an Office amending the Regulations. In addition, the Delegation understood that the relevant Regulations under the Madrid and Hague Systems had also considered changes similar to those proposed in Rule 82*quater*.1. The proposal to amend Rule 82*quater*.1(a) instead of introducing Rule 82*quater*.3 would also overcome concerns about the number of extensions granted by Offices under the proposed Rule 82*quater*.3. The Offices where an applicant would take subsequent actions needed to respect the actions taken by the previous Office under Rule 82*quater*. By implementing the amendments to Rule 82*quater*.1(a) suggested by the Delegation, applicants who were able to meet the timelines would be encouraged to do so. This would help to minimize the number of such events crossing timelines. The Delegation stated that the objective of the proposed new Rule 82*quater*.3 could be better addressed by the suggested amendments to Rule 82*quater*.1(a) so that the new Rule 82*quater*.3 would no longer be required. The Delegation underlined that its intention was to offer an improved legal draft to achieve the remedy that Rule 82*quater*.3 proposed for delegations to consider whether this approach would be advantageous.

50. The Representative of the European Patent Office (EPO) reiterated that the goal of the proposal in document PCT/WG/14/11 was to avoid transforming the approach of Rule 82*quater*.1, which was a well-established practice benefitting users. For that reason, the proposed amendments to Rule 82*quater*.1 were specific, namely, to add the word epidemic to the non-exhaustive list of *force majeure* events in paragraph (a), and to add a new paragraph (d) allowing Offices to waive the need for evidence as long as a statement had been submitted. In terms of the proposed amendments to Rule 82*quater*.1(a) suggested by the Delegation of India, this would enable an applicant to request an excuse of delay because of a *force majeure* event happening in the State where an Office was located, even if the said applicant was situated or residing in another State unaffected by that *force majeure* event. The new provision also implied that the Office would always be affected by a *force majeure* event in the State where it was located, which was not necessarily the case. This scenario looked somewhat awkward and appeared to be tackled already under the current Rule as nothing would prevent an Office today excusing delays when it was experiencing an event of *force majeure* that affected users. The EPO therefore concluded that proposed change to

Rule 82*quater*.1(a) in the non-paper was both confusing and unnecessary. Regarding the addition of the words “Without prejudice to Rule 82*quater*.1” at the beginning of paragraph (a) of Rule 82*quater*.3, the EPO did not see a need for this additional text as it believed that there was little doubt that the two provisions were complementary, and document PCT/WG/14/11 clarified this point. The Representative asked the Secretariat whether these words would make a difference to the application of Rule 82*quater*.3. If the Delegation of India considered this important to joining a consensus, the Representative indicated that the EPO and the co-authors of the document could agree with that addition. The Representative concluded by stating that most delegations supported the proposal in document PCT/WG/14/11, and the draft Understanding had been removed in response to the concerns of some delegations. All questions that delegations had raised had also been answered to their satisfaction. While the Delegation of India still had concerns and had suggested to include some aspects of Rule 82*quater*.3 in Rule 82*quater*.1, the Representative clarified that the two approaches of these Rules were different in nature, one being an excuse-based mechanism, and the other being an extension-based mechanism. The Representative recalled that the Delegation of India had indicated that it could join a consensus on the proposal, and believed that the Working Group could arrive at such a consensus by removing the draft Understanding, and potentially introducing the text at the beginning of Rule 82*quater*.3. Finally, the Representative recalled the recommendation in paragraph of document PCT/WG/14/11 to align the wording of Rule 82*quater*.1(c) and Rule 82*quater*.2(b) to paragraph (c) of the new Rule 82*quater*.3, thus ensuring alignment between these provisions.

51. The Delegation of the United Kingdom agreed with the concerns that the Representative of the European Patent Office had raised regarding the amendment to Rule 82*quater*.1(a) proposed by the Delegation of India. Amending Rule 82*quater*.1 in this way was a fundamental change to the proposal in document PCT/WG/14/11 and negated many of the benefits of the proposed Rule 82*quater*.3. Under the proposal from the Delegation of India, applicants would still have to request an excuse of delay even if the Office waived the requirement for evidence, thereby increasing the burden on applicants and Offices at a time when it was least needed. By widening the scope of Rule 82*quater*.1 there was also the danger that Offices would receive more Rule 82*quater*.1 requests. Applicants who had missed a deadline could use an event occurring in the State the Office was situated as a basis for a Rule 82*quater*.1 request, even though that event has had no effect on the applicant’s ability to meet the deadline and the Office in question was operating normally. Under the current provisions of Rule 82*quater*.1 and the proposal in document PCT/WG/14/11, such requests would not be possible, but it is arguable that they could be allowed under the proposal from the Delegation of India. This would lead to applicants benefitting from delays, when both they and the Office in question had been unaffected by the event of force *majeure*. The Delegation of the United Kingdom was therefore unable to support the proposal from the Delegation of India.

52. The Delegation of the Republic of Korea stated that it would require more time to consider the proposal by the Delegation of India to add the State where the Office, Authority or International Bureau was located to Rule 82*quater*.1(a). The Delegation pointed out that Rule 82*quater*.1 did not oblige an Office to accept a request to excuse delay in meeting a time limit, and it was important to reflect on how this proposal interacted with other Rules.

53. The Secretariat responded to the question of the European Patent Office regarding the proposed wording “Without prejudice to Rule 82*quater*.1” at the beginning of paragraph (a) of Rule 82*quater*.3. The Secretariat considered that this wording was more of an explanatory nature that an applicant was open to request an excuse of delay under Rule 82*quater*.1 if they were unsure if the Office had extended a time limit under Rule 82*quater*.3. However, if such a time limit had been extended, the Office would not need to consider that request, as the applicant would have met that extended time limit. With regard to the proposed words in Rule 82*quater*.1(a), this would have limited practical effect. In the case of an Office not waiving the requirement for evidence to accompany a Rule 82*quater*.1 request, the proposal could allow an applicant to provide evidence that the problem they had in meeting a time limit was due to a

disruption in the State where the Office, Authority or International Bureau was located. However, Rule 82*quater*.2 provided remedies where there were problems at the location of the Office related to electronic communications, and where an Office was closed, time limits would be extended under Rule 80.5. The proposal would therefore provide more assurance that applicants could use Rule 82*quater*.1 to excuse delays in additional situations. It was clear that the European Patent Office and the co-authors of document PCT/WG/14/11 believed that the proposed Rule 82*quater*.3 was necessary. It could be possible to include the changes in Rule 82*quater*.3 as a further amendment in addition to the new Rule 82*quater*.3 to reach a consensus on the amendments. However, the Secretariat acknowledged that most other situations where a user had failed to meet a limit were covered in other provisions in the Regulations.

54. The Chair recalled that need for applicants to have effective and reasonable safeguards in the event of a general disruption and that delegations had expressed support for the principle of the proposal.

55. The Delegation of India recalled that its suggested amendment to Rule 82*quater*.1(a) had been to provide an improved legal draft and remedies for applicants. However, the Delegation indicated willingness to join a consensus if the Working Group had reached this point.

56. The Delegation of the Republic of Korea requested clarification on the term “general disruption”, on how to handle the number of time limits involved and the effect on the national phase and international preliminary examination.

57. The Secretariat, in response to the request from the Delegation of the Republic of Korea, recalled that the International Bureau would propose modifications to the Administrative Instructions and/or relevant Guidelines to clarify the question of a general disruption and to consider the appropriate format for notifications of waivers, but there was no need to specify this in the Regulations. With regard to the consequential effects of an extension on other time limits, most time limits within the PCT were based on the last action, so if one action was delayed, the Office would set the time limit for the next action accordingly. This could clearly cause problems if actions continued to take place after the time limit for entry into the national phase. This should be rare if Offices used the provisions in Rule 82*quater*.3 responsibly and only allowed extensions when needed. Applicants would also not have an interest in delaying proceedings if it caused difficulties to enter the national phase. The provisions would, however, be difficult to regulate given their general nature allowing extensions to multiple time limits, but all parties would have an interest to continue processing applications.

58. The Delegation of the Republic of Korea explained that it would be willing to support the amendments to the Regulations as proposed in document PCT/WG/14/11 if the International Bureau could continue to work on the clarification of the definition of a general disruption and the practicalities of extensions to time limits in the relevant Guidelines.

59. The Working Group invited the International Bureau to develop modifications to the Administrative Instructions and/or relevant Guidelines covering, in particular:

- (a) clarification of what might constitute a general disruption;
- (b) formats for notifications of waivers of the need for evidence under Rule 82*quater*.1(d); and
- (c) clarification of when the statement under Rule 82*quater*.1(d) should be submitted.

60. The Working Group approved the proposed amendments to Rule 82*quater* as set out in the Annex to document PCT/WG/14/11, with a view to their submission to the Assembly for consideration at its session in October 2021.

FORMAL INTEGRATION OF THE PATENT PROSECUTION HIGHWAY INTO THE PCT

61. Discussions were based on document PCT/WG/14/10.

62. The Delegation of the United States of America introduced the document by recalling that, at the fifth session of the Working Group in 2012, the United Kingdom and the United States of America had presented a joint document entitled “PCT 20/20” containing 12 proposals for further development of the PCT System (document PCT/WG/5/18). One of these 12 proposals was a proposal for formal integration of the Patent Prosecution Highway (PPH) into the PCT. Discussions of this proposal took place over several years in the Working Group and the Meeting of International Authorities. While most delegations supported the proposal during these discussions, a few delegations opposed it, primarily for national sovereignty concerns. In spite of the explanations to demonstrate that the PPH had no effect on the sovereignty of a Member State in making a final patentability determination, the Working Group did not approve the proposal. The United States Patent and Trademark Office (USPTO) and the IP Offices of the co-authors of the document continued to believe that the PPH should be further advanced by formal incorporation into the PCT legal framework. These Offices believed that delegations that initially had concerns might have changed their positions since the Working Group first discussed the proposal. In fact, a number of the delegations that had opposed the proposal had IP Offices that were now participating in the PPH. Therefore, in view of the changes to the international intellectual property landscape regarding the PPH, the Delegation believed that the time was right to reconsider the proposal. There had been a renewed effort to make more effective use of the PCT in order to reduce duplication of work by providing a more accurate higher quality search and patentability opinion during the international phase. The PPH had shown that work sharing or work leveraging had tangible benefits for both Offices and applicants. The authors of the document therefore proposed again to formally integrate the PPH system into the PCT. At the applicant’s option, national and regional Offices would fast track or make special national phase applications presented with only claims indicated as meeting the criteria of Articles 33(2) to (4) by either the International Searching Authority or the International Preliminary Examining Authority. This would encourage applicants to ensure that their applications met the requirements of Article 33 in the international phase and effectively reduce the cost of pursuing patent protection through the PCT by providing the benefits seen in the PPH, including reduced actions for disposal, higher allowance rates and a reduced rate of appeal. Ultimately, participation in the PPH did not require or involve any substantive changes in how participating Offices searched and examined applications, but instead acted to provide that participating Offices could be presented with better quality applications to process. The national office would then be able to leverage the work done in the international phase to streamline its national patent examination process. The use of the PPH had increased substantially since the proposal had first been introduced, including addition of Offices that had originally opposed the proposal. While the PPH network had expanded significantly, the Delegation believed that formal incorporation of the PPH into the PCT System was desirable and adoption of the proposal would have positive additional effects. It would further extend the PPH network. It would further enhance the importance and relevance of the international phase work product by creating an additional linkage between the international and national phases, increasing reliance on international phase work products by national and regional offices. It would also allow applicants from all Contracting States to take advantage of the benefits of the PPH worldwide, regardless of whether or not their own national Office had entered into a bilateral agreement with another national Office. The proposal could therefore be a first step towards elimination of the need for bilateral and multilateral PPH agreements. The Annexes to the document proposed new Rules 52*bis* and 78*bis* as well as Administrative Instructions. Subparagraph (a) of both these Rules covered expedited examination where the application contained only claims that satisfied Article 33(2) to (4), with Rule 52*bis* applying to designated Offices and Rule 78*bis* applying to elected Offices. Subparagraph (b) of these Rules provided an alternative opt-in or opt-out provision for the Working Group to consider. Subparagraph (c) of these Rules provided a mechanism where national Offices could suspend participation, for example, for purposes of workload control. In the proposed new Administrative Instructions,

Section 901 provided detailed requirements for expedited examination, Section 902 listed optional requirements for expedited examination such as a fee, and Section 903 provided operational details for applications undergoing expedited examination. The Delegation concluded by thanking the Delegations of the Japan, the Republic of Korea and the United Kingdom for co-sponsoring the proposal in the document.

