

Patent Cooperation Treaty (PCT) Working Group

**Eighth Session
Geneva, May 26 to 29, 2015**

SUMMARY BY THE CHAIR

AGENDA ITEM 1: OPENING OF THE SESSION

1. Mr. Francis Gurry, Director General of WIPO, opened the session and welcomed the participants. Mr. Claus Matthes (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

2. The Working Group unanimously elected Mr. Victor Portelli (Australia) as Chair for the session. There were no nominations for Vice-Chairs.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

3. The Working Group adopted the revised draft agenda as proposed in document PCT/WG/8/1 Rev. 2.

OPENING STATEMENTS

4. The Delegation of Singapore updated the Working Group on the progress of the Intellectual Property Office of Singapore (IPOS) towards beginning operations as an International Searching and Preliminary Examining Authority, following its appointment by the PCT Assembly at its forty-sixth session in September 2014. IPOS had achieved ISO 9001:2008 certification for its patent search and examination processes in November 2014 and now had more than 100 patent examiners. Moreover, processes had been put in place to handle international search and preliminary examination work, and examiners had undergone training for their new role. IPOS intended to begin operations as an International Searching and Preliminary Examining Authority on September 1, 2015.

AGENDA ITEM 4: MEETING OF INTERNATIONAL AUTHORITIES UNDER THE PCT: REPORT ON THE TWENTY-SECOND SESSION

5. The Working Group noted the report of the twenty-second session of the Meeting of International Authorities, based on a Summary by the Chair of that session contained in document PCT/MIA/22/22 and reproduced in the Annex to document PCT/WG/8/2.

AGENDA ITEM 5: PCT STATISTICS

6. The Working Group noted a presentation by the International Bureau on the most recent PCT statistics¹.

AGENDA ITEM 6: PCT ONLINE SERVICES

7. Discussions were based on document PCT/WG/8/20.

8. All delegations which took the floor expressed their appreciation for the work done on improving the online services made available by the International Bureau to applicants and Offices. The services were stated to add considerable value to the PCT process. It was stated that ePCT development should be legally sound, that is that it should be supported by the legal framework.

9. There was broad support in principle for the priorities for further work identified in the document, though various national Offices would not currently be in a position to implement some of the recommendations which were directed towards them, for legal or technical reasons. The issues included national security, certainty concerning the effective time of documents stored on a server operated by another Office and only transferred to local systems later, and the need to use specific forms of electronic signatures.

10. The International Bureau indicated that it would work with the Offices concerned to provide any necessary information on the options currently available and to discuss further requirements. It was emphasized that discussions with Offices should not only seek fixes to the immediate problems, but help the International Bureau to identify opportunities for more comprehensive work over the coming years.

11. Several delegations stated that improvement and expansion of the eSearchCopy system should be a particular priority, since it could have significant benefits if widely implemented. Machine to machine services, machine-readable data and demands for international preliminary examination in XML format were also highlighted by various delegations as being of particular interest, giving potential for efficiencies or useful new services.

12. In response to a question from a user representative, the International Bureau indicated that its services already had arrangements for handling copies of cited documents, though they were currently only routinely used in relation to documents uploaded with third party observations, rather than documents cited in international search reports. In providing services to applicants and designated Offices as required by Article 20(3), any non-patent literature documents received by the International Bureau were made privately available to applicants and designated Offices but, in order to respect copyright, were not made publicly available on PATENTSCOPE.

13. The Working Group noted the contents of document PCT/WG/8/20.

¹ A copy of the presentation is available on the WIPO website at http://www.wipo.int/meetings/en/details.jsp?meeting_code=pct/wg/8

AGENDA ITEM 7: SUPPLEMENT TO “ESTIMATING A PCT FEE ELASTICITY” STUDY

14. Discussions were based on document PCT/WG/8/11.
15. All delegations which took the floor welcomed the supplement to the “Estimating a PCT Fee Elasticity” study by the Chief Economist.
16. One delegation, speaking on behalf of a regional group, underlined that financial sustainability and income neutrality should be a prerequisite for introducing any fee changes. The delegation therefore questioned whether the additional filings generated from reductions for universities and government research institutes would justify the loss in fee income. It further questioned whether it would be justifiable to differentiate between universities and research institutes from developing and developed countries. While the study showed that fee reductions for universities from developing countries appeared to be more effective than reductions for universities from developed countries, the delegation expressed the view that the development aspect had recently been taken into account when Member States had agreed, in 2014, on the revised criteria for fee reductions for applicants from developing countries.
17. One delegation supported the view that any fee reductions applied to universities and government research institutes should not differentiate between developed and developing countries. This delegation believed that universities and government research institutes were under-represented in PCT filings, which might be remedied by general fee reductions for these types of applicants.
18. Several other delegations expressed the view that fee reductions for universities and government research institutes from developing countries should be introduced first, while a possible extension of such fee reductions to these groups of applicants from developed countries should be considered at a later stage. Some of these delegations provided examples of national fee reductions for universities and public research organizations which had resulted in more patent filings from these types of applicants.
19. The Chair, in summarizing the discussions, stated that, while there was support by many delegations for PCT fee reductions for universities and government research institutes, different views had been expressed on whether such reductions should apply to all such types of applicants or only to those from developing countries. In any case, without a significant rise in the number of filings, any reductions would result in a loss in revenue to WIPO. The issue therefore needed to be considered in a holistic manner, also addressing the issue as to how to compensate for any losses. The Chair invited any Member State to come forward with proposals in this context for discussion at a future session of the Working Group.
20. The Working Group noted the contents of document PCT/WG/8/11.

AGENDA ITEM 8: PCT FEE INCOME: POSSIBLE MEASURES TO REDUCE EXPOSURE TO MOVEMENTS IN CURRENCY EXCHANGE RATES

21. Discussions were based on document PCT/WG/8/15.
22. All delegations which took the floor welcomed the proposal to commence hedging of international filing fees as far as the risk resulting from transactions in euro, Japanese yen and United States dollar was concerned, and to modify the current equivalent amount process for PCT fees with a view to fixing new equivalent amounts of PCT international filing fees only once per year, to remain unchanged for a period of 12 months.
23. Delegations emphasized the benefits such an approach would bring to the PCT system, notably in terms of added efficiency and predictability, while stressing the need for full transparency, in particular with regard to the new process for fixing equivalent amounts in the currencies proposed to be hedged based on blended hedge rates to be determined by the

Director General. To that extent, the Secretariat should further consider how best to ensure such transparency, either by including further details on that new process in the Directives themselves or, preferably, by other means, such as by way of an Understanding by the PCT Assembly setting out the details of that new process, to be adopted by the Assembly together with the Directives as proposed to be modified.

24. In response to a query by one delegation, the Secretariat offered to provide more detailed information on PCT fee income in the various currencies in which fees were received by the International Bureau.

25. In response to a suggestion by several delegations, the Secretariat confirmed that, while a final decision on the proposal to commence hedging and to modify the Directives accordingly would be for the PCT Assembly to take, it was the intention of the Secretariat to bring the matter to the attention of the Program and Budget Committee at its upcoming July 2015 session.

26. In response to a query by one delegation, the Secretariat confirmed that there was no limit on possibly "rolling forward" any forward contract, as referred to in paragraph 34 of document PCT/WG/8/15. In essence such "rolling forward" would require the conclusion of a new forward contract, which could be done, at least in theory, again and again. The Secretariat further confirmed that, if implemented, it would be happy to regularly report to Member States on any rolling forward of forward contracts and any impact hedging had on WIPO finances.

27. Upon queries by several delegations as to the compliance of the proposed new approach with WIPO's "Risk Appetite Statement" as set out in document WO/PBC/22/17, noted by the Program and Budget Committee at its twenty-second session in September 2014, the Secretariat stated that the new approach was in full compliance with that statement, as it actually reduced the risks associated with movements in currency exchange rates compared to today's situation, where the Organization was fully exposed to such risks.

28. Several delegations noted the importance of providing sufficient lead time for fee changes to allow receiving Offices to make the necessary updates to internal IT systems and to raise awareness of applicants before new equivalent amounts came into effect. The Secretariat confirmed that, in general, the new approach would not change the effect on receiving Offices compared to the current procedure, under which new equivalent amounts would be fixed in the first week in October of each year, to enter into force on January 1 of the following year. Exceptionally, however, the lead time in the run up to new equivalent amounts coming into force in January 2016 might be slightly shorter, noting that those new equivalent amounts could only be fixed after the PCT Assembly, scheduled to meet from October 5 to 14 this year, had formally adopted the modified Directives, thus slightly delaying the fixing of new equivalent amounts to the second half of October 2015. This would nevertheless leave a period of over two months before entry into force. Alternatively, on an exceptional basis, the entry into force of the new fees for the first year could occur later than January 1.

29. Several delegations suggested applying a similar hedging approach also to other fee collecting WIPO services, such as the Madrid or Hague Systems, although it was noted that there appeared to be a much lower risk of exposure of fee income to movements in currency exchange rates, as most fees paid under those systems were paid in Swiss francs.