63. The Delegation of the United Kingdom expressed the hope that Offices unable to support the proposal during previous discussions would now have experienced the benefits of the Patent Prosecution Highway (PPH) through being part of bilateral PPH agreements. The Delegation explained that the proposal aimed to encourage applicants to amend their applications to address objections raised during the international phase before they filed at national or regional Offices. This would ensure that these Offices would be provided with applications that were closer to being granted since the applicant would have amended the claims to overcome major objections raised by the International Searching Authority or International Preliminary Examining Authority. Each national or regional Office would nevertheless retain sovereignty over the patent rights it granted and could ensure that particular national rules and regulations were applied. By encouraging applicants to amend their applications in this way, a designated or elected Office would receive better quality applications to process, improving the efficiency of the global patent system as a whole. Applicants would also benefit from faster grant times as by amending their applications, they could subsequently request accelerated processing during the national or regional phase. With better quality applications to process, any concerns over an increase in accelerated examination requests could be offset by the decrease in time taken to process such cases. However, if concerns about resources became apparent, a national Office could always opt out of the scheme until it was able to rejoin. Ultimately, the proposal did not require or involve any substantive changes in how participating offices searched and examined their applications. Instead, the proposal aimed to influence applicant behavior so participating Offices could be presented with better quality applications to process.

64. The Delegation of the Republic of Korea recalled the active discussions on the subject of formal integration of the Patent Prosecution Highway (PPH) into the PCT over about two years after the United Kingdom and the United States of America had originally submitted the proposal in 2012. The Delegation considered it appropriate to restart talks on the proposal following the onset of the COVID-19 pandemic, and the proposal in the document took into account the opinions and comments made during the earlier discussions. The Delegation referred to paragraph 15 of the document that listed some key points to consider related to the proposal, and hoped for active discussions by the Working Group.

65. The Delegation of Japan referred to the first Patent Prosecution Highway (PPH) pilot program between the Japan Patent Office and the United States Patent and Trademark Office in 2006. Fifteen years later, the PPH network had expanded to 55 countries and regions, compared to the time of the previous discussions of the proposal by the Working Group in 2014 where 33 countries and regions were part of the PPH network. The Delegation believed that the PPH had room to become more attractive to Offices who were increasingly able to see the workings of the PPH and how it allowed global users to obtain patents quickly in other countries and regions. At the same time, the PPH promoted work sharing among IP Offices. There were similar benefits to applicants and Offices from the PCT-PPH. As one of the two countries that started the PPH, the Delegation concluded that formal integration of the PPH into the PCT would allow more Offices and users to enjoy its benefits.

66. The Delegation of Israel was in favor of the idea to expedite national phase examination through formal integration of the Patent Prosecution Highway (PPH) into the PCT, which would benefit both applicants and Offices. The Delegation supported the proposal in the document if integration of the PPH in the PCT System was viewed as an additional mechanism for an Office to participate in the PPH with no effect on existing bilateral or plurilateral PPH agreements, whether for PCT or non-PCT work products.

67. The Delegation of Brazil recalled that the Working Group discussed the possibility of formally integrating the Patent Prosecution Highway (PPH) into the PCT in 2013 and 2014 and referred to previous statements by Brazil during the discussions that stated the main difficulties related to this integration. The Delegation acknowledged that the proposal in the document attempted to address one of these difficulties, the significant increase in workload for IP Offices that this integration would entail. Although the proposed provisions would allow for a temporary suspension of PPH examinations, it would be important for the National Institute of Industrial Property of Brazil to enjoy other flexibilities such as the possibility to limit applications in terms of technological area and the number of applications per applicant. While acknowledging the benefits of the PPH, the Delegation believed that it should be an optional procedure. The National Institute of Industrial Property of Brazil had signed PPH agreements with some Offices, but was focusing efforts on reducing patent examination backlogs. This provided little room for formal integration of the PPH into the PCT at this time.

68. The Delegation of Singapore noted that work sharing programs offered benefits for IP Offices and applicants. From the experience of the Intellectual Property Office of Singapore, examination work on a corresponding application could serve as a useful reference in producing quality national reports. Patent Prosecution Highway (PPH) arrangements and regional work sharing for granting patents, like the ASEAN patent examination cooperation (ASPEC), had also allowed applicants to obtain patents faster and more efficiently, offering businesses greater and expedited access to markets. The Delegation also appreciated the clarification that the proposal would not affect national sovereignty, which had also been the experience of Singapore. The Delegation supported the objective of the proposal in the document. As Asia's role in the global value chains continued to grow, the Delegation saw a value in establishing programs to help accelerate IP and innovation growth in the region and beyond. The Delegation also appreciated that the proposal considered flexibilities such as an opt-in or opt-out mechanism, a temporary suspension of the offer to expedite processing if national workload became overwhelming, and the possibility of requiring a fee from applicants. These flexibilities were important, especially for small and medium-sized IP Offices, to manage an increased workload and maintain high standards of patent reports, and for Offices who might need additional resources to implement the program. These flexibilities also offered each Office the opportunity to expand its networks at its own desired pace and avoid the imposition of obligations that might be challenging to comply with within a certain timeframe. In conclusion, the Delegation supported the objectives of the proposal. The experience of Singapore in work sharing had been positive and these programs had benefitted innovators by facilitating their entry into global markets. The Delegation looked forward to discussions to take the proposal forward.

69. The Delegation of the Russian Federation noted the importance of the proposal in order to enhance the efficiency of the PCT System and streamline the work of Offices. Given that the Federal Service for Intellectual Property (ROSPATENT) participated in the Patent Prosecution Highway (PPH) network, including the Global PPH and PCT-PPH, the Delegation supported the proposal for formal integration of the PPH into the PCT System. However, the Delegation wished to analyze the proposed amendments to the Regulations and Administrative Instructions with regard to a possible increase in administrative burden. The Delegation believed it to be expedient to estimate the number of applications at ROSPATENT that might be subject to examination in the PPH as these applications would need to receive special status at ROSPATENT to be examined ahead of the queue.

70. The Delegation of India stated that it understood that there was no additional work sharing in the proposed integration of the Patent Prosecution Highway (PPH) into the PCT compared to what was already available under the PCT in the national phase. The only difference that the proposal would make was preferential treatment in the form of out-of-turn processing for applications based on a positive finding in an international report. The PCT had been envisaged as an impartial system that could be used by applicants irrespective of the patent eligibility of the inventions. In the PCT System, international reports were of non-binding nature,

which meant that no PCT applicant could claim preferential treatment based on the outcome of these reports. The PCT System did not presume that the primary purpose of any patent Office was to grant patents quickly rather than dispose of the applications filed with it in a timely manner, covering both grants and refusals. The proposed integration of the PPH in the PCT encouraged a win-win situation for International Searching Authorities issuing more “A” category citations and for applicants opting to use these Authorities, which could severely undermine the quality of international reports. It would also lead to a situation where the fastest International Searching Authority decided the queue for national phase applications in other jurisdictions. There was also a danger that the PCT System itself was reduced to a tool just to secure faster processing in the national phase. Implementation of the proposal would further widen the gap between foreign and local applicants in jurisdictions where grants to foreign applicants outnumbered those to local applicants. Moreover, a negative finding in the international search report had more persuasive value compared to a positive one; a report with only “A” category citations merely stated that the International Searching Authority could not find any citations that affected patent eligibility and decided to stop the search. There was no reduction in workload for a national Office since a different database, search strategy or proficiency in a different language might help in finding more relevant citations. Moreover, there were instances where positive findings in the international search report were reversed in the national phase. Despite having a negative finding in the reports, patents were granted in the national phase due to the objections being overcome through amendments or due to differences in novelty or inventive step considerations in different jurisdictions. The Delegation underlined that the PCT System should offer a level playing field in the national phase for all stakeholders. By contrast, only applicants filing in patent Offices that were comparatively relatively fast in processing could leverage the facility under the PPH. Small innovators across the globe, including those from developing countries, would find it difficult to afford the high costs involved in choosing the fastest Authorities in order to leverage the proposed PPH in the PCT, especially the cost of assigning competent legal practitioners at various locations, and the cost of translations etc. Faster processing might also lead to more litigation, noting the huge gap in appeal mechanisms and costs among jurisdictions. The Delegation further believed that the PPH program did not align with the mission of WIPO “to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all.” The theme of World IP Day in 2021 was “IP and SMEs: Taking your ideas to market.” If the PCT System facilitated quicker grant of patents to larger multinational companies based on favorable findings by the quicker patent offices, it would fail to encourage the small innovators in the queue desirous of securing patents in different jurisdictions. Faster processing under the PPH also disrupted the availability of results of examination of other Offices that supplemented the work of Offices, which would have been available in the normal course of the proceedings. It was well accepted that there was a wide gap in the technical competencies among Offices that formed the basis for WIPO’s capacity building programs, wherein well-established and advanced patent Offices were helping in the capacity building of smaller Offices and those in developing countries. The integration of the PPH into the PCT did not align with the WIPO Development Agenda and would hinder the recommendations for future work acknowledged in the PCT Roadmap aimed at providing technical assistance to Offices for eliminating differences in search and examination capacities, skills and access to information. The Delegation noted that some Offices were already implementing PCT-PPH under bilateral programs. Considering that the proposal included “opt-in” or “opt-out” options, there was no change in the situation after implementation of the proposal as far as such Offices were concerned. On the contrary, formal integration of the PPH into the PCT would change the basic structure of the PCT that presently offered equal treatment to all applicants. Even with the “opt-out” options, the adverse effects would remain. Such preferential treatment could not form a part of the PCT legislation as it was against the spirit of the PCT and conflicted with the ideals of WIPO. Such integration within the PCT would also provide more coercive power to the PPH program, further weakening the position of developing countries in trade negotiations. The Delegation was therefore unable to support the proposal. The Delegation further observed that receiving Offices did not declare all International Authorities competent to search the international applications filed at their

respective Office. Presently, for the majority of the applications, the International Searching Authority was the same as the receiving Office. In this respect, India had presented a proposal for better distribution of workload among International Authorities at the twelfth session of the Working Group (document PCT/WG/12/18). The Delegation considered this an important step that could help in improving the quality of reports without amending the PCT and without discriminating against certain applicants.

71. The Representative of the European Patent Office (EPO) stated that the EPO could support the proposed amendments to Rules 52*bis* and 78*bis*, provided that the “opt-in” alternative would apply. The “opt-in” solution would allow designated Offices to decide when the provisions should apply in their Office, thereby addressing the needs expressed by some delegations. Designated Offices also needed to have some degree of flexibility to decide the conditions under which they opted in. As to the proposed amendments to the Administrative Instructions, the EPO believed that a requirement according to which expedited examination should be subject to the claims being free of any observations in Box VIII should be added to Section 901. This requirement corresponded to standard practice in the Patent Prosecution Highway (PPH) and had been contained in the proposal discussed by the Working Group in 2014 (see document PCT/WG/7/21).

72. The Delegation of Canada endorsed the proposal. The Canadian Intellectual Property Office (CIPO) was a partner in bilateral PPH agreements and the Global PPH. CIPO had seen similar benefits from the PPH as those reported in the document in terms of increases in allowance rates and reduction in pendency times. Moreover, Canada had not experienced any negative impact on national sovereignty through its PPH or PCT-PPH agreement, nor did the Delegation believe that incorporating the PPH into the PCT would any different.

73. The Delegation of China stated that the China National Intellectual Property Administration (CNIPA) was still reviewing the proposal and suggested to perform an analysis on the likely impact of the proposal on the workload of Offices.

74. The Delegation of Germany stated that it could support in principle the proposed integration of the Patent Prosecution Highway (PPH) into the PCT. The German Patent and Trademark Office (DPMA) participated in the Global PPH and maintained a bilateral PPH pilot program with the China National Intellectual Property Administration. Overall, the DPMA had had positive experiences with participation in the PPH network. The Delegation welcomed the flexibilities in the proposed new Regulations with the “opt-in” or “opt-out” options and the possibility for Offices to suspend expedited examination temporarily. The Delegation currently preferred the “opt-in” alternative in Rules 52*bis*(b) and 78*bis*(b) as Germany was still assessing the consequences on national law of the proposed amendments to the Regulations and Administrative Instructions. With regard to the normative content of the proposed amendments, the Delegation understood the proposed Section 901 of the Administrative Instructions to contain the main normative requirements for expedited examination. The Delegation therefore questioned whether it would be preferable to incorporate the detailed requirements for expedited examination in the proposed Section 901 into the Regulations, for example, instead of Rules 52*bis*.1(a) and 78*bis*.1(a).

75. The Delegation of Denmark supported the proposal for formal integration of the PPH in the PCT as it had done when the Working Group had previously discussed the proposal. The use of the Patent Prosecution Highway (PPH) and its geographical coverage had grown substantially since its inception in 2006. From the experience of the Danish Patent and Trademark Office’s participation in the PPH program in 2008, the Delegation believed that the PPH had increased efficiency in processing of applications and led to the more robust granted patent rights. The Delegation underlined that the PPH increased quality because the examiner at the later Office would receive prior art that the examiner at an earlier Office had revealed and therefore could do no worse than the earlier examiner.

76. The Delegation of New Zealand supported the proposal in general but expressed a concern with regard to capacity at Offices to handle increases in workload in particular technologies. The Intellectual Property Office of New Zealand (NZIPO) was a part of the Global Patent Prosecution Highway (PPH) with 64 examiners across four broad technology fields, the smallest team containing eight examiners. The workload and capacity of an IP Office to handle an incoming PPH request could depend on the technology. The Delegation therefore enquired about the possibility for an Office to suspend expedited examination for applications only in certain technology fields, or alternatively provide additional criteria for accepting requests that an Office had the capacity to deal with the application. In this way, an Office would still be able expedite the examination of applications in technologies where there were no difficulties with workload. Furthermore, the Delegation explained that the NZIPO received some PPH requests before the Article 22 time limit had expired. In such cases, the Delegation asked whether other Offices treated such PPH requests as an express request under Article 23(2) for a designated Office to process to examine an international application.

77. The Delegation of France stated that the proposal for formal integration of the Patent Prosecution Highway (PPH) in the PCT did not directly concern the National Institute of Industrial Property (INPI) as an applicant had to pass through the regional phase at the European Patent Office (EPO) to obtain patent protection in France using the PCT. The Delegation nevertheless supported the principle of the proposal given the potentially positive impact on French users whose applications entered the national phase at an IP Office that did not have a PPH agreement with the EPO, where the IP Office would apply the PPH for PCT applications through the general provisions of the proposal. Finally, the Delegation informed the Working Group that a PPH program between INPI and the Japan Patent Office (JPO) began on January 1, 2021, which was the first PPH agreement involving INPI.

78. The Delegation of Portugal informed the Working Group that the Portuguese Institute of Industrial Property (INPI) had signed bilateral Patent Prosecution Highway (PPH) agreements with the Mexican Institute of Industrial Property and the China National Intellectual Property Administration and was preparing a bilateral PPH agreement with the National Institute of Industrial Property of Brazil. INPI was also part of the Global PPH network. Since INPI was a small IP Office, it had limited experience of the PPH, but this experience had been positive. The Delegation therefore supported the proposal for integration of the PPH into the PCT, which it believed had various benefits and merits.

79. The Representative of the Intellectual Property Latin American School (ELAPI) stated that it was important to integrate the Patent Prosecution Highway (PPH) in the PCT System. Contrary to concerns that some Member States had expressed, EPAPI did not believe that implementation of the proposal would have any effect on national sovereignty. The PPH allowed expedited process of patent applications where grant was highly likely, reducing the time and cost of processing and granting the application in the national phase. This would improve the accessibility of new technologies to markets, facilitating the regulatory framework for the commercialization of products across multiple borders. The proposal would also reposition the PCT System as an expeditious, valid and reliable way of obtaining worldwide patent protection of new technologies. Finally, the PPH only covered inventions meeting the patentability requirements as assessed and recognized by at least one Office in line with the standards of the PCT. The standardization of processes to protect inventions in different countries would strengthen international agreements and promote the commercialization of new technologies and the dissemination of related knowledge, levelling the field for innovators who solve technical problems that went beyond national borders.

80. The Representative of the Japan Intellectual Property Association (JIPA) welcomed the proposed improvement and the expansion of the Patent Prosecution Highway (PPH) system as it would be expected to save costs and actions for users in the national phase. However, it was important to maintain the quality of international search for the reliability of the PPH system. The Representative therefore expressed concern that differences in quality of international

search reports between International Searching Authorities might create an unfair situation among applicants. With the formal integration of the PPH into the PCT, the Representative stated that JIPA would also appreciate providing a way of maintaining and improving the quality of international search.

81. The Representative of the Intellectual Property Owners Association (IPO) stated that the IPO supported formally incorporating the Patent Prosecution Highway (PPH) into the PCT System along with standardizing many of the PPH requirements. This would streamline and simplify the process for applicants by sunseting the multitude of bilateral agreements that would no longer be necessary.

82. The Secretariat, in response to the question from the Delegation of Germany about the incorporation of the requirements for expedited examination from Section 901 of the Administrative Instructions into the Regulations, indicated that it would take up drafting issues with the United States of America in any further work on the proposal decided by the Working Group. In response to the suggestion from the Delegation of China to perform an analysis on the likely impact of the proposal on the workload of Offices, the Secretariat indicated that the International Bureau could perform this review in part, but it did not have sufficient recent information to address the whole PPH network. However, the International Bureau issued a report each year of the characteristics of international search reports showing the proportion of international search reports having only "A" category citations, which it could break down by different fields of technology. For Offices that provided the International Bureau with high quality information on the national phase as required under Rule 95, the International Bureau could also indicate the proportions of applications with only "A" category citations that entered the national phase. It would therefore be possible to provide an indication to some Offices of the number of applications that could be eligible for expedited treatment in principle, but it was impossible to know how many of these cases would be subject to a PPH request. The Secretariat stated that the International Bureau would be willing to perform this work if it would be useful to the Working Group in moving forward if Member States decided to take the proposal further.

83. The Delegation of the United States of America commented that most delegations had spoken in favor of the proposal. In response to the comment from the Delegation of Israel about other Patent Prosecution Highway (PPH) agreements, the Delegation of the United States of America did not believe that the proposal would affect PPH arrangements already in place. In response to concerns about workload and the request for additional flexibilities to allow an Office to limit expedited examination to certain technological areas or to a limited number of cases per applicant, the Delegation indicated that it could consider these possibilities. One idea in this regard could be for an Office to indicate further limitations in an "opt-in" notification to the International Bureau. In relation to the comments from the Delegation of Brazil about overall workload, applications with PPH requests had helped to increase efficiency at the United States Patent and Trademark Office (USPTO) since these applications had a pre-screening before examination, therefore requiring less amendment and less time to process than a standard application. The Delegation of the United States of America further stated that it did not agree with the characterization of the proposal by the Delegation of India, and considered that the PPH represented a good example of the type of cooperation that the Patent Cooperation Treaty should embrace. Moreover, the Delegation did not agree with the comments about disparate treatment between applicants, and stressed that the PPH intended to simply and streamline the patent procedure for all applicants in every situation, as well as Offices. In relation to the request from the European Patent Office to add a requirement for expedited examination in Section 901 that the claims should be free of any observations in Box VIII, the Delegation could consider this request. Another way of providing for this requirement could be to allow Offices to add this condition in an "opt-in" notification to the International Bureau. In reply to the question from the Delegation of New Zealand, the USPTO did not consider a PPH request as an express request under Article 23(2) to process an international application, but the Delegation of the United States of America acknowledged the arguments for

a different interpretation. The Delegation concluded by noting the support from the majority of delegations that had taken the floor and indicated that it wished to consider the proposal further along with the co-authors.

84. The Delegation of the Republic of Korea thanked delegations for their comments and requested them to be submitted in writing to allow the authors to consider them in developing the proposal further.

85. The Chair acknowledged the interest in the proposal and the comments and concerns that some delegations had raised, notably with regard to workload at Offices, the flexibilities available, and how the proposal related to the goals of the PCT System. The Chair concluded that the Working Group required more time to discuss the proposal further and invited Japan, the Republic of Korea, the United Kingdom and the United States of America to consider the comments further in submitting a revised proposal to a future session of the Working Group.

86. The Working Group invited Japan, the Republic of Korea, the United Kingdom and the United States of America to consider the comments raised during the session and submit a revised proposal to a future session of the Working Group.

CERTIFIED COPIES OF EARLIER INTERNATIONAL APPLICATIONS

87. Discussions were based on document PCT/WG/14/16.

88. The Delegation of Japan introduced the document by explaining that the COVID-19 pandemic had brought about many changes to the global economy and society, one of these being digitalization. In order to continue normal operations of the PCT System during the pandemic, Offices had needed to rely less on paper documents to avoid potential delays caused by disruptions in international mail services. In this context, the Delegation saw possibilities to improve the PCT legal framework, and proposed discussions regarding the Regulations on priority documents for priority claims based on earlier international applications. When submitting a priority document, some Offices already utilized the WIPO Digital Access Service for Priority Documents (DAS) for international applications. However, other Offices did not use DAS for international applications due to the costs and time needed to update their IT systems. In order to reduce problems from the processing and transmission of paper, the Delegation proposed to use the record copy as the certified copy of an earlier international application used as the basis of a priority claim. While there were three options in paragraph 11 of the document to implement this proposal, the Delegation preferred option (iii). The Delegation concluded by stating that the proposal would alleviate the problems in situations where epidemic outbreaks prevented Offices from issuing priority documents promptly or when priority documents could not be sent due to the suspension of international mail services.

89. The Secretariat referred to the discussions of the proposal at the twenty-eighth session of the Meeting of International Authorities from March 24 to 26, 2021. Authorities agreed that the third option in paragraph 11 of the document appeared to be the most promising if work were to be undertaken (see paragraph 18 of the Summary by the Chair of the session, reproduced in the Annex to document PCT/WG/14/2). Any arrangements would need to meet the requirements of Article 4D(3) of the Paris Convention and the Secretariat highlighted two key points in this regard. First, the copy to be used as a priority document must be certified as correct by the authority that received the application, which was the receiving Office in the case of international applications. Second, countries may require the copy to be accompanied by a certificate from the authority that received the application showing the date of filing. The Secretariat referred to the understanding of the Assemblies of the Paris Union and the PCT Union adopted in 2004 relating to the certification of documents in electronic form, reproduced in paragraph 8 of the document. The understanding provided flexibility in the forms of certification of priority documents that were acceptable, which included the possibility of collective certification of multiple priority documents. The Annex to the document showed preliminary draft amendments to the Regulations that could address how option (iii) in

paragraphs 11 and 13 of the document might be implemented. Proposed amendments to Rule 22 added that transmission of the record copy should be considered a certification that the record copy is the correct copy of the international application as filed. This amendment would therefore put part of the understanding into the Regulations in a form that followed the requirements of Article 4D(3) of the Paris Convention. The proposed Rule 21.3 provided the basis for the International Bureau making these certified copies available to DAS. The Secretariat emphasized that it was a long-standing practice for Offices to make certified copies available that were originally prepared by a different Office. The important matter was not which Office made the copy available but that the Office receiving the application certified it, and then ensuring that the certification remained valid. In the case of a paper priority document with a sealed ribbon, the important thing was that the ribbon remained intact; it was not relevant how many hands the document had passed through before reaching the Office that needed the document. Under Rule 17, the International Bureau delivered certified copies to all designated Offices based on the receipt of a single copy of that document. This proposal would be similar but introducing the mechanism of DAS into the process. Paragraph 14 of the document proposed an understanding of the PCT and Paris Union Assemblies concerning the recognition of the certified copy and the use of the request form as a certificate. While this should not be strictly necessary if Member States were confident that the Rules and Administrative Instructions were appropriate, but it could be a useful recognition of what the system proposed. An understanding would also provide confidence that it was agreed as acceptable not only by PCT Contracting States but also by other members of the Paris Union whose Offices could in principle receive such certified copies through DAS. In terms of how the International Bureau would provide the certified copy in an appropriate form, this would be part of the Administrative Instructions. The International Bureau hoped to automate this process, but this remained impractical because of limitations and differences in the ways different receiving Offices sent record copies. However, the Secretariat hoped that, as part of the digital transformation proposals discussed during the session, all content exchanged between Offices could be packaged in ways that would allow the contents to be identified and processed with much higher degrees of automation. For the moment, the International Bureau would need to assemble the necessary components manually, including the pages of the application body as filed and a copy of the request form, either stamped with the date of filing by the receiving Office or showing the representation of the filing date. This representation might be in XML from an Office that no longer printed, stamped and re-scanned the form for that function. This manual process would take a significant amount of time per application, but would only be required for the few applications where the certified copy was requested. All record copies would be tagged as theoretically available to DAS, and applicants would be sent a number that could be used as an access code, most likely by adding a new code to Form PCT/IB/301 (Notification of Receipt of Record Copy). An applicant desiring to use the record copy as a priority document would include the access code on the request form of the later application, whether that was the international application or a later national application. When the document request came through DAS, the International Bureau would check that the code was valid, which would trigger a response indicating that the document was available and be delivered soon. An action would then be created for the International Bureau to put the certified copy into a form suitable for inclusion in DAS. The International Bureau would then transmit the certified copy as soon as possible afterwards, usually within one or two working days. The key benefit of option (iii) was that no implementation or operational work would be required by national Offices, as they would not need to take any new action in preparing record copies and the certification process would be the transmission of the record copy. The later applications would look like any other application that included a DAS request, with the International Bureau handling retrieval of the document from DAS. Similarly, the International Bureau would have no implementation work for receiving the later application because it would use the automated DAS retrieval processes used for other certified copies. The implementation and operational issues would be centered on the earlier applications, adjusting Form PCT/IB/301 to include a suitable code for creating a certified copy to be triggered by a valid DAS request, and extending the existing processes for sending certified copies filed at the receiving Office of the International Bureau to DAS to copies

from other applications. This option would not require receiving Offices to join DAS, either as a depositing Office or as an accessing Office since the International Bureau would perform those functions under Rule 17. Receiving Offices that already acted as depositing Offices could continue to act in that role noting that DAS was able to deal with certified copies of the same application being available from different sources. The system would check the provided access code first against the digital library of the receiving Office and then against the International Bureau and take its response from whichever one worked. While, there were further details to be worked out, the Secretariat believed that the two key questions required discussing at this stage. First, whether the Working Group considered that this proposal was one that should be pursued, and second, whether Member States were confident that certified copies provided in the way described would be recognized as valid priority documents for the purpose of national phase processing according to their national laws.