30. The Working Group agreed on the proposed modifications to the Directives of the PCT Assembly Relating to the Establishment of Equivalent Amounts of Certain PCT Fees set out in Annex II to document PCT/WG/8/15 with a view to their submission to the Assembly for consideration at its next session, in October 2015, subject to possible further drafting changes to be made by the Secretariat or, alternatively, the submission to the Assembly of a draft Understanding setting out details of the new process for fixing equivalent amounts in the currencies proposed to be hedged based on blended hedge rates, to be adopted by the Assembly together with the Directives as proposed to be modified.

31. All delegations which took the floor on the matter supported the proposal not to commence hedging of search fees at this stage but rather to first carry out a “proof of concept” simulation with a view to discussing a detailed proposal by the Secretariat at the next session of the Working Group in 2016.

32. Several delegations expressed their support in general for the proposal to move to a “netting structure” for all PCT fee transactions between receiving Offices, International Searching Authorities and the International Bureau, while stating that more information was needed before being able to decide on the matter.

33. One delegation stated that it could not support the netting proposal, as it was concerned that it would result in additional work for receiving Offices.

34. One delegation expressed the hope that a netting structure could be implemented quickly, citing its positive experiences, as an International Searching Authority, with an ongoing pilot project under which it received search fees from one receiving Office “via” the International Bureau. It further stated that its expectation was that the greatest benefits would be achieved if such netting structure would be combined with the electronic transfer of search copies from the receiving Offices to the International Searching Authority “via” the International Bureau (eSearchCopy).

35. All delegations which took the floor noted with satisfaction that it was no longer proposed to pursue the proposal to add a margin to equivalent amounts of the international filing fees and search fees.

36. Several delegations stated that they did not support the proposal to enable applicants to pay the international filing fee in Swiss franc and the search fee in the applicable ISA currency, although it was noted that the proposal had not been to make such fee payments in currencies other than the local receiving Office currency mandatory.

AGENDA ITEM 9: COORDINATION OF TECHNICAL ASSISTANCE UNDER THE PCT

37. Discussions were based on document PCT/WG/8/16.

38. All delegations which took the floor welcomed the report on the technical assistance projects for developing countries. Several delegations emphasized their commitment to continue to provide such technical assistance, noting the importance of such assistance for developing countries.

39. One delegation, representing a regional group, emphasized that the information set out in the document showed that PCT-related technical assistance programs formed an essential element of broader WIPO technical assistance activities aimed at extending and enhancing the PCT system. The delegation further stated that the issue of provision of technical assistance had to be seen in a broader context and, in this context, referred to ongoing discussions in that regard in the Committee on Development and Intellectual Property (CDIP), which had devoted more time to debating technical assistance activities at its most recent session. To that extent, it continued to be of the opinion that the Working Group had to await the outcome of the discussions in the CDIP on the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (document CDIP/8/INF/1) before commencing discussions on specific PCT-related technical assistance in the Working Group.

40. Several delegations expressed their gratitude for the technical assistance activities that WIPO and a number of national and regional Offices had provided to their countries and acknowledged the benefits of technical assistance for Offices and users on a national and regional scale.

41. The Working Group noted the contents of document PCT/WG/8/16.

AGENDA ITEM 10: TRAINING OF EXAMINERS

42. Discussions were based on document PCT/WG/8/7.
43. Several delegations expressed their appreciation for the examiner training and other assistance which they had received in recent years from other Offices and from the International Bureau. This was greatly appreciated and essential to improving the quality of the work by their Offices. Several delegations outlined a variety of different ways in which their Offices as donor Offices offered such training. Nevertheless, it was widely recognized there was scope for improving the efficiency and effectiveness of the training by better coordination between Offices and learning from best practices of others. One delegation emphasized that training needed to be practical and focused on the needs of the relevant Office.
44. All delegations which took the floor strongly supported the proposal for the International Bureau to increase its role in helping to coordinate examiner training between Offices. At its most basic, this would involve a matching of needs with training capacity in a way which ensured that Offices were aware of and could complement activities of other Offices, thereby avoiding duplication. Ideally, the arrangement should also allow Offices to better understand and learn from the ways in which training was being conducted by other Offices. Several delegations reiterated the view that a physical donor conference should only be held if it were possible to do so back-to-back with another PCT-related event.
45. One delegation expressed concerns with regard to the proposal that the International Bureau should develop, jointly with partner Offices, model training components and curricula, noting that the content of such components should be left to the donor Offices and that the International Bureau should primarily act as a coordinator.
46. The Working Group requested the International Bureau to issue, as a first step, a Circular requesting information from Offices on examiner training activities carried out by Offices for the benefit of other Offices, notably from developing countries. This would better inform the next phase of discussions on how the International Bureau could act as a coordinating body to most useful effect.

AGENDA ITEM 11: APPOINTMENT OF INTERNATIONAL AUTHORITIES

47. Discussions were based on document PCT/WG/8/3.
48. All delegations which took the floor expressed their support for the recommendations by the Quality Subgroup of the Meeting of International Authorities (PCT/MIA) to focus further work on procedural issues related to the quality requirements that an Office should be required to meet to act effectively as an International Authority. Notably, delegations supported the specific recommendations to review Chapter 21 of the PCT Search and Examination Guidelines with a view to strengthening the requirements with respect to quality management systems and to develop a standard application form for any request for appointment, as set out in paragraph 7 of document PCT/WG/8/3.
49. One delegation, while fully supporting the recommendations by the Quality Subgroup, suggested that the Working Group should also consider the need for the establishment of new International Authorities and in this context requested the Secretariat to provide more detailed information as to the costs for the International Bureau resulting from the appointment of a new Authority in terms of advisory missions, training, IT development etc. In response to this request, the Secretariat stated that it would be happy to provide such information but noted that such expenses by the International Bureau appeared to be rather low compared to the investment to be made by the Office seeking appointment and compared to the assistance such an Office would often receive, in particular in terms of examiner training, by other Offices seeking to support an Office in its endeavor to be appointed as an International Authority.

50. The Working Group noted the update on the ongoing discussions in the Quality Subgroup of the Meeting of International Authorities, and in the PCT/MIA itself, on the quality related aspects of the criteria for appointment of International Authorities, in particular the recommendations by the Quality Subgroup set out in paragraph 7 of document PCT/WG/8/3.

51. The Working Group invited the International Bureau to provide information concerning the expenses typically incurred by the International Bureau in relation to the appointment of a new International Searching and Preliminary Examining Authority.

AGENDA ITEM 12: PCT DIRECT — A NEW SERVICE FOR STRENGTHENING THE USE OF THE PCT

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

53. All delegations which took the floor expressed an interest in the new PCT Direct Service offered by the European Patent Office (EPO) in its capacity as an International Searching Authority, in particular as it will become available, as of July 1, 2015, to applicants filing international applications with receiving Offices other than the EPO.

54. In response to several queries by delegations, the delegation of the EPO stated that the relatively high number of PCT Direct letters which had been received so far (which had been submitted in about 20 per cent of cases in respect of which such letters could have been sent) had confirmed applicants' interest in using the service, notably to provide further explanations to the examiner on amendments made to the international application compared to the first filing. The delegation further clarified that there was no fee for the service and that a PCT Direct letter should be submitted in any official language of the EPO for it to be taken into account. A proper dialogue between the examiner and the applicant would only take place if the applicant had filed a demand under PCT Chapter II. Furthermore, any PCT Direct letter would become accessible to third parties via PATENTSCOPE and, after regional phase entry, via the EPO's Register.

55. In response to a query by one delegation as to when a PCT Direct letter had to be submitted, the delegation of the EPO clarified that such a letter had to be filed together with the international application and indicated as an accompanying item in the request form (PCT/RO/101), which meant that the action had to be taken before the expiration of the priority period. In view of the EPO's aim to deliver regional search reports within six months of filing, this would mean that applicants would typically have six months within which to decide what action to take and to prepare the necessary documents. It further clarified that the examiner would always take such a PCT Direct letter into account, even if it was determined during the search stage that the priority claim relating to the earlier application already searched by the EPO was not valid.

56. The Delegation of Israel stated that the Israel Patent Office had also been offering a similar service since April 1, 2015, but had only received two such letters to date. It further emphasized the usefulness of the new service for applicants seeking to obtain a positive international search report and written opinion in view of their intention to later request Patent Prosecution Highway (PPH) acceleration in the national phase.

57. In response to queries by several delegations, the Secretariat confirmed that a PCT Circular would be sent within the next few weeks to consult with Member States and users on proposed modifications to the Receiving Office Guidelines to clarify the procedures to be followed by receiving Offices when receiving such PCT Direct letters. The Secretariat further confirmed that both PCT-SAFE and ePCT would support the submission of PCT Direct letters as of July 1, 2015. Similar support could be offered for other International Searching Authorities which notified equivalent requirements to the International Bureau.

58. In response to a query by one delegation, the delegation of the European Patent Office confirmed that it would continue reporting on its experiences with the PCT Direct Service at future sessions of the Working Group.