90. The Delegation of the Republic of Korea agreed with the proposal because it would be more convenient for the applicant while reducing the workload of the receiving Offices. The Delegation supported option (iii) among the possibilities in paragraph 11 of the document, which would not require major changes to IT systems or the Regulations.

91. The Representative of the European Patent Office (EPO) supported the proposal under option (iii) in paragraph 11 of the document as a basis for further consideration since the option of using DAS appeared the most practical one. In particular, it did not require major changes to the digital processes in place, and it was desirable that this transmission system worked as seamlessly as DAS both for applicants and Offices. The EPO nevertheless had two questions about the proposal. First, the Representative asked how the applicant would request the International Bureau to make the certified copy available to DAS. Second, the Representative requested clarification on how the applicant would require the access code in order to use it for the later application. The Representative also commented on a difference between the wording of the proposed draft amendment to Rule 22.1 and the possible understanding of the Paris Union and PCT Assembly in paragraph 14 of the document. The proposed text in Rule 22.1 stated that “the indications made on or together with a request form of the record copy shall constitute a certificate...”. However, the understanding stated “(a) the transmission of the record copy constitutes a certification that a copy is correct; and (b) the request stamped with the international application number and the international filing date ... shall be considered a certificate from the receiving Office.” The Representative asked why this language differed, and suggested that the same language in the understanding be used in the Rule.

92. The Delegation of India agreed with the option (iii) in paragraph 11 of the document, and with the proposed amendments to the Regulations.

93. The Delegation of the United Kingdom indicated a preference for option (iii) in paragraph 11 of the document. Under this option, there appeared to be less work involved for all parties and it used DAS, which was an excellent resource for the exchange of digital priority documents from the experience of the United Kingdom Intellectual Property Office. Given the relatively small number of applications involved, it appeared sensible to reuse an existing service rather than creating additional work for Offices. The Delegation hoped that more Offices would join DAS soon noting the recent difficulties Offices had experienced in transferring paper copies of priority documents during the pandemic, which would in turn enable the full benefits of option (iii) to be realized with all national Offices then able to accept PCT priority documents via this route.

94. The Delegation of China believed that the proposal would help to reduce the workload of the receiving Office and streamline procedures, while making sure that the national laws would be taken into account. Among the options proposed in paragraph 11 of the document, the Delegation indicated a preference for option (iii).

95. The Delegation of Israel supported the concept outlined in option (iii) in paragraph 11 of the document, and supported the draft amendments to the Regulations outlined in the Annex of the document.

96. The Delegation of the Russian Federation recalled the three options in paragraph 11 of the document for the use of the record copy of an international application as a certified copy for a priority claim related to a later application. The Delegation highlighted the importance of this issue towards a more efficient use of PCT applications, as well as streamlining the interactions among Offices. The Delegation supported both options (ii) and (iii), and suggested the latter with a view to adopting a unified decision among all PCT Offices. However, as not all Offices were interacting with DAS, the Delegation suggested that option (ii) could be a temporary measure before moving to option (iii).

97. The Delegation of the United States of America stated that it understood the objectives behind the proposal in the document. However, there were additional details compared to the document discussed by the Meeting of International Authorities (document PCT/MIA/28/6) that the United States Patent and Trademark Office (USPTO) was not able to give proper consideration to due to the late posting of the document. As such, the Delegation could not support a recommendation to take this proposal to the Assembly this year. Moreover, the Delegation raised some concerns for consideration. First, it did not appear to the USPTO that the scope of the problem warranted the expenditure of resources to find a solution. Specifically, while the document pointed out that the issue related to around 4,000 international applications per year, this represented approximately 1.5 per cent of PCT applications filed based on 2019 filing data. The USPTO had received between 100 and 150 cases claiming priority from an earlier international application, and over the past three years, the USPTO had had no issues with managing the need to provide certified copies in the later filed PCT applications. Paragraph 12 of the document indicated that implementation of any of the proposed options would require what appears to be significant IT development work at the International Bureau in order to extract a record copy and present it as a certified copy and that such IT development would require studies of the required presentation of the contents. Paragraph 12 also noted that initially, given the variation in presentation of the contents of record copies from different receiving Offices, the International Bureau would need to prepare certified copies manually, imposing a significant burden for these applications. In view of the extremely limited nature of this situation being addressed, the Delegation questioned whether this was an issue that warranted the expenditure of resources necessary to achieve a solution. The Delegation also continued to have legal concerns with the proposal. First, it was not clear that the proposed options would satisfy the requirements of the Paris Convention. Specifically, under Article 4D(3) of the Paris Convention, part of the certification process involved the certifying Office providing a certificate along with the priority document. The Delegation noted that the proposed amendments to Rule 22 provided for the indications made on or together with the request form of the record copy to constitute a certificate from the receiving Office showing the international filing date. However, due to insufficient time to consider all the legal ramifications of this proposed Rule change, the Delegation was not able to comment on whether this would satisfy the provisions of the Paris Convention and its national law. The Delegation nevertheless provided some initial observations regarding this aspect of the proposal. As an initial matter, the Delegation acknowledged the agreed understanding by the Paris and PCT Union Assembly in paragraph 9 of the paper, and specifically that it was for the competent authority furnishing the priority document to determine what constituted certification of a priority document. That said, noting that a certificate was a requirement of Article 4D(3) of the Paris Convention, defining this term in contravention of the Paris Convention would be problematic. According to the Oxford English Dictionary, a certificate was generally defined as an official document attesting a certain fact. The proposed Rule suggested the creation of a certificate prior to creation of the certified copy. As such it was not clear that the requirement for or the purpose of a certificate set forth in Article 4D(3) of the Paris Convention would be satisfied by the proposed Rule. On a drafting matter, the Delegation shared the same concern as the European Patent Office regarding the difference in language between the proposed amendment to Rule 22.1 and

the proposed understanding in paragraph 14 of the document in defining the certificate. As an initial observation, the definition provided in the understanding appeared to be clear and thus preferable over the language in the proposed Rule. Further, as acknowledged in paragraph 12 of the document, the record copy might include documents submitted after the initial filing, and the record copy would then be offered to Offices as a document that had been certified by the receiving Office as a true copy of the application as filed. The Delegation was concerned that this procedure would not be legally appropriate. Finally, certain situations did not appear to be accounted for in the proposal, for example, where the filing date was changed after transmission of the record copy. As the transmission of the record copy was considered to be a certification under the proposed Rule, the effect and treatment of such post-transmission changes was unclear. While the Delegation understood what the Japan Patent Office wished to accomplish in the proposal, in view of the extremely limited nature of the problem, the resources necessary to resolve it and the legal questions raised, the Delegation indicated that it would be premature to forward the proposal to the Assembly at this time.

98. The Delegation of France indicated a preference for the option (iii) in paragraph 11 of the document, given that it would have a minimal impact on receiving Offices and would decrease their workload. The Delegation informed the Working Group that the National Institute of Industrial Property participated in DAS, acting as a depositing Office since December 1, 2020 for patent applications filed since October 1, 2019.

99. The Secretariat responded to the comments by delegations by confirming that the intention at this stage was to agree that the International Bureau should work further on details of the proposal, which would include the costs. In response to the question from the European Patent Office on how applicants would request the International Bureau to make a copy of the earlier international application available to DAS, all international applications by virtue of the Rule and the Administrative Instructions would in principle be made available to DAS. The applicant would need to use an access code, most likely from Form PCT/IB/301 in order to retrieve a copy from DAS. Only at that point would the International Bureau begin work to put the copy of the application together in the form necessary for DAS. With regard to the question of the difference of wording between certification and certificates pointed out by the European Patent Office and the Delegation of the United States of America, the Secretariat pointed out that Article 4D(3) of the Paris Convention had two different terms, namely, “the copy, certified as correct by the Authority” and “accompanied by a certificate”. The Secretariat believed that a certificate was distinct from the process of certification. In other words, the certificate was the physical embodiment of the certification, but the certification process was more than just the certificate. The certificate needed to be attached to the appropriate matter being certified. The Secretariat believed therefore that it was proper to refer to the certificate and the certification separately, but was willing to work further on the wording of the provisions. The important point was to determine whether there could be an agreement to use the request form as the physical certificate, which some Offices might require, and this would be a matter subject to further discussions.

100. The Chair acknowledged the interest in the proposal and the support especially for option (iii) in paragraph 11 of the document, with one delegation also indicating that it could consider option (ii) as a temporary measure. At the same time, some delegations had voiced concerns regarding the legality of the proposal and matters related to its implementation and operation, such as workload and costs. The Chair therefore proposed that the International Bureau should consider the comments that delegations had raised and work together with interested parties bring a revised proposal to the next session of the Working Group.

101. The Delegation of Japan thanked delegations for their comments on the proposal and welcomed further discussions on the matter with the International Bureau and all interested parties.

102. The Working Group noted the contents of document PCT/WG/14/16 and invited the International Bureau to work with interested parties to address the issues raised during the session and to bring a revised proposal to the next session of the Working Group.

PROCESSING INTERNATIONAL APPLICATIONS IN FULL-TEXT FORMAT

103. Discussions were based on document PCT/WG/14/8.

104. The Secretariat introduced the document by explaining that the International Bureau intended to revise Annex F of the Administrative Instructions to allow the international phase processing of the application body in the XML full-text format as filed by the applicant or processed by Offices, which in turn would enable the transition to full-text international publication. The International Bureau would also make its DOCX converter and full-text comparison tools available to all IP Offices through web services to serve as a reference for implementation of processing applications filed in DOCX format and ensure consistency in the conversion from DOCX to XML. The Secretariat invited the Working Group to consider the proposals and the consequent changes to filing and processing of international applications, and also to agree on the principles for development of software and processes listed in paragraph 28 of the document.

105. The Delegation of the United States of America expressed its support for a transition to full-text processing. The United States Patent and Trademark Office (USPTO) already accepted national applications filed in DOCX format and would charge a fee for application bodies in other formats from January 1, 2022. The Delegation enquired whether the conversion of an international application from DOCX to XML would occur at the receiving Office or at the International Bureau, including when a receiving Office transfers the application to the receiving Office of the International Bureau under Rule 19.4. The Delegation also asked about how the physical requirements of an international application in Rule 11 would apply to DOCX filings, and questioned whether it would continue to be reasonable to charge fees for excess sheets. The Delegation also wished to understand the legal effect in the differences in terms “official copy” and “official view”. Finally, the Delegation observed that the proposal appeared to require XML based on DTDs in line with WIPO Standard ST.36. As the USPTO was committed to WIPO Standard ST.96 based on XML schemas and did not intend to support both WIPO Standards ST.36 and ST.96, a requirement to use DTDs would affect the USPTO being able to international applications in XML format.

106. The Delegation of the Republic of Korea supported the filing and processing of documents in full-text format. The Korean Intellectual Property Office had been transmitting international applications to the International Bureau in XML format since 2005 and had been transmitting search reports and written opinions in XML format since 2015. The Delegation observed that filing and transmission of international applications and other enclosed documents enabled full-text processing, reducing workload at receiving Offices and bringing about further efficiencies in document processing. The Delegation also underlined the importance of using a standardized DOCX to XML converter to ensure the consistency of the conversion and therefore supported the International Bureau developing and making its converter available to IP Offices.

107. The Delegation of Israel supported the transition to processing and publication of all international applications in full-text format, and the necessary updates to Annex F of the Administrative Instructions. The Israel Patent Office considered the transition to DOCX and XML formats to be a priority, and was working on the necessary measures to make this transition.

108. The Delegation of India supported the proposal in the document. The Indian Patent Office processed applications in the international phase in PDF format and generated search reports and written opinions in PDF format for transmission to the International Bureau. The Delegation indicated that the Indian Patent Office would need guidance from the International Bureau on processing applications in full-text to implement the proposal.

109. The Delegation of Sweden welcomed the proposal. However, the Swedish Intellectual Property Office did not have the resources needed to implement the processing of international applications in full-text format at this stage.

110. The Delegation of Germany expressed its support for processing international applications in full-text format. However, the Delegation highlighted several points that were important to the German Patent and Trade Mark Office (DPMA). First, while the Delegation supported the International Bureau providing an official DOCX to XML conversion tool to which all conversions were required to match and making this tool available through a web service, some Offices received applications through their own filing systems instead of using ePCT for receiving international applications. According to the proposal, these Offices would need to call a third party web service and transmit highly sensitive data outside of their Office, resulting in the data leaving the filing tool before the user officially agreed to the transmission. Even if this third party were the International Bureau, in some jurisdictions, this could be problematic from a legal perspective and with regard to governmental security policy. Therefore, the Delegation requested the International Bureau to consider offering the conversion tool as a microservice to install locally as this would not involve sending data outside the filing software. Similarly, from a technical point of view, the Delegation welcomed the idea of using a single comparison tool for handling amendments to an international application and generating a mark-up. However, the Delegation requested the International Bureau to consider building a standalone local solution similar to the microservice offered for validating sequence listings in ST.26 format as it could be problematic to call a web service from inside the case management system of an Office. The Delegation also inquired whether receiving Offices or the International Bureau would perform the conversion into XML of international applications filed on paper or in image-based formats after the transition to full-text processing and publication of all international applications. In this regard, the Delegation pointed out that conversion of image-based filings to full-text was not always a straightforward process and should be done in a consistent manner. Finally, the Delegation observed that a rendering of XML into page images did not contain information on page breaks and the number of sheets, which was relevant to calculate the amount of the international filing fee. The rendering of XML into page images therefore needed to be done consistently by the rendering software, at the receiving Office and at the International Bureau. In referring to difficulties that the DPMA had experienced with rendering discrepancies between these three instances, notably with the Request Form PCT/RO/101, the Delegation proposed that the International Bureau could provide an official rendering tool. The Delegation also suggested that at least initially, Offices and the International Bureau could transmit and store the PDF rendering alongside the DOCX and XML file in case of possible discrepancies.

111. The Delegation of China observed that applicants in China could use PDF, DOCX or XML format to submit applications. For electronic filings in non-XML format and paper filings, the China National Intellectual Property Administration provided a service to convert the application into XML format for processing. The Delegation therefore asked the International Bureau to clarify whether, in the proposal, the receiving Office would be required to use the conversion tool provided by the International Bureau. If this would be the case, the Delegation believed that Offices already using other converters should be able to continue using them.

112. The Delegation of the United Kingdom shared the vision of processing applications in full-text and the United Kingdom Intellectual Property Office (UKIPO) had included requirements for full-text processing in its transformation program for domestic applications. However, the existing legacy systems at the UKIPO were not set up for processing applications in full-text, so the solutions developed for international applications would need to allow for this in the future. Although the transformation program would take several years, the Delegation indicated that the UKIPO was prioritizing patent services. The UKIPO would be entering the requirements gathering phase of its transformation program later in 2021, and it would ensure that the full-text processing of international applications would be captured as a future need.

113. The Representative of the European Patent Office (EPO) indicated that the EPO had always been promoting the use of full-text submissions because of the inherent benefits of full-text processing. In this regard, the EPO had been facilitating filings through PATXML, but with limited success, only attracting 1 per cent of applications. The EPO had therefore been investigating the possibility of the applicant filing an application in DOCX format with a conversion to XML. There were two approaches to performing the conversion. The first approach, which the International Bureau had taken, was for the conversion of DOCX into XML to be performed at the applicant's end. In this situation, the legal filing would be the XML conversion. The second approach was for the Office to perform the conversion from DOCX to XML, with the legal filing being the DOCX file. The EPO favored this latter approach in its current pilot since it was less burdensome for applicants, and generally supported efforts to allow applicants to file applications in DOCX with confidence and minimal effort. The Representative noted that there were different DOCX to XML converters available, which could cause problems when an applicant submitted a subsequent application to an Office of second filing. It was therefore desirable to have an alignment of the converters used by various Offices to ensure that each application was treated consistently in the conversion and rendering of the pages in the international publication. The EPO had therefore been collaborating with the International Bureau to align its respective DOCX converters and processes. The Representative further indicated that the EPO believed that the DOCX file should be added as a further valid legal format in Annex F, as proposed in the PFC 17/005. The proposal was still under consideration, especially with respect to aspects related to receipt and processing of subsequently-filed documents. The EPO furthermore stressed the importance of ensuring compatibility between the converters at the EPO and the International Bureau, and agreed that the International Bureau should publish full-text applications in image and full-text format, and the other applications in image format. Finally, the EPO supported the move of the International Bureau to full-text processing and publication of applications. The Representative indicated that the EPO would continue working with the International Bureau to find solutions to the issues listed in the document. Specifically, with reference to paragraph 17 of the document on the requirement for Offices to provide the International Bureau with revised versions of the XML application body without change mark-up when amendments were filed in DOCX, the EPO was not yet in a position to provide such XML. While achieving alignment in the conversion of an international application was ongoing, the open question as to how Offices would receive and process amendments in DOCX as subsequently-filed documents remained open, which was the main reason that PFC 17/005 was pending. In conclusion, the EPO strived to work together with the International Bureau to find a way forward on these open topics.

114. The Delegation of Norway supported generally the proposal. As a receiving Office, the Norwegian Industrial Property Office received international applications in full-text format and forwarded them as such. While the Delegation stated that while Norway was still considering the matter of correcting errors in the conversion of documents, minor conversion errors might be seen as translation errors, and as such, the Norwegian Industrial Property Office could permit their correction as a designated Office, regardless of whether the corrections were performed in the international phase or the national phase. On the other hand, major conversion errors that excluded subject matter from the application, for example, missing formulas, should not be handled in the same manner as minor conversion errors, and if subject matter were missing in the application as filed, it should not be introduced into the application at a later stage. In the document, the Delegation noted that the applicant would have to accept a proof copy of the conversion to full-text, and underlined that major conversion errors should be the responsibility of the applicant and handled, for example, by the possibility to file missing parts under Rule 20.5.

115. The Delegation of France supported the principle of processing applications in full-text format, and indicated that the National Institute of Industrial Property (INPI) already used the DOCX converter of the International Bureau for its national applications. INPI was considering moving towards a paperless processing of international applications. In view of INPI's experience with the DOCX converter of the International Bureau, use of this converter was not

likely to be problematic for international applications, and INPI was cooperating closely with the European Patent Office and the International Bureau in this regard.

116. The Representative of the Intellectual Property Latin American School (ELAPI) indicated that processing international applications in full-text format would benefit all PCT Offices by standardizing and speeding up processing of applications. However, full-text processing would also be a challenge for many IP Offices in Latin America, who would need sufficient time and adequate training to make the transition to full-text processing, as well as for applicants and attorneys who would need to have confidence that information contained in applications filed in XML format would be protected by the Office. Applicants might also have doubts about XML processing of documents such as a power of attorney or assignment of rights. According to paragraph 1(b) of document PCT/WG/12/10, the long-term goals of PCT online services were to provide "improved definitions and implementations of data standards so that the International Bureau and national Offices can process applications consistently irrespective of their source". Based on this goal, the Representative stated that it needed to clear to applicants whether Offices in the national phase would be required to process international applications in XML format, or whether this would be left to the discretion of each national Office.

117. The Secretariat acknowledged the general support for the proposal and the need for the International Bureau to work with IP Offices and national user groups to make sure that the processes and the systems to enable full-text processing were desirable and beneficial for applicants to use. The Secretariat stressed the importance of the reliability and consistency of the converter, and indicated that it would work with Offices and user groups in this regard. In response to the comments raised by the Delegation of Germany regarding the passing of confidential information to a third party, the Secretariat indicated that it would look into the possibility of packaging up a converter adopted as a common international standard so it could be included in a local installation. Regarding the issue of who made the conversion from DOCX to XML, the Secretariat believed that this needed to be done at the outset, as a part of the filing process, whether this would be considered to be done by the applicant or the Office was largely academic. The Secretariat underlined that the initial filing at the receiving Office should contain the converted XML and that the applicant should be aware of what the converted XML application and any renderings would look like. The Secretariat indicated that it would need to look into the legal question of whether the DOCX or XML was the original format of the international application, but what appeared more important was that any errors were rare, they were identified and corrected at an early stage, and could be rectified at any time. The rules relating to the contents of the initial filing and how to correct any conversion errors were therefore of paramount importance. Regarding the issue of rendering, the Secretariat believed that it was important to have common rendering tools. The Secretariat agreed with the need to review whether the page fees were an appropriate tool, but it was likely that the existing fee structure would be in place in the early stages of the proposals. Regarding the comments about resources needed for Offices to implement full-text processing, the Secretariat recognized that many Offices had limited resources for implementing the arrangements proposed in the document. It was therefore important to produce common tools that could minimize the work needed for Offices to implement the arrangements, both in their procedures in the international phase as receiving Offices and International Searching Authorities, and in the national phase and general patent processing work. The tools also needed to be easy for Offices to implement into their national systems to ensure a consistent approach across the entire process.

118. The Chair noted the significant interest in the proposals in the document and acknowledged that the International Bureau would continue working with Offices and user groups to address the issues that needed to be taken into account in further development of these proposals.

119. The Working Group noted with approval the general direction proposed in document PCT/WG/14/8 and invited the International Bureau to continue working with Offices and user groups to implement the goals outlined in the document.

PCT ONLINE SERVICES

120. Discussions were based on document PCT/WG/14/14.

121. The Secretariat introduced the document and informed the Working Group that the International Bureau had issued Circular C. PCT 1623 on June 2, 2021 to propose a modification to the Administrative Instructions to leverage the secure delivery mechanism provided by the ePCT system to offer the official delivery of documents to applicants without the reliance on postal services. The Secretariat reminded Offices to supply national phase entry information under Rule 95, earlier search information or documents under Rule 23*bis* and Chapter II documents under Rule 71.1(b), and invited any Offices requiring assistance on setting up the necessary process for the transfer of these documents or information to contact the PCT International Cooperation Division. With regard to the decommissioning of PCT-SAFE, the Secretariat indicated that, subject to finalization of applicant support requirements with the remaining receiving Offices using PCT-SAFE, support was expected to end on July 1, 2022.

122. The Delegation of Spain announced that the Spanish Patent and Trademark Office would cease accepting international applications made through PCT-SAFE later in 2021, which it would officially communicate to the International Bureau.

123. The Representative of the European Patent Office (EPO) indicated that the EPO provided its Mailbox service to send electronic communications to professional representatives, legal practitioners, or applicants who had their residence or place of business in a European Patent Convention (EPC) Contracting State. The use of Mailbox had increased during the COVID-19 pandemic, with the EPO now sending out 60 per cent of its pages electronically. The EPO was looking into possibilities to provide a similar feature to international patent agents from non-EPC States. The Representative also indicated that EPO was working with the International Bureau to investigate the use of e-notifications within the framework of Circular C. PCT 1623. The EPO welcomed the reminder from the International Bureau for receiving Offices to transmit earlier search and classification results when available, as required under Rule 23*bis*.2. With regard to search copies, in the context of the EPO Strategic Plan 2023, the EPO was working with the International Bureau in piloting the use of ePCT web services to receive eSearch copies, and expressed appreciation to the International Bureau to have implemented this service. The Representative stated that the integration of e-filing web services was key to offering integrated environments covering all patent procedures. In this regard, the EPO was an important consumer of ePCT web services, which were integrated in the EP filing system, and was active in the context of Front Office IT cooperation projects. Regarding the PCT-SAFE decommissioning, the EPO supported the decommissioning of PCT-SAFE as the ePCT system had been already integrated into the eOLF 2.0 filing platform since April 1, 2021. Furthermore, the EPO had announced the decommissioning of the CMS filing system as the functionalities had been integrated in the eOLF 2.0 filing platform. However, as the PCT-SAFE plugin within eOLF was still being used, the Representative requested the International Bureau to consider carefully the proposed decommissioning date of July 1, 2022 to ensure that the decommissioning of PCT-SAFE was coordinated with IT cooperation activities between the EPO and EPC Contracting States, particularly those relying on the PCT-SAFE plugin to file international applications.