59. The Working Group noted the contents of document PCT/WG/8/17.

AGENDA ITEM 13: TRANSMITTAL BY THE RECEIVING OFFICE OF EARLIER SEARCH AND/OR CLASSIFICATION RESULTS TO THE INTERNATIONAL SEARCHING AUTHORITY

60. Discussions were based on document PCT/WG/8/18.

61. All delegations which took the floor supported the general goal of the proposal to facilitate the work of International Searching Authorities.

62. Many delegations, however, stated that, under their respective national laws concerning confidentiality, their Offices were prohibited from transmitting information on unpublished applications without the consent of the applicant. Moreover, in some jurisdictions, it was unlikely that these restrictions on transmission of information could be removed in the foreseeable future. If the proposals were to be adopted, the Offices would therefore have to make use of the possibility to “opt out” by way of a notification of incompatibility and it had to be understood that some of those Offices would not be in a position to withdraw any such notification of incompatibility in the foreseeable future.

63. In commenting on the restrictions on transmitting information on unpublished applications, some delegations of Contracting States of the European Patent Convention referred to arrangements under the European Patent Convention for their national patent Offices to exchange information with the EPO on unpublished patent applications. One of these delegations emphasized that the most important information related to an unpublished patent application was the patent specification itself. When filing an application based on an earlier priority at a different Office, the information in the specification needed to have been disclosed to the subsequent Office. This delegation considered the search results and classification of the priority application to be of lesser importance and Offices should therefore consider legal means to share this information without the specific consent of the applicant.

64. One delegation suggested providing a check box on the request form for the applicant to authorize transmission of unpublished search and classification results to the International Searching Authority.

65. In response to a question from one delegation concerning the extent to which earlier search reports established in languages not understood by the International Searching Authority would be useful, the delegation of the EPO indicated that the most important information was the list of documents, which was easily identified and essentially language neutral.

66. One delegation stated that, although its national law allowed for the transmission of documents relating to earlier national search or classification to the International Searching Authority under proposed new Rule 23*bis*.2(a), it could support the addition to the PCT Regulations of that new Rule only if a further provision was added under which a receiving Office was entitled to provide its applicants the choice of not having any such earlier national search or classification results transmitted to the International Searching Authority.

67. Following informal discussions, several delegations proposed to further amend Rule 23*bis*.2 by adding a new paragraph (b) as follows:

“(b) Notwithstanding paragraph (a), a receiving Office may notify the International Bureau by [DATE] that it may, on request of the applicant submitted together with the international application, decide not to transmit the results of an earlier search to the International Searching Authority. The International Bureau shall publish any notification under this provision in the Gazette.”

68. One delegation, supported by several other delegations, expressed concerns with regard to proposed new Rule 23*bis*.2(b), noting that it was inappropriate to have the possibility to allow an Office to opt-out of a PCT provision without an overwhelming need to do so, such as in the case of incompatibility of that PCT provision with its national law. The delegation expressed the view that this should not become an established mode of operation. Moreover, paragraph (b) as proposed to be added was inconsistent with the goal of promoting work sharing and cooperation between Offices with a view to bringing benefits in improving the quality of patent search and examination products. The delegation therefore requested the International Bureau to monitor the use of this provision by applicants; if it were to be rarely used by applicants, prompt consideration should be given to its removal.

69. The delegation which had proposed to add new paragraph (b) stated that this new paragraph was essential for its national Office. While being able to transmit information on unpublished applications under its national law, the delegation wished to retain the possibility for applicants to request that the earlier search results should not be transmitted to the International Searching Authority.

70. The Working Group approved the proposed amendments to Rules 12*bis*, 23*bis* and 41 of the Regulations as set out in Annex I to this Summary by the Chair with a view to their submission to the Assembly for consideration at its next session in October 2015, subject to possible further drafting changes to be made by the Secretariat.

AGENDA ITEM 14: REPORT ON IMPLEMENTATION AT THE EUROPEAN PATENT OFFICE OF THE MANDATORY REPLY TO A NEGATIVE SEARCH OPINION

71. Discussions were based on document PCT/WG/8/24.

72. One delegation stated that it appreciated the idea behind the requirement for the applicant to submit, upon national phase entry, a reply to the EPO where that Office in its capacity as an International Authority had issued a negative search opinion. Further links between the international phase and the national phase were in principle desirable. However, it had concerns with the specific requirement, as it added a further burden for applicants.

73. The Delegation of the United States of America stated that it was encouraged by the positive results reported by the EPO and was investigating the possibility to implement a similar requirement under its own national law. It noted that a proposal to introduce such a procedure in the PCT had been contained in its “PCT 20/20” proposal submitted jointly with the United Kingdom and expressed the hope that that proposal would be reconsidered in the not too distant future.

74. Two representatives of user groups stated that they were not in favor of any mandatory requirement to submit a reply to a negative search opinion upon national phase entry. There were many strategic reasons as to why applicants might want to commence national phase proceedings on the basis of a negative search opinion and without immediately responding to any negative statements set out in a search opinion; delaying such a response was at times appropriate, for example, where the applicant was awaiting the search results by other Offices. Leaving choices for applicants appeared more appropriate.

75. The representative of another user group stated that European users had become used to, and had had good experiences with, the EPO's requirement for a mandatory reply. However, such requirements should be limited to cases where the application entered the national phase before the Office which had established the search opinion in its capacity as an International Searching Authority.

76. The Working Group noted the contents of document PCT/WG/8/24.

AGENDA ITEM 15: INFORMATION CONCERNING NATIONAL PHASE ENTRY AND TRANSLATIONS

77. Discussions were based on document PCT/WG/8/8.

78. All delegations which took the floor recognized the importance of timely and complete data concerning national phase entry and strongly supported the principle underlying the proposal. Many delegations stated that they already at present furnished national phase entry data to the International Bureau on a regular basis. One delegation noted that it was only in a position to furnish national phase entry data after the international publication of the application.

79. Various concerns were raised by several delegations concerning the clarity of the terminology and the one month time limit which was suggested for providing the information. Most delegations expressed the view that two months would be more realistic and some indicated that longer would be desirable, at least in certain circumstances. Nevertheless, it was felt important to include within the Rules a target which emphasized the importance of providing timely information to the extent practical.

80. One delegation emphasized the importance of ensuring that the information was distributed to the Offices by the International Bureau in bulk format for integration into other services, in addition to being available on a case-by-case basis within PATENTSCOPE, and requested that this be made explicit in the Regulations. The Secretariat pointed out that the international phase bibliographic data for published international phase applications was already made available in bulk format without an explicit Rule. To introduce a Rule concerning bulk distribution of national phase data only could lead to doubt concerning the use and bulk distribution of other PCT data. It therefore suggested that the issue could be the subject of an Understanding of the Assembly rather than being explicitly included in the Regulations.

81. It was noted that several national Offices would require a significant lead time before the Rule came into force in order to complete the necessary work on IT systems.

82. The Working Group agreed on the proposed amendments to Rules 86 and 95 set out in Annex II to this Summary by the Chair with a view to their submission to the Assembly for consideration at its next session, in October 2015, subject to possible further drafting changes to be made by the Secretariat.

83. The Working Group agreed to recommend that, subject to further discussions between the Secretariat and the concerned delegation on possible drafting changes to the proposed Understanding or possible alternative ways to address the issue, such as explicitly addressing it in the Regulations, the Assembly adopt the following Understanding at the same time as the proposed amendments to Rules 86 and 95: "In adopting the amendments to Rule 86.1(iv), the Assembly noted that the information concerning national phase entry will be made available to the public not only by way of inclusion in the Gazette on the PATENTSCOPE website but also as part of the bulk PCT bibliographic data offered to Offices and other subscribers to the PATENTSCOPE subscription data services."

AGENDA ITEM 16: REVIEW OF THE SUPPLEMENTARY INTERNATIONAL SEARCH SYSTEM

84. Discussions were based on document PCT/WG/8/6.
85. All delegations which took the floor supported recommending to the PCT Assembly that the International Bureau should continue to monitor the supplementary international system for a further five years, with the PCT Assembly reviewing the system again in 2020.
86. One delegation, supported by several other delegations, proposed to remove the linkage between supplementary international search and the pilot on collaborative search and examination in the draft recommendation in paragraph 31 of the document. Supplementary international search provided the possibility of a further international search to be requested after the main international search, but under a collaborative search and examination model, the applicant would have to make a choice upfront to have an application searched by more than one International Searching Authority for a higher search fee.
87. Several delegations expressed support for further consideration of the improvements to the supplementary international search system suggested in the document. In particular, some delegations stated that they could support providing for the possibility for an applicant to request a supplementary international search on the basis of amended claims filed under Article 19, and changing the deadline for filing a supplementary search request to 22 months from the priority date to correspond to the deadline for filing a demand for international preliminary examination.
88. Representatives of user groups gave reasons for the low use of supplementary international search, such as the cost, limited choice of International Searching Authorities and languages available for a supplementary international search, sometimes needing to file a request for supplementary international search before receiving the main international search report, and the possibility of obtaining a further search through early national phase entry.
89. The Working Group invited the International Bureau to present a document to the next session of the Working Group to discuss possible improvements to the supplementary international search system.
90. The Working Group agreed to recommend to the PCT Assembly to adopt the following recommendation:
- “The PCT Assembly, having reviewed the supplementary international search system three years after the date of entry into force of the system and again in 2015, decided:
- “(a) to invite the International Bureau to continue to closely monitor the system for a period of a further five years, and to continue to report to the Meeting of International Authorities and the Working Group on how the system is developing;
- “(b) to invite the International Bureau, International Authorities and national Offices and user groups to continue their efforts to raise awareness of and promote the service to users of the PCT system;
- “(c) to invite the International Authorities which offer supplementary international searches to consider reviewing the scope of their services provided under the system and consequently the levels of fees charged for the services provided, which should be reasonable; and to invite Authorities which currently do not offer the service to reconsider whether to offer the service in the near future;

“(d) to review the system again in 2020, taking into account further developments until then, notably in relation to developments in collaborative search and examination, and in relation to efforts to improve the quality of the “main” international search.”