124. The Delegation of the Republic of Korea believed that the IT system initiatives would increase efficiency at the International Bureau and IP Offices. In particular, the Delegation stated that machine-to-machine services would be the key to increase the efficiency of data exchange and business work processes. The Delegation welcomed the decision of the International Bureau regarding PCT-SAFE, and indicated that it would be an opportunity to develop other PCT electronic services by saving on PCT-SAFE maintenance costs. The Delegation indicated however that the migration of Korean users to ePCT would be challenging and requested support from the International Bureau to help with this migration. The Delegation indicated further that it would cooperate with the International Bureau on further IT collaborative activities.

125. The Delegation of India found the IT services highly beneficial. The Delegation observed that the Indian Patent Office acting as receiving Office had started registering all certified copies of priority documents in WIPO Digital Access Service (DAS) from March 2020, and the Indian Patent Office no longer sent physical copies to the International Bureau. The Delegation further noted that the eSearchCopy system along with the WIPO Fee Transfer service had helped the Indian Patent Office to transmit the documents to International Searching Authorities on time. The Delegation further stated that since March 2020, the use of WIPO DAS and ePCT filing services at the Indian Patent Office had increased.

126. The Delegation of Israel indicated that the Israel Patent Office widely used all PCT online services and was planning to cease accepting filings through PCT-SAFE. The Israel Patent Office would also be offering guidance and workshops to users for transitioning to ePCT.

127. The Delegation of the United Kingdom reminded the Working Group that the United Kingdom Intellectual Property Office (UKIPO) was one of the few Offices that continued to use PCT-SAFE. However, the Delegation announced that a business case had been raised to recommend making the switch to ePCT from July 2021. The Delegation indicated that the UKIPO would integrate the filing solution first, whilst the back-end processing functions would be considered later as part of a wider transformation program.

128. The Delegation of Chile stated that the National Institute of Industrial Property (INAPI) had been a leader for the use of ePCT in Latin America and had published a guide for ePCT in Spanish in 2021. INAPI had also worked together with the International Bureau in 2020 to carry out training on the use of the ePCT system which had enabled all international applications filed online to be accepted. The Delegation thanked the International Bureau for its support and encouraged cooperation between the International Bureau and other countries on the processing of applications in ePCT.

129. The Secretariat confirmed that the International Bureau would provide support for Offices and applicants through the transition from PCT-SAFE. In addition, the decommissioning of PCT-SAFE meant that the PCT plugin for the eOLF software used at the European Patent Office and certain Offices of members of the European Patent Convention would also come to end of life. However, the Secretariat clarified that this did not necessarily have to be from the same date and the International Bureau was working with the European Patent Office to ensure that an effective service could be maintained while Offices developed and implemented the necessary replacement systems. The International Bureau could continue to support the plugin for as long as there are no significant changes, but this should only be for a limited time to allow an adaptation of systems while making sure that applicants had the necessary support to move on to more modern filing options.

130. The Working Group noted the contents of document PCT/WG/14/14.

INTERNATIONAL SEARCH REPORT FEEDBACK PILOT

131. Discussions were based on document PCT/WG/14/12.

132. The Delegation of the United Kingdom introduced the document by stating that it believed that developing a system for designated Offices to provide constructive feedback on the outcome of an international search would be a useful tool to improve the quality of the international search, which would in turn benefit designated Offices. The United Kingdom Intellectual Property Office (UKIPO), along with IP Australia, the Canadian Intellectual Property Office, the Intellectual Property Office of Singapore, and more recently, the United States Patent and Trademark Office, had therefore been involved with a small-scale pilot to demonstrate the potential use of such a system. The pilot involved the UKIPO providing feedback on 20 national phase applications, each participating International Searching Authority (ISA) having performed the international search on five of these applications. These ISAs reported back to the UKIPO on the feedback and how it could be improved, such as any other information that would have

proved useful to receive from the designated Office. The pilot had found that additional citations and information on any expansion in the field of search during national phase examination were the most useful aspects of the feedback, although it would have been useful to have more reasoning behind the citation of additional prior art or expansion of the field of search. The Delegation indicated that a better understanding of how UK national examination compared to the practice recommended in the International Search and Preliminary Examination Guidelines would have been useful for the other pilot participants, for example, by UKIPO examiners providing more reasoning behind decisions to deviate from the scope of the international search. One ISA felt that the pilot would bring greater benefits to ISAs if the designated Office providing the feedback performed an independent full search rather than a top-up search and subsequently compared the results of both searches. Finally, feedback in the some cases had been provided on amended claims rather than the original claims examined by the ISA. This was a key issue that would need to be addressed in any PCT-wide feedback service. The Delegation thanked the ISAs that had participated in the pilot, announced that the Israel Patent Office had expressed an interest in joining in the pilot, and invited other ISAs to consider participation. The Delegation concluded by expressing interest in hearing whether Offices believed that a PCT-wide feedback service would be beneficial for ISA examiners. One possible way of providing such a service could be to introduce a secure tab within PATENTSCOPE for designated Office examiners to access and provide feedback on the quality of the international search.

133. The Delegation of the United States of America thanked the Delegation of the United Kingdom for establishing the pilot and committing resources in order to improve work products of the participating International Searching Authorities. Participation in the pilot had been beneficial to the United States Patent and Trademark Office (USPTO) due to the feedback received, and the Delegation hoped that the UKIPO had also benefitted from the comments that the USPTO had been able to provide.

134. The Delegation of Australia thanked the UKIPO for initiating the pilot, and expressed support for the collaborative approach in PCT processes to ensure that work in the international phase was operating as effectively as possible. Participating in the pilot was a practical way of IP Australia providing that support. The pilot had also provided useful feedback to IP Australia as it highlighted a possible difference in practice when dealing with broad claims. The Delegation concluded by encouraging other ISAs to participate in the future rounds of the pilot.

135. The Delegation of Israel stated that the Israel Patent Office would like to join the next round of the pilot and had already approached the UKIPO on this matter. The Delegation considered that receiving feedback from the national phase and comparing it to products from the international phase would be of great value since comparing reports was one of the key parts of assessing the quality of work by patent examiners. The Delegation also indicated that a number of local pilots comparing reports had already been performed on a small scale.

136. The Delegation of China expressed support for the pilot and looked forward to participating Offices sharing results in the future.

137. The Delegation of Sweden welcomed the pilot as a means to achieving stable and harmonized quality of international search, but questioned whether the administrative cost of a feedback system might outweigh the benefits. There would also be a need to reflect on the questions in the feedback forms if the pilot were implemented on larger scale.

138. The Delegation of India appreciated the efforts by the UKIPO and the other Offices participating in the pilot and hoped that this step could lead to the creation of a feedback system where designated Offices could provide feedback on the work carried out by International Searching Authorities during the international phase. The Delegation welcomed the pilot as a positive step towards improving the quality of international search reports, which did not involve initial expenditures for applicants or entail preferential treatment to some applicants, unlike the

PCT-Patent Prosecution Highway (PPH) system, yet respected the principle of national sovereignty. The Delegation wondered what the utility of the international search report feedback pilot would be if faster grants occurred because of the expedited national phase examination through the PCT-PPH system, that is, even before receiving the search report feedback. Furthermore, the Delegation expressed interest in whether the feedback initiative of the UKIPO had helped in narrowing the scope of the claims, compared to the scope at the time of national phase entry in participating Offices.

139. The Representative of the European Patent Office (EPO) stated that the EPO looked forward to learning more about how the pilot developed and how participating Offices used the information provided in order to improve their services and products. In turn, this would be helpful to assess the added value of the pilot.

140. The Delegation of the United Kingdom thanked delegations for their comments and interest in the pilot. With regard to costs, the UKIPO had limited the number of applications per International Searching Authority to five in order to keep additional resources required for the pilot to a minimum. However, costs would need to be considered if it were decided to expand the pilot. In reply to the Delegation of India concerning the usefulness of feedback if the applicant had amended the claims for expedited processing through the PCT-PPH system, the Delegation of the United Kingdom believed that an international search report feedback system could go hand-in-hand with the PCT-PPH. When applicants amended an application in the international phase in order to accelerate the examination of their application in the national phase, it would still be desirable for the designated Office to provide feedback on the initial international search prior to the amendments.

141. The Working Group noted the contents of document PCT/WG/14/12.

WIPO FEE TRANSFER SERVICE: STATUS REPORT

142. Discussions were based on document PCT/WG/14/7.

143. The Secretariat introduced the document by recalling the goals of the WIPO Fee Transfer Service to reduce bank transfer fees and the risks from fluctuations in foreign exchange rates, to simplify the processing of transactions and to reduce the administrative costs regarding claims from International Searching Authorities (ISAs) under Rule 16.1(e). There were 64 Offices participating as of May 31, 2021, transferring search fees to at least some of the ISAs for which they were competent. Fourteen of these Offices participated in their capacity as International Searching and Preliminary Examining Authorities, receiving search fees from at least some receiving Offices (ROs) via the International Bureau. The Secretariat was discussing participation in the WIPO Fee Transfer Service with ISAs not currently participating except the four that were competent only for their nationals and residents. The proportion of search fees transferred via the International Bureau had risen to 97.7 per cent over the past three years, but the WIPO Fee Transfer Service would not realize its full benefits until all ISAs and ROs participated as there were costs in maintaining two processes for managing search fees, and continuing to process claims under Rule 16.1(e). The International Bureau had invited almost all ROs to join that had received an international application since 2016 and had specified a participating ISA and would follow up on these invitations and seek solutions to any issues that prevented a receiving Office from participating. The Secretariat added that several ISAs had expressed a wish to make participation in the service mandatory for all ROs for which they were competent to act as ISA, and paragraph 10 of the document explained how this might be achieved.

144. The Representative of the European Patent Office (EPO) reported that the WIPO Fee Transfer Service was working well, with 98 per cent of the PCT search fees for the EPO transferred via the International Bureau. The goal of the EPO was to have most of the remaining ROs that had specified the EPO as a competent ISA to join the WIPO Fee Transfer Service by the end of 2021. The EPO agreed with the International Bureau that all Offices

needed to participate to maximize the benefits of the WIPO Fee Transfer Service as only then would ROs and ISAs no longer have to deal with transfers and receipts of fee payments to and from multiple Offices, but only to and from the International Bureau. This would considerably simplify the current process. The Representative therefore encouraged Offices not yet participating to join the WIPO Fee Transfer Service as soon as possible. The EPO welcomed any initiative from the International Bureau to offer near real-time information on the stages of fee payments and transfers to applicants and all Offices concerned, with validations immediately highlighting any discrepancies between the amounts received or transferred and the amounts expected in view of the bibliographic data available. The EPO also shared the International Bureau's hopes that this service would underpin the possibility of the collection of fees by one Office on behalf of another. The EPO also hoped that, in the near future, a linkage between the WIPO Fee Transfer Service and the eSearchCopy service could be created. This would ensure that for any search copy received, the ISA would always receive the corresponding search fee in the correct amount from the International Bureau, irrespective of whether the search fee had been timely transferred by the receiving Office to the International Bureau. The EPO believed that such a linkage would be very beneficial for all International Searching Authorities.

145. The Delegation of the Republic of Korea explained that the Korean Intellectual Property Office (KIPO) had participated in the WIPO Fee Transfer Service since 2020 and had experienced the streamlined processing in transmitting fees between the International Bureau and International Searching Authorities (ISAs), sending fee payment information to the International Bureau in XML format. Therefore, the Delegation supported the WIPO Fee Transfer Service and invited other Offices to join. The Delegation requested the International Bureau to provide more details on the use of ePCT for sending fee payment information and on how other Offices were transmitting this information, and asked if there were any other means to send fee payment information in the XML format. For instance, many Offices used PCT Electronic Data Interchange (PCT-EDI), which could be used to send fee payment information data in XML format. The Delegation asked whether there were any advantages to receiving Offices using ePCT for transmitting fee information since many Offices did not have difficulties transmitting fee information without ePCT. The Delegation also asked whether the fee payment information was automatically transmitted or if each Office had to create and upload information on PCT-EDI and send it to the International Bureau. The Delegation further asked the International Bureau whether the fee delivery system had been designed exclusively for Offices and whether fees were paid monthly or per application. The Delegation concluded by stating that developing fee payments via ePCT would need to be carefully considered.

146. The Delegation of Saudi Arabia believed that the service would be beneficial for all Offices and mentioned that the Saudi Authority for Intellectual Property, acting as a receiving Office, had successfully implemented the transfers as part of the WIPO Fee Transfer Service.

147. The Delegation of Israel stated that the Israel Patent Office (ILPO) had been part of the WIPO Fee Transfer Service since 2018. The ILPO transferred search fees for the benefit of the United States Patent and Trademark Office (USPTO) and the European Patent Office when acting as receiving Office, and received search fees from the receiving Offices of the International Bureau and USPTO when acting as an International Searching Authority. The Delegation supported the general concept of the WIPO Fee Transfer Service, continued to see the benefits it provided and supported future work to develop the service further.

148. The Delegation of India stated that the Indian Patent Office was participating in the WIPO Fee Transfer Service in its capacity as receiving Office. The Delegation appreciated and supported the plans of the International Bureau for providing a facility for immediate payment of fees in relation to new applications or demands filed through ePCT, as well as for the payment of additional fees or international preliminary examination fees by applicants.

149. The Delegation of Japan expressed its appreciation to the International Bureau for its efforts in implementing the WIPO Fee Transfer Service in order to mitigate the risks linked to

fluctuations in exchange rates. The Delegation therefore supported the initiative of the International Bureau on this matter, which reduced the workload at the Japan Patent Office (JPO) as an International Searching Authority and receiving Office. The Delegation further indicated that since the WIPO Fee Transfer Service had been implemented, the JPO had checked payments on a monthly basis, and settled differences with the International Bureau, which rendered the processes related to fee payments more straightforward. The Delegation further believed that more International Searching Authorities and receiving Offices could benefit from the service and indicated that this would enable the JPO to evaluate its usefulness.

150. The Delegation of the United States of America supported improvements that increased the efficiency of the WIPO Fee Transfer Service, especially by increasing participation from more Offices. The Delegation was pleased with the operation of the WIPO Fee Transfer Service so far, which had allowed the United States Patent and Trademark Office to automate fee transfer processes and reduce the need for manual intervention with the ensuing improvements in efficiency and cost reductions. The Delegation further reported that all the International Searching Authorities that were competent for applications filed at the USPTO as a receiving Office were part of the service, as were three quarters of receiving Offices that had specified the USPTO as a competent International Searching Authority for their applications. The Delegation encouraged Offices that were not yet a part of the WIPO Fee Transfer Service to consider participating and further supported the future direction set out in paragraph 15 of the document.

151. The Secretariat, in response to the question from the Delegation of the Republic of Korea on using ePCT to provide the payment details, clarified that the XML generation facilities within ePCT were intended for Offices using ePCT as their main processing tool. Receiving Offices processing record copies and payments in local systems should continue to generate data locally and upload it using PCT-EDI, though an ePCT web service could be offered if there were demand for automation through that route. With regard to the integration of the WIPO Fee Transfer Service with the eSearchCopy service, this was a priority and the International Bureau would be discussing specific requirements with affected Offices.

152. The Working Group noted the contents of document PCT/WG/14/7 and invited the International Bureau to continue to develop the WIPO Fee Transfer Service to extend and improve it further, taking into account the comments made during the session.

SEQUENCE LISTINGS TASK FORCE: STATUS REPORT

153. Discussions were based on document PCT/WG/14/5.

154. The Representative of the European Patent Office (EPO) introduced the document by recalling that the Task Force on Sequence Listings had been created by the Committee on WIPO Standards (CWS) in 2010 to prepare a recommendation on the presentation of nucleotide and amino acid sequence listings based on XML for adoption as a WIPO Standard. In 2016, the CWS had adopted a standard based on this recommendation, known as WIPO Standard ST.26. The most recent revision to WIPO Standard ST.26 (version 1.4) was adopted in 2020 at the eighth session of the CWS (see document CWS/8/6 Rev.), which contained, in particular, revisions regarding free-text qualifiers in languages other than English. Regarding the revisions of the PCT legal framework, amendments to the Regulations to implement WIPO Standard ST.26 were approved at the thirteenth session of the Working Group in October 2020 and would be submitted to the next session of the Assembly, to take place from October 4 to 8, 2021. The International Bureau had been consulting the Task Force in preparing a Circular containing proposals for modifications to the PCT Administrative Instructions to be issued soon. Regarding the entry into force of WIPO Standard ST.26, this had been foreseen to be on January 1, 2022 following a “big bang” scenario in which all Offices transitioned from ST.25 to ST.26 at the same time, with the international filing date as the reference date for determining which of the two standards should apply. However, as the Assembly would only be adopting the amendments to the Regulations in October 2021, the Task Force had been discussing the

opportunity to postpone the date of entry into force in order to give more time to patent Offices to implement any necessary changes to their legislation. Most Offices had expressed support for postponing the entry into force until July 1, 2022, provided that the “big bang” scenario would be respected. Regarding the authoring and validation tools, the International Bureau had been developing an authoring and validation tool for applicants, known as WIPO Sequence, which would be available as a standalone desktop application, and a validation tool for IP Offices, known as WIPO Sequence Validator, which would be incorporated into the IT systems of each IP Office. Both tools were available for download on the WIPO website. In May 2021, the United States Patent and Trademark Office and the EPO had provided a list to the International Bureau outlining the functions that they considered mandatory for the tools, along with less urgent, nice-to-have functionalities that could be removed from the tools if those could not be fixed or implemented differently by the end of the warranty period. The EPO invited Task Force members, before the end of June 2021, either to provide feedback on the list through the wiki forum, in particular regarding the definition of a minimum viable product, or to propose an alternative minimum viable product definition.

155. The Delegation of the United States of America appreciated the efforts of the European Patent Office (EPO), the International Bureau and the other Offices in the Task Force towards the implementation of ST.26. The United States Patent and Trademark Office (USPTO) had an extensive internal task force working on the implementation of ST.26 into its legal framework, IT development and the development of training for internal and external stakeholders. The Delegation expressed regret that Assembly would not be able to adopt the amendments to the Regulations to implement ST.26 in the PCT legal framework until its next session in October 2021. If the “big bang” date remained at January 1, 2022, there would therefore be a very small time window between adoption and implementation. In view of the recent discussions in the Task Force, the Delegation supported the delay of the “big bang” date until July 1, 2022. While the Delegation acknowledged that this could present inconveniences to some Offices that had made significant progress towards implementation of ST.26, given the concerns of some Offices about the time to implement ST.26 and the readiness of WIPO Sequence, the Delegation believed that a six-month delay was in the interests of all parties to ensure successful implementation of ST.26. Regarding the development of WIPO Sequence, the Delegation noticed that the USPTO and the EPO appeared to be the only Offices doing extensive testing of this tool. As the only tool that would be available for the generation of a compliant sequence listing immediately after the transition to ST.26, it was critical that this tool functioned properly to allow applicants to generate a sequence listing to satisfy disclosure requirements. The Delegation therefore encouraged all Offices to start testing the tool and to review the list of critical functions that the EPO and the USPTO had made available on the Sequence Listings Task Force wiki.

156. The Secretariat acknowledged that the Assembly would only be able to adopt the amendments to the Regulations to implement WIPO Standard ST.26 in the PCT at its session in October 2021. In order to ensure that all States and Offices had time to complete the preparatory work, the International Bureau was recommending postponing the “big bang” date from January 1, 2022 to July 1, 2022. The Secretariat indicated that the Sequence Listings Task Force would be discussing this recommendation and invited any interested delegations whose Offices were not already participating to join the discussions in that forum.

157. The Delegation of France indicated that the transition to the XML format of ST.26 for presentation of sequence listings should not pose difficulties for the National Institute of Industrial Property in France, which would accept this format for PCT applications from July 1, 2022. The Delegation therefore supported the postponement of the “big bang” for transition to ST.26.

158. The Delegation of Chile supported the six-month delay to July 1, 2022 for the transition to WIPO Standard ST.26 for the presentation of sequence listings. The Delegation also

suggested that there could be a depositing system for sequence listings similar to the WIPO Digital Access Service (DAS) where Offices could review the listings.

159. The Working Group noted the contents of document PCT/WG/14/5.

PCT MINIMUM DOCUMENTATION: STATUS REPORT

160. Discussions were based on document PCT/WG/14/4.

161. The Representative of the European Patent Office (EPO) introduced the document by updating the Working Group on the third meeting of the PCT Minimum Documentation Task Force that took place from May 17 to 21, 2021. First, regarding Objective B, the Task Force had reached consensus on the draft amendments to Rules 34 and 36, pending minor details. Second, regarding Objective C, there was consensus on the technical and access requirements for the patent literature part of the PCT Minimum Documentation, leaving only the question open of deciding on a cut-off date; all patent documents in the PCT minimum documentation published after this date would eventually be required to be made available in full text searchable format. Third, regarding Objective D under leadership of the United States Patent and Trademark Office (USPTO), the Task Force had reached consensus on the conditions for non-patent literature (NPL) to be accepted in the PCT Minimum Documentation, as well as the way to maintain the list of NPL over time. However, the important issue regarding whether there should be different criteria for including traditional knowledge-based prior art in the PCT minimum documentation had not been resolved. In terms of future work, the Task Force agreed to convene a fourth session in December 2021 to pursue discussions on the proposals for amendments to the Regulations and modifications to the Administrative Instructions to be tabled at the Meeting of International Authorities in 2022. The objective would be to present these proposals at the fifteenth session of the Working Group in May/June 2022. The Representative thanked the USPTO for the good cooperation as well as the active and constructive participation of all International Authorities and observer Offices involved in the work of the Task Force.

162. The Delegation of the United States of America thanked the European Patent Office (EPO) for the leadership of the Task Force and for coordination and hosting of its meetings. Regarding Objective D led by the United States Patent and Trademark Office (USPTO) on recommending criteria and standards for the review, addition and maintenance of non-patent literature and traditional knowledge-based prior art, the Delegation reported that consensus was reached at the third meeting of the Task Force on all but one of the proposed criteria and standards. For the one criterion where the Task Force had not reached consensus, only one Office had continuing objections, which the USPTO would endeavor to address through bilateral discussions with that Office before the anticipated fourth session of the Task Force in December 2021. The USPTO would also post an updated document of criteria for non-patent literature and traditional knowledge-based prior art before this session. The Delegation remained confident that the PCT Minimum Documentation Task Force would be able to approve a set of criteria for the evaluation and inclusion of non-patent literature in the PCT minimum documentation for the USPTO to present at next year's session of the Meeting of International Authorities. Thereafter, the Task Force would be able to begin evaluating titles for inclusion in the PCT minimum documentation based on the approved criteria.

163. The Delegation of China thanked the Offices involved in the PCT Minimum Documentation Task Force for their efforts and took note of the progress on the matter.

164. The Delegation of France thanked the Task Force for allowing the National Institute of Industrial Property to attend the recent meeting of the Task Force as an observer, and supported its further work.

165. The Delegation of the Russian Federation thanked the European Patent Office for preparing the document, and the United States Patent and Trademark Office (USPTO) for

looking at Objective D regarding questions related to inclusion of non-patent literature in the PCT minimum documentation. The Delegation also thanked the Indian Patent Office for preparing a document on the Indian Traditional Knowledge Digital Library for the most recent session of the Task Force. The sessions of the Task Force in December 2020 and May 2021 in virtual format had made it possible for the Task Force to make substantive progress in all of the objectives. With respect to Objective B, the Delegation supported the proposal to amend Rules 34 and 36. With regard to Objective C, the Delegation supported the proposed technical requirements, and did not see many difficulties in implementing them. In terms of access to national patent collections in the PCT minimum documentation, the Delegation supported the idea of making documents available in searchable full text format as of January 1, 2021 given the ten-year transition period that the Federal Service for Intellectual Property (ROSPATENT) would have to bring national data collections into line with these requirements. With regard to Objective D, the Delegation supported the proposal of the USPTO to introduce a voluntary system of International Authorities performing annual checks on the metadata and access to non-patent literature in the PCT minimum documentation to ensure electronic access and accurate references to the journals.

166. The Delegation of India thanked the European Patent Office and the United States Patent and Trademark Office for their work in the PCT Minimum Documentation Task Force. While there was progress in the Task Force on Objectives B and C, the Delegation did not believe that the work on these two objectives was sufficiently mature to state that there was consensus on these topics. The Delegation also welcomed the way forward suggested by the Delegation of the United States of America on Objective D.

167. The Working Group noted the contents of document PCT/WG/14/4.

IP5 PCT COLLABORATIVE SEARCH AND EXAMINATION: STATUS REPORT

168. Discussions were based on document PCT/WG/14/4.

169. The Representative of the European Patent Office reported on the progress of the third pilot project on collaborative search and examination among the IP5 Offices. The pilot project was divided into three phases: a preparatory phase from 2016 to 2018 putting into place the procedural and technical framework for the pilot, an operational phase from July 2018 to June 2020 dedicated to the processing of PCT applications under the collaborative scheme, and an evaluation phase for analyzing the results and formulating recommendations to the IP5 Heads of Office meeting in June 2022. During the operational phase, 468 applications had been processed. For the evaluation phase, the IP5 Offices would assess international applications entering the national and regional phases that had been processed collaboratively in the pilot based on an agreed set of quality and operational indicators. The International Bureau would also survey the pilot participants using a questionnaire agreed upon by the IP5 Offices. In addition, each IP5 Office would consult its own user groups to obtain feedback.