AGENDA ITEM 17: NATIONAL PHASE ENTRY USING EPCT

91. Discussions were based on document PCT/WG/8/19.

92. Several delegations expressed their interest in the concept of national phase entry using ePCT and indicated either a strong interest in joining a pilot group or a possible interest in doing so, subject to a better understanding of the legal and technical implications. One delegation noted that its national Office already used a very similar arrangement to assist national phase entries as part of its online case management facility.

93. Several delegations and user representatives indicated their concern that such a system might be used in a way which reduced the role of a national attorney in ensuring that the local requirements were properly met, and that this would be detrimental to the interests of the applicant – potentially increasing overall costs, losing rights or decreasing the value of any rights obtained. A system which appeared easy up-front but risked causing large problems later was not desirable. The Secretariat explained that it was not the intended purpose of the system to offer a “single click national phase entry”, reducing the substantive role of the national agent. Rather, the system was intended to eliminate retyping of data by attorneys and Offices, to reduce formalities errors and to provide a secure, multilingual common platform for shared preparation of drafts by users who might be located in different countries. In particular, the system would require an entry in the field “national attorney” as a mandatory requirement before submission. Any such national agent would at least need to have agreed to act as attorney having regard to the process which was being undertaken, and should ideally have taken a strong and early role in the preparation of the national phase entry. The interface could be designed to emphasize the importance of this point and minimize the risk that applicants indicate a non-qualified address for service.

94. Other concerns noted included:

- (a) legal issues concerning the time at which documents delivered to an IB-operated server, or payments made to an IB-operated centralized payment system, would be deemed to have been received by the relevant national Office;
- (b) practical issues of the need for instant access to information by the designated Office to ensure that deficiencies could be noted immediately and that the applicant could be given opportunities to correct within the time limits, which in some Offices were strict;
- (c) questions of whether national laws permitted roles in national processing of applications to be delegated to non-citizens of the relevant State;
- (d) whether Offices would be able to participate if their national laws did not have suitable provisions for recognizing electronic submission of documents in the national phase;
- (e) determination of responsibilities – both between “main” and “national” attorneys if preparation of national phase entries was shared, and between national Offices and the International Bureau to determine what remedies were available in the event of the system being unavailable or defective.

95. One representative of users suggested that a better approach might be simply to give access to the international phase data and a set of standard interfaces at national Offices and leave the implementation to users’ systems directly.

96. The Chair noted that many of the areas which were cited as having potential for bad practice were equally relevant to the paper world. However, the PCT system needed to face up to the reality of the digital era. It was important to take account of the issues, but using them to attempt to stop progress would simply mean that alternative mechanisms would appear and Offices and users would have lost their opportunity to help shape them.

97. The Working Group noted that the International Bureau intended to prepare a first draft interface in the Demo ePCT environment, likely in autumn 2015, which would help to inform more concrete discussions with potential pilot Offices and users. It further noted the intention of the International Bureau to invite participation by pilot Offices and users, by way of a PCT Circular, in the near future.

AGENDA ITEM 18: PCT MINIMUM DOCUMENTATION: DEFINITION AND EXTENT OF PATENT LITERATURE

98. Discussions were based on document PCT/WG/8/9.

99. Several delegations welcomed the reactivation of the minimum documentation task force, noting the importance of this subject to effective search and availability of patent information in the current digital world. One delegation stated that it considered that the work needed to ensure the qualities of correctness, completeness and timeliness of patent data, as well as ensuring that the data was made available in a barrier-free manner. It was important to consider utility models, which were now very numerous and important from a prior art point of view and to consider the importance of having certain information available in English. Moreover, the mechanism for adding new collections to the PCT minimum documentation needed to be easy.

100. The Working Group noted the contents of document PCT/WG/8/9.

AGENDA ITEM 19: PCT SEQUENCE LISTING STANDARD

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

102. The representative of a user group stated that, while he generally supported the move from Standard ST.25 to new Standard ST.26, which was in line with current technical trends, he was concerned that this move might result in applicants making errors when filing sequence listings under the new Standard; it was thus important to give sufficient time for the transition by applicants from the old to the new Standard and to ensure that measures for relief were available in the event of errors.

103. The Working Group noted the contents of document PCT/WG/8/13.

AGENDA ITEM 20: REVISION OF WIPO STANDARD ST.14

104. Discussions were based on document PCT/WG/8/10.

105. One delegation reiterated its position for maintaining category "X" and not introducing categories "N" and "I" in the citation category codes in paragraph 14 of WIPO Standard ST.14. This delegation supported a closer alignment of ST.14 with International Standard ISO 690:2010 in line with the present considerations by the Task Force rather than a full alignment.

106. The Working Group noted the contents of document PCT/WG/8/10.

AGENDA ITEM 21: COLOR DRAWINGS

107. Discussions were based on document PCT/WG/8/21.

108. Several delegations and representatives of user groups reiterated the importance of the work towards accepting and processing color drawings, noting that they could be important to effective disclosures of inventions in certain technological fields. It was also observed that the file formats which were required by the PCT and national patent systems were increasingly obsolete and less supported in the software generally used for preparation of other documents. One user representative suggested that it might be appropriate to begin accepting color drawings in international applications filed in XML format even before the problems were resolved for those filed in PDF format.

109. Several delegations noted that their national Offices had either complete or partial systems for processing color drawings and offered to share technical information with the International Bureau and other interested Offices.

110. In response to questions from one delegation, the Secretariat indicated that there remained some flexibility to decide the processes and further clarification may be required to the legal framework, both of which might be the subject of proposals in future sessions of the Working Group. However, the assumptions on which the work was based were that:

- (a) it was essentially impossible in the short to medium term to change Rule 11 to ensure that color drawings would be accepted in the national phase before all designated Offices;
- (b) where an international application was filed including color drawings, the international phase processing, including international search and international publication, would use those color drawings;
- (c) the International Bureau's systems might automatically render black and white views of the color drawing for use by designated Offices which required black and white drawings in the absence of provision of a better alternative by the applicant, but that the color drawing was what was filed and this would represent a formal defect before those national Offices which required black and white drawings – in the end, it would be the applicant's responsibility to ensure that a correction was made available to the designated Office which properly reflected the content of the international application as filed, without introducing added subject matter.

111. The Working Group noted the contents of document PCT/WG/8/21.

AGENDA ITEM 22: CLARIFYING THE PROCEDURE REGARDING INCORPORATION BY REFERENCE OF MISSING PARTS

112. Discussions were based on document PCT/WG/8/4.

113. One delegation stated that it continued to hold the strong view that, where the international application contained an (erroneously filed) set of claims and/or an (erroneously filed) description but the applicant nevertheless requested the incorporation by reference of all of the claims and/or all of the description contained in the priority application as a "missing part", such incorporation by reference was clearly covered not only by the spirit and intent but also by the wording of the current Regulations. It could not support the compromise solution set out as Option B in the document as that solution was inequitable, offering nothing to applicants from Member States whose Offices already today allowed such incorporation by reference both in their capacity as receiving Offices and designated Offices. The solution would only benefit applicants from those Member States whose Offices did not do so. It urged user groups from Member States whose Offices did not allow for the incorporation in the situation at hand to

“lobby” those Offices with a view to changing their position. It further suggested that the International Bureau should publish a list indicating the practice of Offices of all PCT Contracting States with regard to incorporation by reference in the current situation.

114. The delegation further stated that, in addition to Options A and B, there were at least two more options which should be considered. First, Rule 4.18 could be amended to specifically allow for the incorporation by reference, in the situation at hand, of all of the claims and/or all of the description contained in the priority application as a “missing part”. Second, an entirely new provision could be added to the Regulations to deal with the situation at hand.

115. One delegation recalled the original purposes of the missing parts provisions as included in the PCT Regulations, which had been to align the PCT with the provisions of the Patent Law Treaty (PLT). The provisions had been designed to provide a safety net for applicants and thus, being provisions designed to deal with exceptional situations, had to be interpreted in a strict manner. In its view, there were no provisions, either in the PLT or in the PCT, which dealt with the issue of whether or not to allow the applicant to incorporate all of the claims and/or all of the description contained in the priority application as a “missing part” where the international application as filed already contained an (erroneously filed) set of claims and/or an (erroneously filed) description. It could accept the compromise solution set out as Option B in the document but recognized that this would not appear acceptable to others. It thus suggested to focus on modifying the Receiving Office Guidelines to clarify the continued divergent practices of Offices and to raise awareness among the applicant community.