170. The Delegation of China expressed appreciation for the work of the European Patent Office in the management of the pilot and the International Bureau in automation and other aspects of the pilot and general support. The Delegation reported that the China National Intellectual Property Administration was evaluating the pilot, and was prepared to take into account suggestions and feedback to provide a better service to applicants in the future.

171. The Delegation of Saudi Arabia welcomed the pilot and hoped the evaluation would bring positive results. The Delegation indicated that the Saudi Authority for Intellectual Property would begin a bilateral collaborative search program with the Korean Intellectual Property Office on July 1, 2021. Under this program, both Offices would exchange information on patent applications, which could help accelerate examination of applications. A successful collaboration could lead to expanding the program to other Offices in the future.

172. The Working Group noted the contents of document PCT/WG/14/4.

COORDINATION OF TECHNICAL ASSISTANCE UNDER THE PCT

173. Discussions were based on document PCT/WG/14/17.

174. The Secretariat introduced the document by highlighting the PCT related technical assistance activities in its Annexes I and II. In 2020, 57 activities were delivered, attended by more than 4,700 participants originating from 101 PCT Member States and/or IP Offices. During the first half of 2021, 23 events were attended by around 1,200 participants originating from over 22 PCT Member States. In terms of remote delivery of technical assistance, more participants from a wider range of locations had attended these events. It had also 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. Regarding IT technical assistance, the working conditions triggered by the COVID-19 pandemic had been an incentive to enhance the scope and speed of digitization and automation of processes, services and tools. Due to the different waves of the pandemic around the globe, some planned activities carried over from 2020 had to be further postponed. The document also briefly reported on activities related to developing the patent systems of developing countries that extended beyond those having a direct bearing on the use of the PCT in the given countries. These activities were provided by other sectors of the International Bureau, such as the Infrastructure and Platforms Sector, more particularly in charge of Program 13 “Global Databases” and Program 15 “Business Solutions for IP Offices”. Under Program 15, the International Bureau officially launched its cloud-based WIPO IP Office Suite for IP Office administration on April 20, 2021, with Jordan becoming the first Member State to make use of that tool. In addition, the document provided a brief update on the discussions on technical assistance in the Committee on Development and Intellectual Property (CDIP), under the sub-agenda item “WIPO Technical Assistance in the Area of Cooperation for Development”, as described in paragraph 10. This included discussions on the delivery of future webinars. The COVID-19 pandemic had triggered changes in how the International Bureau delivered technical assistance, which was likely to continue for some time. As a result of the lessons learned from these changes, the Secretariat noted that there appeared to be room for further discussions and reflections on the content, formats and other considerations, such as relevance, effectiveness and sustainability of the webinar delivery model for technical assistance in the PCT, including related reporting.

175. The Delegation of China thanked reported that the China National Intellectual Property Administration (CNIPA) had held touring seminars with more than 400 participants. Thanks to funding made available by WIPO Funds-in-Trust and China foreign aid, CNIPA had delivered training in Gulf States and other areas by audio recordings due to the COVID 19 pandemic, conducting 13 online seminars attended by more than 130 participants. CNIPA had also been developing training courses in English.

176. The Working Group noted the contents of document PCT/WG/14/17.

PATENT EXAMINER TRAINING

(A) COORDINATION OF PATENT EXAMINER TRAINING

177. Discussions were based on document PCT/WG/14/13.

178. The Secretariat informed the Working Group that it had made recordings and presentations from the virtual side event that took place on June 10, 2021 available on the WIPO website¹. The side event included a presentation by the International Bureau on the progress in developing a cloud based online learning management system (LMS) for the management of patent examiner training and a presentation by the Intellectual Property Office of the Philippines (IPOPPL) on its implementation of an LMS based on the open source Moodle

¹ https://www.wipo.int/meetings/en/details.jsp?meeting_id=64588

software. In referring to the technical assistance that IP Australia had provided with to ASEAN Offices until the end of 2020 in the context of the Regional Patent Examiner Training (RPET) and Regional Patent Examiner Mentoring (RPEM) projects, the Secretariat raised the question of how best to organize technical assistance to Offices in an effective, timely and sustainable manner. In this regard, the Secretariat proposed to conduct a survey described in paragraph 21 of the document among small Offices and medium Offices. This survey would cover training policies, management methodologies and respective infrastructures, technical assistance needs for developing such policies, methodologies and infrastructures, and how such technical assistance and the supply of training could be organized in a timely and efficient manner.

179. The Delegation of the Chile pointed out the central role of the International Bureau for the training of examiners and the need for more coordination in delivering training, including the policy framework. Not all Offices had the same needs and the training could not be applied in the same way at different Offices, as the Delegation had witnessed in the region of Latin America and the Caribbean. The Delegation further suggested that some Offices could cooperate on an *ad hoc* basis with the International Bureau in order to deliver tailored training to their specific needs.

180. The Representative of the European Patent Office (EPO) stated that, as a donor Office, the EPO strongly supported the need for better coordination of the training of substantive patent examiners. The EPO believed that it was important that training opportunities were used efficiently, that individual patent examiners acquired competencies relevant to their job description, that training activities offered by donor Offices met the institutional requirements of training beneficiaries, and these activities and learning outcomes were tracked, and that training collaborations between donor and beneficiary Offices were monitored. The EPO therefore supported the proposal to conduct a survey among small and medium Offices to collect information and better understand the needs of the Offices about training policies, training management infrastructure and related infrastructure.

181. The Delegation of Israel indicated willingness to respond to the survey proposed in paragraph 21 in order to improve training policies and management. In recent years, the number of substantive examiners at the Israel Patent Office had increased significantly in several recruitment cycles, which required creating a comprehensive training program for examiners. The Israel Patent Office had set in place a durable and sustainable training infrastructure that provided for all examiners from entry level up to proficient and experienced ones. The Delegation indicated that the Israel Patent Office would be glad to share its knowledge and experience with other small and medium sized Offices, and would also be interested to hear about explore new tools for improvements in this field.

182. The Delegation of China indicated that the China National Intellectual Property Administration (CNIPA) had been following the project on coordination of patent examiner training, taken part in the discussions, and acted as a donor Office, contributing to the content of the training and the evaluation on internal systems.

183. The Delegation of Saudi Arabia welcomed the efforts to enhance the capacity and the training of the examiners. The Saudi Authority for Intellectual Property (SAIP) was preparing programs for new examiners on formal and substantive examination. The Delegation therefore expressed an interest in SAIP being able to benefit from the training opportunities described in the document.

184. The Delegation of France underlined the importance of training examiners as the National Institute of Industrial Property in France had increased the number of examiner to 120. The Delegation therefore supported the initiative of the International Bureau to carry out a survey among medium and small Offices with regard to technical assistance.

185. The Delegation of Iraq informed the Working Group that Iraq was in the final stages of accession to the PCT. The Industrial Property Department of the Central Organization for Standardization & Quality Control (COSQC) in the Ministry of Planning in Iraq had greatly expanded recently with more divisions and departments because of the need to process more patents. The increase in applications for patents made it necessary for Iraq to seek accession to the PCT. On this basis, the Delegation requested help from the International Bureau to enable training of technical and administrative staff for receiving and reviewing national and international patent applications.

186. The Working Group noted the contents of document PCT/WG/14/13 and invited the International Bureau to conduct a survey along the lines outlined in paragraph 21 of the document, taking into account the comments made during the session.

(B) SURVEY ON USE OF E-LEARNING RESOURCES FOR THE TRAINING OF SUBSTANTIVE PATENT EXAMINERS

187. Discussions were based on document PCT/WG/14/15.

188. The Secretariat reported on the combined results from Circular C. PCT 1588, dated February 27, 2020 and Circular C. PCT 1620, dated April 6, 2021, both relating to the use of e-learning resources for the training of substantive patent examiners. The International Bureau had published a statistical analysis and compilation of comments from the 43 responses to the Circulars on the webpage to the session. This analysis had incorporated two corrections to the numbers in the document. Regarding paragraph 9 of the document, 27 Offices replied that they had established a policy on either the obligatory or the voluntary use of e-learning resources and 16 Offices replied that they had not established such a policy. In paragraph 10 of the document, for 17 of the 27 Offices having a policy, the use of e-learning resources was an obligatory part of the entry level to training of patent examiners, and for eight Offices for post-entry level training of examiners. For six of the Offices, the use of e-learning resources was not obligatory, but only voluntary. Looking at the access to the e-learning resources prepared by some Offices, only the United States Patent and Trademark Office granted comprehensive access to all e-learning resources, while the other Offices provided selected access, based for instance on bilateral agreements between the Offices. However, 10 of the Offices providing e-learning content did not grant any access to external users. Paragraphs 18 to 21 of the document discussed factors that might determine whether an Office shared e-learning resources and suggested to create an independent repository for e-learning resources with access to accredited users. With regard to the compilation of e-learning resources made available on the website, Offices considered this to be a valuable resource, but there was a lack of more technology-specific training units in these resources. The International Bureau had a workshop on computer-implemented inventions in 2020, which it was considering making publicly available to cater for this need.

189. The Delegation of the United States of America indicated that the United States Patent and Trademark Office (USPTO) had developed extensive online resources for the training of its examiners, most of which were available to other Offices and to the public through the USPTO website. The Delegation supported the creation of a WIPO-based independent repository for e-learning resources as outlined in paragraphs 16 through 21 of the document, provided that this was a database of such resources presented without edits or comments.

190. The Delegation of the United Kingdom indicated that the United Kingdom Intellectual Property Office (UKIPO) did not currently use e-learning resources when training its examiners but had provided virtual training sessions during the COVID 19 pandemic, which it had recorded for those unable to attend. Subsequent viewings had been low in numbers, with most examiners preferring to partake in the live event as it provided them with the opportunity to interact and ask questions to the trainer. With this in mind, the Delegation suggested that the pandemic was a unique opportunity to deliver live training events more efficiently to other Offices in addition to creating an independent repository for Offices to share their e-learning

resources. For example, a space could be created for Offices to publicize training that they could provide to other Offices on specific elements of the examiner's role. While the document highlighted some issues with virtual sessions, for example time differences, there were also many benefits, particularly with one Office being able to share its practice with many other Offices at the same time. The Delegation therefore asked whether other Offices would support such a venture, and if so, whether this would be something the International Bureau would like to promote. Regarding the repository of e-learning resources, the Delegation supported the idea, but the UKIPO did not yet have any resources to deposit. For the UKIPO, resources that focused on technical training would be the most useful, such as experts sharing their knowledge of specific technologies and tips on where relevant disclosures were likely to be found in these fields, or detailed training on classification on how to interpret and use the classification schemes correctly. For the proposed repository, this would ideally consist of training relating to topics that were of general applicability regardless of search tools used or the underlying legal framework.

191. The Delegation of Israel indicated that the Israel Patent Office (ILPO) had an established policy on the voluntary use of e-learning resources for the training of substantive patent examiners and encouraged examiners to participate in external e-learning programs for extending knowledge and personal development. The ILPO recognized the time spent on learning as part of the paid working hours and participation as a contributing factor to the amount of the incentive pay. Working almost a hundred per cent from home during the COVID-19 pandemic, the ILPO had been compelled to use live video media for training. However, the Delegation stated that e-learning could not replace live lectures since the interaction with the lecturer and fellow examiners was irreplaceable. The ILPO wished to contribute and share knowledge towards the creation of an independent repository for e-learning resources as discussed in paragraphs 16 to 21 of the document, but the ILPO did not currently have plans to expand the use of e-learning.

192. The Delegation of France recognized that online resources were important for further training of examiners and informed the Working Group that the National Institute of Industrial Property (INPI) was developing its own online resources under the name MOOC INPI in order to raise awareness of the public, for example, small and medium sized enterprises and start-ups. INPI also conducted regular webinars for in-house training of its examiners. The Delegation concluded by expressing support for the creation of an independent repository of e-learning resources.

193. The Secretariat thanked delegations for their interest in the International Bureau creating a repository of e-learning resources and clarified that the International Bureau would prepare a concept paper on this idea for the fifteenth session of the Working Group.

194. The Working Group noted the results of the survey on e-learning resources for the training of substantive patent examiners and invited the International Bureau to develop proposals for the creation of an independent repository of e-learning resources, taking into account the issues noted in document PCT/WG/14/15 and those raised during the session.

OTHER MATTERS

195. The International Bureau indicated that the fifteenth session of the Working Group was tentatively scheduled to take place in May/June 2022.

SUMMARY BY THE CHAIR

196. The Working Group noted the contents of the Summary by the Chair in document PCT/WG/14/18 and that the official record would be contained in the present report of the session.

CLOSING OF THE SESSION

197. The Chair closed the session on June 17, 2021.

198. The Working Group adopted this report by correspondence.

[Annex follows]

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS

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