116. The Chair noted that it would appear strange to him that the Regulations allowed the applicant to validly file certain documents in “*force majeure*” circumstances after a time limit had expired without filing anything at all within the relevant time limit, but that they did not allow the applicant to correct the mistake of having filed a wrong set of claims and/or a wrong description. If it was not possible to address that situation by way of incorporation by reference of a “missing part”, then perhaps—and along the lines of the suggestion made by one delegation—an attempt should be made to explore whether it would be possible to draft an entirely new provision which would allow the applicant, in very limited and exceptional cases, to replace the wrongly filed claims and/or description of the international application as filed with the equivalent “correct” version of the claims and/or description contained in the priority application.

117. Several delegations expressed their preference for Option A as set out in document PCT/WG/8/4 (to leave the situation “as is” but modify the Receiving Office Guidelines to clarify the continued divergent practices of Offices and raise awareness among the applicant community), whereas several other delegations expressed a preference for Option B (require receiving Offices to permit incorporation for the purposes of the international phase).

118. One delegation considered that the PCT Regulations should be amended to clarify that incorporation by reference of all claims and the description should not be permitted.

119. Several delegations, including some which had expressed a preference for either Option A or B, expressed an interest in the suggestion by the Chair to explore whether it would be possible to draft an entirely new incorporation provision to address the situation at hand. The representative of a user group agreed that it would be desirable to correct an erroneously filed part, but emphasized that this needed not only to be in strictly limited circumstances, but also to be done at a very early stage in processing.

120. Several representatives of user groups stated that the current situation harmed legal certainty. Errors were made and there should be opportunities to replace erroneously filed elements of the international application in appropriate, limited situations where no damage was done to third party interests.

121. The representative of one user group suggested the Working Group might also consider amending Rule 4.18 with a view to allowing the incorporation by reference of missing elements or parts also in the situation where a priority claim was not contained in the international application as filed but was later added or corrected under Rule 26*bis*.

122. The Working Group requested the International Bureau to prepare, for discussion at its next session, a working document containing a draft of a new provision which would allow the applicant, in very limited and exceptional cases, to replace the wrongly filed claims and/or description of the international application as filed with the equivalent "correct" version of the claims and/or description contained in the priority application.

123. The Working Group further requested the International Bureau, pending the ongoing discussions of the issues at hand in the Working Group, to prepare and consult on modifications to the Receiving Office Guidelines aimed at clarifying the continued divergent practices of Offices, and to continue to raise awareness among the applicant community on the consequences of the continued divergent practices of Offices.

AGENDA ITEM 23: SAME DAY PRIORITY CLAIMS

124. Discussions were based on document PCT/WG/8/5.

125. Several delegations stated that the preferred option would be what had been set out as Option 1 in document PCT/WG/8/5, namely, to refer the matter to the Paris Union Assembly with a view to seeking a common interpretation of Article 4 of the Paris Convention. However, it was recognized that it was unlikely that the Paris Union would agree on such a common interpretation and that, even if it did, a formal revision of the Paris Convention would be a cumbersome and lengthy procedure. It was further recognized that, given the small number of applications which involved same day priority claims, the issue might not be considered to be of sufficient importance to justify referral to the Paris Union Assembly at this stage.

126. A majority of delegations, including some of those which had expressed a general preference for Option 1, considered that what had been set out as Option 3 in document PCT/WG/8/5, namely, to amend the PCT Regulations to prepare the ground for a decision on the matter to be taken by designated Offices in the national phase, appeared the most realistic way forward.

127. Other delegations, again including some of those which had expressed a general preference for Option 1, expressed a preference for what had been set out as Option 4 in document PCT/WG/8/5, namely, to leave the situation "as is" and to only modify the Receiving Office Guidelines and the *PCT Applicant's Guide* to raise awareness in the applicant community of the divergent practices of Offices and their consequences.

128. One delegation stated that, in its capacity as a receiving Office, it accepted same day priority claims, noting that the PCT Regulations had been amended in 2007 to allow for the restoration of the right of priority. In that context, the express requirement that an earlier application, the priority of which was claimed in the international application, had to be filed "prior to the international filing date" had been deleted. Another delegation stated that it did not accept same day priority claims on the basis of a literal interpretation of Article 4C(2) of the Paris Convention.

129. One representative of a user group suggested that a practical way to deal with the issue at hand might be to not only apply a date stamp but also a time stamp to applications so as to record the actual time at which an application was received by an Office, allowing the identification of "earlier" applications where several applications were received on the same day.

130. In response to a query by one delegation, the Secretariat confirmed that the Office of Legal Counsel of WIPO had been consulted on the issue but that it was up to the Member States of the Paris Union to agree on how to interpret the provisions of the Paris Convention.

131. While noting the divergence of views, the Working Group requested the International Bureau to prepare, for discussion at its next session, a proposal for amendment of the PCT Regulations to expressly require receiving Offices not to cancel same day priority claims so as to prepare the ground for decisions on the matter to be taken by designated Offices in the national phase under the applicable national laws.

AGENDA ITEM 24: OMISSION OF CERTAIN INFORMATION FROM PUBLIC ACCESS

132. Discussions were based on document PCT/WG/8/12.

133. Delegations which took the floor expressed general support for the proposal, but emphasized the need for guidance on how the provisions should be applied, such as in the Administrative Instructions. In particular, some delegations requested clarity on the term “economic interests of any person” in proposed Rules 48.2(l)(ii) and 94.1(e)(ii). One delegation wondered whether the proposal to amend Rule 9.2 to require an Office to notify other Offices and the International Bureau of a suggestion made to the applicant that he should voluntarily correct his international application to comply with Rule 9.1 would really be desirable, as this could result in duplicated or redundant records, but stated that it did not propose to delete that amendment to Rule 9.2 at this stage.

134. In response to a comment from one delegation that the provisions to allow access to the file held by the designated or elected Office in Rule 94.2*bis* as proposed to be amended and Rule 94.3 appeared more restrictive than what was provided for in Article 30(2)(a), the Working Group agreed to further amend those Rules with a view to making a direct reference to Article 30(2)(a) in those Rules.

135. In response to concerns expressed by one delegation of the additional burden on receiving Offices and International Searching Authorities to provide access on request to documents contained in its file, the Working Group agreed to further amend proposed new Rules 94.1*bis* and 94.1*ter* with a view to making them optional rather than mandatory (“may” instead of “shall” provisions).

136. In response to a question by a representative of a user group, the International Bureau clarified that, where the International Bureau had not provided access to information in the file, the designated Office could request this information directly from the applicant if such information was required as evidence when considering a request for restoration of the right of priority.

137. The Working Group approved the proposed amendments to Rules 9, 48.2 and 94 of the Regulations as set out in Annex III to this Summary by the Chair with a view to their submission to the Assembly for consideration at its next session in October 2015, subject to possible further drafting changes to be made by the Secretariat.

AGENDA ITEM 25: TRANSMITTAL TO THE INTERNATIONAL BUREAU OF COPIES OF DOCUMENTS RECEIVED IN THE CONTEXT OF A REQUEST FOR RESTORATION OF RIGHT OF PRIORITY

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

139. All delegations which took the floor supported the proposal, subject to further drafting changes to Rule 26*bis*.3(h) and the addition of a new paragraph (h-*bis*) in Rule 26*bis*.3. The Working Group requested the International Bureau to modify the Receiving Office Guidelines

with a view to providing guidance on what types of information the receiving Office should withhold from transmission to the International Bureau on the basis of proposed new Rule 26*bis*.3(h-*bis*).

140. One delegation pointed to a possible need to amend paragraphs 166(C) and (O) of the Receiving Office Guidelines, since these paragraphs stated that it was preferable for the receiving Office to send declarations or evidence.

141. The Working Group approved the proposed amendments to Rules 26*bis* and 48.2(b) of the Regulations as set out in Annex IV to this Summary by the Chair with a view to their submission to the Assembly for consideration at its next session in October 2015, subject to possible further drafting changes to be made by the Secretariat.

AGENDA ITEM 26: DELAYS AND FORCE MAJEURE FOR ELECTRONIC COMMUNICATIONS

142. Discussions were based on document PCT/WG/8/22.

143. Delegations expressed general support for the purpose of the proposal to excuse delays due to unavailability of electronic communications services. However, in order to address concerns voiced by some delegations on how the provisions could be applied in a consistent manner, clarification was requested to be provided in the Receiving Office Guidelines, such as on the circumstances the receiving Office should consider before excusing a delay.

144. One delegation considered that the proposed amendment was encompassed by the existing wording “or other like reason in the locality where the interested party resides” in Rule 82*quater*.1(a). The delegation pointed out that general unavailability of electronic communications would not normally be accepted as a reason to excuse a delay to meet a time limit at its national Office if alternative filing means, such as postal services, would have been available to the applicant.

145. One delegation acknowledged the need to excuse a failure to meet a time limit due to failure of electronic communications services but considered that the reason “general unavailability of electronic communication services” proposed to be added would not fit into Rule 82*quater* when considering the other reasons cited in Rule 82*quater*.1(a), all of which had a much higher level of gravity. The delegation believed that the provisions should be applied on a case-by-case basis and considered that the proposed new provision might be too prescriptive. In response to the latter remark, the Chair clarified that the failure to meet a time limit had to be caused by the general unavailability of electronic communications services, and any evidence had to be proven to the satisfaction of the Office to excuse a delay in meeting a time limit.

146. One delegation highlighted that the Working Group may need to look at further issues concerned with problems caused by electronic communications in future. For example, there had been cases where the Office had not received a document uploaded through a system for electronic submissions of documents, even though the applicant had been issued with a filing receipt which demonstrated that he had taken an action.

147. A representative of a user group expressed a desire for the proposal to also cover loss of internet access and unavailability of the applicant’s internet service provider server.

148. The Working Group approved the proposed amendments to Rule 82*quater* as set out in Annex V to this Summary by the Chair and the Understanding as set out in paragraph 25 to document PCT/WG/8/22 and reproduced below, with a view to their submission to the Assembly for consideration at its next session in October 2015, subject to possible further drafting changes to be made by the Secretariat.

“Application of Rule 82^{quater}.1 with regard to a General Unavailability of Electronic Communications Services:

“In considering a request under Rule 82^{quater}.1 to excuse a delay in meeting a time limit that has not been met due to a general unavailability of electronic communication services, the Office, Authority or the International Bureau, should interpret general unavailability of electronic communications to apply to outages that affect widespread geographical areas or many individuals, as distinct from localized problems associated with a particular building or single user.”

149. The Working Group requested the International Bureau to consult on proposed modifications to any of the Receiving Office Guidelines, International Search and Preliminary Examination Guidelines and Administrative Instructions, as appropriate, to clarify how delays in meeting time limits due to failure in electronic communications services should be applied, including the possibility that such delays may not be excused where other means of communication were available.

AGENDA ITEM 27: LANGUAGES FOR COMMUNICATION WITH THE INTERNATIONAL BUREAU

150. Discussions were based on document PCT/WG/8/23.

151. Several delegations strongly welcomed the proposal to extend the range of languages in which applicants could communicate with the International Bureau, noting that this would make the system more accessible. Noting that the pilot extension was presently limited to communications made using ePCT, some delegations expressed their hope that it could be extended to other modes of communication as soon as possible.

152. A number of delegations, while generally supporting the concept, expressed certain concerns about the implementation. First, it should not be allowed to increase costs or reduce timeliness because of added workload. Second, it was essential to ensure that this did not result in difficulties for designated Offices by allowing the submission in alternative languages of documents which were important for the Office to be able to read. Finally, it would be desirable to provide better consultation and notice for national Offices concerning impending changes to ePCT which could have an effect on the PCT Regulations and on the Offices.

153. The Working Group agreed on the proposed amendments to Rule 92.2(d) set out in the Annex to document PCT/WG/8/23 and reproduced in Annex VI to this Summary by the Chair with a view to their submission to the Assembly for consideration at its next session, in October 2015, subject to possible further drafting changes to be made by the Secretariat.

AGENDA ITEM 28: OTHER MATTERS

154. The Working Group agreed to recommend to the Assembly that, subject to the availability of sufficient funds, one session of the Working Group should be convened between the October 2015 and September/October 2016 sessions of the Assembly, and that the same financial assistance should be made available to enable attendance of certain delegations at this session should be made available at the next session.

155. The International Bureau indicated that the ninth session of the Working Group was tentatively scheduled to be held in Geneva in May/June 2016.

AGENDA ITEM 29: SUMMARY BY THE CHAIR

156. The Working Group noted that the present document was a summary established under the responsibility of the Chair and that the official record would be contained in the report of the session.

AGENDA ITEM 30: CLOSING OF THE SESSION

157. The Chair closed the session on May 29, 2015.

[Annexes follow]

DRAFT AMENDMENTS TO THE PCT REGULATIONS
RECOMMENDED IN RELATION TO AGENDA ITEM 13

TRANSMITTAL BY THE RECEIVING OFFICE OF EARLIER
SEARCH AND/OR CLASSIFICATION RESULTS
TO THE INTERNATIONAL SEARCHING AUTHORITY

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Rule 12bis

Submission by the Applicant of Documents Relating to Earlier Search

~~Copy of Results of Earlier Search and of Earlier Application; Translation~~

12bis.1 Furnishing by the Applicant of Documents Related to Earlier Search in Case of Request Under Rule 4.12 ~~Copy of Results of Earlier Search and of Earlier Application; Translation~~

(a) Where the applicant has, under Rule 4.12, requested the International Searching Authority to take into account the results of an earlier search carried out by the same or another International Searching Authority or by a national Office, the applicant shall, subject to paragraphs (b) to (d) ~~(e) to (f)~~, submit to the receiving Office, together with the international application, a copy of the results of the earlier search, in whatever form (for example, in the form of a search report, a listing of cited prior art or an examination report) they are presented by the Authority or Office concerned.

~~(b) The International Searching Authority may, subject to paragraphs (c) to (f), invite the applicant to furnish to it, within a time limit which shall be reasonable under the circumstances:~~

~~(i) a copy of the earlier application concerned;~~

~~(ii) where the earlier application is in a language which is not accepted by the International Searching Authority, a translation of the earlier application into a language which is accepted by that Authority;~~

~~(iii) where the results of the earlier search are in a language which is not accepted by the International Searching Authority, a translation of those results into a language which is accepted by that Authority;~~

[Rule 12bis.1, continued]

~~(iv) a copy of any document cited in the results of the earlier search.~~

~~(b)~~ ~~(e)~~ Where the earlier search was carried out by the same Office as that which is acting as the receiving Office, the applicant may, instead of submitting the ~~copy~~ ~~copies~~ referred to in ~~paragraph (a)~~ ~~paragraphs (a) and (b)(i) and (iv)~~, indicate the wish that the receiving Office prepare and transmit ~~it~~ ~~them~~ to the International Searching Authority. Such request shall be made in the request and may be subjected by the receiving Office to the payment to it, for its own benefit, of a fee.

~~(c)~~ ~~(d)~~ Where the earlier search was carried out by the same International Searching Authority, or by the same Office as that which is acting as the International Searching Authority, no copy ~~or translation~~ referred to in ~~paragraph (a)~~ ~~paragraphs (a) and (b)~~ shall be required to be submitted under ~~that paragraph~~ ~~those paragraphs~~.

~~(e) Where the request contains a statement under Rule 4.12(ii) to the effect that the international application is the same, or substantially the same, as the application in respect of which the earlier search was carried out, or that the international application is the same, or substantially the same, as that earlier application except that it is filed in a different language, no copy or translation referred to in paragraphs (b)(i) and (ii) shall be required to be submitted under those paragraphs.~~

~~(d)~~ ~~(f)~~ Where a copy ~~or translation~~ referred to in ~~paragraph (a)~~ ~~paragraphs (a) and (b)~~ is available to ~~the receiving Office or the~~ International Searching Authority in a form and manner acceptable to it, for example, from a digital library ~~or in the form of the priority document~~, and the applicant so indicates in the request, no copy ~~or translation~~ shall be required to be submitted under ~~that paragraph~~ ~~those paragraphs~~.

12bis.2 Invitation by the International Searching Authority to Furnish Documents Related to
Earlier Search in Case of Request Under Rule 4.12

(a) The International Searching Authority may, subject to paragraphs (b) and (c)
~~paragraphs (e) to (f)~~, invite the applicant to furnish to it, within a time limit which shall be
reasonable under the circumstances:

(i) a copy of the earlier application concerned;

(ii) where the earlier application is in a language which is not accepted by the
International Searching Authority, a translation of the earlier application into a
language which is accepted by that Authority;

(iii) where the results of the earlier search are in a language which is not accepted by
the International Searching Authority, a translation of those results into a language
which is accepted by that Authority;

(iv) a copy of any document cited in the results of the earlier search.

(b) Where the earlier search was carried out by the same International Searching
Authority, or by the same Office as that which is acting as the International Searching Authority,
or where a copy or translation referred to in paragraph (a) is available to the International
Searching Authority in a form and manner acceptable to it, for example, from a digital library, or
in the form of the priority document, no copy or translation referred to in paragraph (a) shall be
required to be submitted under that paragraph.

[Rule 12bis.2, continued]

(c) Where the request contains a statement under Rule 4.12(ii) to the effect that the international application is the same, or substantially the same, as the application in respect of which the earlier search was carried out, or that the international application is the same, or substantially the same, as that earlier application except that it is filed in a different language, no copy or translation referred to in paragraphs (a)(i) and (ii) ~~paragraphs (b)(i) and (ii)~~ shall be required to be submitted under those paragraphs.

Rule 23bis

Transmittal of Documents Relating to Earlier Search or Classification

23bis.1 Transmittal of Documents Relating to Earlier Search in Case of Request Under

Rule 4.12

(a) The receiving Office shall transmit to the International Searching Authority, together with the search copy, any copy or translation referred to in Rule 12bis.1(a) related to an earlier search in respect of which the applicant has made a request under Rule 4.12, provided that any such copy or translation:

(i) has been submitted by the applicant to the receiving Office together with the international application;

(ii) has been requested by the applicant to be prepared and transmitted by the receiving Office to that Authority; or

(iii) is available to the receiving Office in a form and manner acceptable to it, for example, from a digital library in accordance with Rule 12bis.1(d).

(b) If not included in the copy of the results of the earlier search referred to in Rule 12bis.1(a), the receiving Office shall also transmit to the International Searching Authority, together with the search copy, a copy of the results of any earlier classification effected by that Office, if already available.

23bis.2 Transmittal of Documents Relating to Earlier Search or Classification for the Purposes of Rule 41.2

(a) For the purposes of Rule 41.2, where the international application claims the priority of one or more earlier applications filed with the same Office as that which is acting as the receiving Office and that Office has carried out an earlier search in respect of such an earlier application or has classified such earlier application, the receiving Office shall, subject to paragraphs (b), (d) and (e), transmit to the International Searching Authority, together with the search copy, a copy of the results of any such earlier search, in whatever form (for example, in the form of a search report, a listing of cited prior art or an examination report) they are available to the Office, and a copy of the results of any such earlier classification effected by the Office, if already available. The receiving Office may also transmit to the International Searching Authority any further documents relating to such an earlier search which it considers useful to that Authority for the purposes of carrying out the international search.

(b) Notwithstanding paragraph (a), a receiving Office may notify the International Bureau by [DATE] that it may, on request of the applicant submitted together with the international application, decide not to transmit the results of an earlier search to the International Searching Authority. The International Bureau shall publish any notification under this provision in the Gazette.

(c) At the option of the receiving Office, paragraph (a) shall apply *mutatis mutandis* where the international application claims the priority of one or more earlier applications filed with an Office different from the one which is acting as the receiving Office and that Office has carried out an earlier search in respect of such an earlier application or has classified such earlier application, and the results of any such earlier search or classification are available to the receiving Office in a form and manner acceptable to it, for example, from a digital library.

[Rule 23bis.2 continued]

(d) Paragraphs (a) and (c) shall not apply where the earlier search was carried out by the same International Searching Authority or by the same Office as that which is acting as the International Searching Authority, or where the receiving Office is aware that a copy of the earlier search or classification results is available to the International Searching Authority in a form or manner acceptable to it, for example, from a digital library.

(e) To the extent that, on [DATE], the transmission of the copies referred to in paragraph (a), or the transmission of such copies in a particular form, such as those referred to in paragraph (a), without the authorization by the applicant is not compatible with the national law applied by the receiving Office, that paragraph shall not apply to the transmission of such copies, or to the transmission of such copies in the particular form concerned, in respect of any international application filed with that receiving Office for as long as such transmission without the authorization by the applicant continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [DATE]. The information received shall be promptly published by the International Bureau in the Gazette.

Rule 41

Taking into Account Results of Earlier Search

41.1 *Taking into Account Results of Earlier Search* [in Case of a Request under Rule 4.12](#)

Where the applicant has, under Rule 4.12, requested the International Searching Authority to take into account the results of an earlier search and has complied with Rule 12*bis*.1 and:

(i) the earlier search was carried out by the same International Searching Authority, or by the same Office as that which is acting as the International Searching Authority, the International Searching Authority shall, to the extent possible, take those results into account in carrying out the international search;

(ii) the earlier search was carried out by another International Searching Authority, or by an Office other than that which is acting as the International Searching Authority, the International Searching Authority may take those results into account in carrying out the international search.

[41.2 *Taking into Account Results of Earlier Search in Other Cases*](#)

[\(a\) Where the international application claims the priority of one or more earlier applications in respect of which an earlier search has been carried out by the same International Searching Authority, or by the same Office as that which is acting as the International Searching Authority, the International Searching Authority shall, to the extent possible, take the results of any such earlier search into account in carrying out the international search.](#)

[Rule 41.2, continued]

(b) Where the receiving Office has transmitted to the International Searching Authority a copy of the results of any earlier search or of any earlier classification under Rule 23bis.2(a) or (b), or where such a copy is available to the International Searching Authority in a form and manner acceptable to it, for example, from a digital library, the International Searching Authority may take those results into account in carrying out the international search.

[Annex II follows]

DRAFT AMENDMENTS TO THE PCT REGULATIONS
RECOMMENDED IN RELATION TO AGENDA ITEM 15

INFORMATION CONCERNING NATIONAL PHASE ENTRY AND TRANSLATIONS

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Rule 86
The Gazette

86.1 *Contents*

The Gazette referred to in Article 55(4) shall contain:

(i) to (iii) *[no change]*

(iv) information, ~~if and to the extent furnished to the International Bureau by the designated or elected Offices, on the question whether the requirements provided for in Articles 22 or 39 have been complied with in respect of the international applications designating or electing the Office concerned~~ concerning events at the designated and elected Offices notified to the International Bureau under Rule 95.1 in relation to published international applications;

(v) *[No change]*

86.2 to 86.6 *[No change]*

Rule 95

~~Availability of Translations~~

Information and Translations from Designated and Elected Offices

95.1 Information Concerning Events at the Designated and Elected Offices

Any designated or elected Office shall notify the International Bureau of the following information concerning an international application within two months, or as soon as reasonably possible thereafter, of the occurrence of any of the following events:

(i) following the performance by the applicant of the acts referred to in Article 22 or Article 39, the date of performance of those acts and any national application number which has been assigned to the international application;

(ii) where the designated or elected Office explicitly publishes the international application under its national law or practice, the number and date of that national publication;

(iii) where a patent is granted, the date of grant of the patent and, where the designated or elected Office explicitly publishes the international application in the form in which it is granted under its national law, the number and date of that national publication.

~~95.1~~ 95.2 *Furnishing of Copies of Translations*

(a) *[No change]* At the request of the International Bureau, any designated or elected Office shall provide it with a copy of the translation of the international application furnished by the applicant to that Office.

(b) *[No change]* The International Bureau may, upon request and subject to reimbursement of the cost, furnish to any person copies of the translations received under paragraph (a).

[Annex III follows]

DRAFT AMENDMENTS TO THE PCT REGULATIONS
RECOMMENDED IN RELATION TO AGENDA ITEM 24

OMISSION OF CERTAIN INFORMATION FROM PUBLIC ACCESS

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Rule 9
Expressions, Etc., Not to Be Used

9.1 [No change] *Definition*

The international application shall not contain:

- (i) expressions or drawings contrary to morality;
- (ii) expressions or drawings contrary to public order;
- (iii) statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person (mere comparisons with the prior art shall not be considered disparaging *per se*);
- (iv) any statement or other matter obviously irrelevant or unnecessary under the circumstances.

9.2 *Noting of Lack of Compliance*

The receiving Office, ~~and~~ the International Searching Authority, the Authority specified for supplementary search and the International Bureau may note lack of compliance with the prescriptions of Rule 9.1 and may suggest to the applicant that he voluntarily correct his international application accordingly, in which case the receiving Office, the competent International Searching Authority, the competent Authority specified for supplementary search and the International Bureau, as applicable, shall be informed of the suggestion. ~~If the lack of compliance was noted by the receiving Office, that Office shall inform the competent International Searching Authority and the International Bureau; if the lack of compliance was noted by the International Searching Authority, that Authority shall inform the receiving Office and the International Bureau.~~

9.3 *[No change] Reference to Article 21(6)*

"Disparaging statements," referred to in Article 21(6), shall have the meaning as defined in Rule 9.1(iii).

Rule 48

International Publication

48.1 [No change]

48.2 Contents

(a) to (k) [No change]

(l) The International Bureau shall, upon a reasoned request by the applicant received by the International Bureau prior to the completion of technical preparations for international publication, omit from publication any information, if it finds that:

(i) this information does not obviously serve the purpose of informing the public about the international application;

(ii) publication of such information would clearly prejudice the personal or economic interests of any person; and

(iii) there is no prevailing public interest to have access to that information.

Rule 26.4 shall apply *mutatis mutandis* as to the manner in which the applicant shall present the information which is the subject of a request made under this paragraph.

[Rule 48.2, continued]

(m) Where the receiving Office, the International Searching Authority, the Authority specified for supplementary search or the International Bureau notes any information meeting the criteria set out under paragraph (l), that Office, Authority or Bureau may suggest to the applicant to request the omission from international publication in accordance with paragraph (l).

(n) Where the International Bureau has omitted information from international publication in accordance with paragraph (l) and that information is also contained in the file of the international application held by the receiving Office, the International Searching Authority, the Authority specified for supplementary search or the International Preliminary Examining Authority, the International Bureau shall promptly notify that Office and Authority accordingly.

48.3 to 48.6 [No change]

Rule 94

Access to Files

94.1 Access to the File Held by the International Bureau

(a) [No change] At the request of the applicant or any person authorized by the applicant, the International Bureau shall furnish, subject to reimbursement of the cost of the service, copies of any document contained in its file.

(b) The International Bureau shall, at the request of any person but not before the international publication of the international application and subject to Article 38 [and paragraphs \(d\) to \(g\)](#), furnish, ~~subject to the reimbursement of the cost of the service,~~ copies of any document contained in its file. [The furnishing of copies may be subject to reimbursement of the cost of the service.](#)

(c) [No change] The International Bureau shall, if so requested by an elected Office, furnish copies of the international preliminary examination report under paragraph (b) on behalf of that Office. The International Bureau shall promptly publish details of any such request in the Gazette.

[\(d\) The International Bureau shall not provide access to any information contained in its file which has been omitted from publication under Rule 48.2\(l\) and to any document contained in its file relating to a request under that Rule.](#)

[Rule 94.1, continued]

(e) Upon a reasoned request by the applicant, the International Bureau shall not provide access to any information contained in its file and to any document contained in its file relating to such a request, if it finds that:

(i) this information does not obviously serve the purpose of informing the public about the international application;

(ii) public access to such information would clearly prejudice the personal or economic interests of any person; and

(iii) there is no prevailing public interest to have access to that information.

Rule 26.4 shall apply *mutatis mutandis* as to the manner in which the applicant shall present the information which is the subject of the request made under this paragraph.

(f) Where the International Bureau has omitted information from public access in accordance with paragraphs (d) or (e), and that information is also contained in the file of the international application held by the receiving Office, the International Searching Authority, the Authority specified for supplementary search or the International Preliminary Examining Authority, the International Bureau shall promptly notify that Office and Authority accordingly.

(g) The International Bureau shall not provide access to any document contained in its file which was prepared solely for internal use by the International Bureau.

94.1bis Access to the File Held by the Receiving Office

(a) At the request of the applicant or any person authorized by the applicant, the receiving Office may provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(b) The receiving Office may, at the request of any person, but not before the international publication of the international application and subject to paragraph (c), provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(c) The receiving Office shall not provide access under paragraph (b) to any information in respect of which it has been notified by the International Bureau that the information has been omitted from publication in accordance with Rule 48.2(I) or from public access in accordance with Rule 94.1(d) or (e).

94.1ter Access to the File Held by the International Searching Authority

(a) At the request of the applicant or any person authorized by the applicant, the International Searching Authority may provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(b) The International Searching Authority may, at the request of any person, but not before the international publication of the international application and subject to paragraph (c), provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

[Rule 94.1ter, continued]

(c) The International Searching Authority shall not provide access under paragraph (b) to any information in respect of which it has been notified by the International Bureau that the information has been omitted from publication in accordance with Rule 48.2(I) or from public access in accordance with Rule 94.1(d) or (e).

(d) Paragraphs (a) to (c) shall apply *mutatis mutandis* to the Authority specified for supplementary search.

94.2 Access to the File Held by the International Preliminary Examining Authority

(a) At the request of the applicant or any person authorized by the applicant, ~~or, once the international preliminary examination report has been established, of any elected Office,~~ the International Preliminary Examining Authority shall provide access to any document ~~furnish, subject to reimbursement of the cost of the service, copies of any document~~ contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(b) At the request of any elected Office, but not before the establishment of the international preliminary examination report and subject to paragraph (c), the International Preliminary Examining Authority shall provide access to any document contained in its file. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

(c) The International Preliminary Examining Authority shall not provide access under paragraph (b) to any information in respect of which it has been notified by the International Bureau that the information has been omitted from publication in accordance with Rule 48.2(I) or from public access in accordance with Rule 94.1(d) or (e).

94.2bis Access to the File Held by the Designated Office

If the national law applicable by any designated Office allows access by third parties to the file of a national application, that Office may allow access to any documents relating to the international application, contained in its file, to the same extent as provided by the national law for access to the file of a national application, but not before the earliest of the dates specified in Article 30(2)(a). The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

94.3 Access to the File Held by the Elected Office

If the national law applicable by any elected Office allows access by third parties to the file of a national application, that Office may allow access to any documents relating to the international application, including any document relating to the international preliminary examination, contained in its file, to the same extent as provided by the national law for access to the file of a national application, but not before the earliest of the dates specified in Article 30(2)(a) ~~the international publication of the international application~~. The furnishing of copies of documents may be subject to reimbursement of the cost of the service.

[Annex IV follows]

DRAFT AMENDMENTS TO THE PCT REGULATIONS
RECOMMENDED IN RELATION TO AGENDA ITEM 25

TRANSMITTAL TO THE INTERNATIONAL BUREAU OF COPIES OF DOCUMENTS
RECEIVED IN THE CONTEXT OF A REQUEST FOR RESTORATION OF RIGHT OF
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Rule 26bis

Correction or Addition of Priority Claim

26bis.1 and 26bis.2 [No change]

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

(a) to (e) [No change]

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

(g) [No change]

(h) The receiving Office shall promptly:

(i) [no change] notify the International Bureau of the receipt of a request under paragraph (a);

(ii) [no change] make a decision upon the request;

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

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

(iv) subject to paragraph (h-bis), transmit to the International Bureau all documents received from the applicant relating to the request under paragraph (a) (including a copy of the request itself, any statement of reasons referred to in paragraph (b)(ii) and any declaration or other evidence referred to in paragraph (f)).

(h-bis) The receiving Office shall, upon a reasoned request by the applicant or on its own decision, not transmit documents or parts thereof received in relation to the request under paragraph (a), if it finds that

(i) this document or part thereof does not obviously serve the purpose of informing the public about the international application;

(ii) publication or public access to any such document or part thereof would clearly prejudice the personal or economic interests of any person; and

(iii) there is no prevailing public interest to have access to that document or part thereof.

Where the receiving Office decides not to transmit documents or parts thereof to the International Bureau, it shall notify the International Bureau accordingly.

(i) and (j) [No change]

Rule 48

International Publication

48.1 [No change]

48.2 Contents

(a) [No change]

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

(i) to (vi) [No change]

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

~~(viii) [Deleted] where applicable, an indication that the applicant has, under Rule 26*bis*.3(f), furnished copies of any declaration or other evidence to the International Bureau.~~

(c) to (k) [No change]

48.3 to 48.6 [No change]

[Annex V follows]

DRAFT AMENDMENTS TO THE PCT REGULATIONS
RECOMMENDED IN RELATION TO AGENDA ITEM 26

DELAYS AND FORCE MAJEURE FOR ELECTRONIC COMMUNICATIONS

[There are no changes to these draft amendments compared to those set out in the Annex to document PCT/WG/8/22.]

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Rule 82^{quater}

Excuse of Delay in Meeting Time Limits

82^{quater}.1 Excuse of Delay in Meeting Time Limits

(a) Any interested party may offer evidence that a time limit fixed in the Regulations for performing an action before the receiving Office, the International Searching Authority, the Authority specified for supplementary search, the International Preliminary Examining Authority or the International Bureau was not met due to war, revolution, civil disorder, strike, natural calamity, [a general unavailability of electronic communications services](#) or other like reason in the locality where the interested party resides, has his place of business or is staying, and that the relevant action was taken as soon as reasonably possible.

(b) [No change] Any such evidence shall be addressed to the Office, Authority or the International Bureau, as the case may be, not later than six months after the expiration of the time limit applicable in the given case. If such circumstances are proven to the satisfaction of the addressee, delay in meeting the time limit shall be excused.

(c) [No change] The excuse of a delay need not be taken into account by any designated or elected Office before which the applicant, at the time the decision to excuse the delay is taken, has already performed the acts referred to in Article 22 or Article 39.

[Annex VI follows]

DRAFT AMENDMENTS TO THE PCT REGULATIONS
RECOMMENDED IN RELATION TO AGENDA ITEM 27

LANGUAGES FOR COMMUNICATION WITH THE INTERNATIONAL BUREAU

[There are no changes to these draft amendments compared to those set out in the Annex to document PCT/WG/8/23.]

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Rule 92
Correspondence

92.1 [No change]

92.2 Languages

(a) *[No change]* Subject to Rules 55.1 and 55.3 and to paragraph (b) of this Rule, any letter or document submitted by the applicant to the International Searching Authority or the International Preliminary Examining Authority shall be in the same language as the international application to which it relates. However, where a translation of the international application has been transmitted under Rule 23.1(b) or furnished under Rule 55.2, the language of such translation shall be used.

(b) *[No change]* Any letter from the applicant to the International Searching Authority or the International Preliminary Examining Authority may be in a language other than that of the international application, provided the said Authority authorizes the use of such language.

(c) *[Remains deleted]*

(d) Any letter from the applicant to the International Bureau shall be in English, ~~or~~ French or any other language of publication as may be permitted by the Administrative Instructions.

(e) *[No change]* Any letter or notification from the International Bureau to the applicant or to any national Office shall be in English or French.

92.3 and 92.4 [No change]

[End of Annex VI and of document]