

Working Group on the Digital Access Service for Priority Documents

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POTENTIAL FOR IMPROVEMENTS TO DAS WITHIN THE EXISTING SYSTEM ARCHITECTURE

Document prepared by the Secretariat

I. SUMMARY

1. The current WIPO Digital Access Service for Priority Documents (“DAS”) system has two main concerns associated with it:
 - (i) Making a document available through the system is too complicated and frequently goes wrong for first time users.
 - (ii) There is a slight possibility of errors leading to a document being made available to the public incorrectly by the Office of second filing.
2. This document contains proposals for improvements which could be made to DAS within the existing system architecture, primarily by introducing applicant accounts to facilitate the use of the applicant portal and passing more bibliographic information between Offices to assist error checking and reliable tracking of document exchanges.
3. If Member States decide to adopt the proposals by Japan set out in document WIPO/DAS/PD/WG/3/6, introducing “Route D” as a complete replacement for present Routes A and C, the specific proposals set out in this document will not be relevant and this document will be relevant only as background information to show existing and potential features of the current system architecture which may not be available under Route D.

II. ISSUES TO BE ADDRESSED

4. The issues to be addressed with regard to the present system fall into two different categories, namely, (i) the ease of making a document available under the present system, and (ii) avoiding and mitigating errors which may be made by both applicants and Offices, as set out in the following paragraphs.

Ease of Making a Document Available Under the Present System

5. The exact details of how to make a document available through DAS are different in each participating Office of first filing. However, there are two broad categories of arrangement, as described below (“Route A” and “Route C”; note that “Route B” is currently not used by any Office).

“Route A” Offices (Australia, Finland, International Bureau, Spain, United Kingdom)

6. For applications first filed in a “Route A” Office:
 - (i) the applicant makes a request to the Office to make the document available, generally either by sending a letter or form to the Office, or else by ticking a checkbox on the application form at the time of filing.
 - (ii) The Office sends to DAS either a copy of the document for storage in a digital library hosted by the International Bureau, or else a reference allowing it to be found in a local digital library, together with contact details (physical or, normally, electronic mailing address) for the applicant.
 - (iii) The International Bureau sends the applicant an access code.
 - (iv) The applicant logs into the DAS applicant portal to set the list of Offices which are permitted to access the document, using the country code and application number as a “user id” and the access code as a “password”.
7. The system also allows the Office of first filing to set the initial list of Offices which are to have access to a priority document at the time that the document is registered with the system, though at present only the Spanish Patent and Trademark Office offers that service.

“Route C” Offices (Japan, Republic of Korea, United States of America)

8. For applications first filed in a “Route C” Office:
 - (i) The applicant obtains an access code from the Office, either by special request or using a code routinely printed on a standard communication, such as a filing receipt.
 - (ii) The applicant logs into the DAS applicant portal using the country code and application number as a “user id” and the access code as a “password”. The system requests the user’s name and a contact e-mail address, but does not permit any further action to be taken by the applicant at this stage.
 - (iii) The system sends the application number and access code to the Office for verification. If this is successful (the application number and access code match and any other necessary steps have been taken, such as the separate submission of a “confidentiality waiver” in the case of the United States Patent and Trademark Office), the Office returns a confirmation that the document is available.
 - (iv) The system sends an e-mail to the address given by the applicant in step (ii) confirming that the Office reports that the document is available.
 - (v) The applicant logs in again and sets the list of Offices which are permitted to access the document.

Problems with Routes A and C

9. The process involves multiple dependent steps. It may not be obvious to applicants that all of them are needed unless they have read the instructions very carefully and failure to complete any of the steps will mean that the document is not available to the Office of second filing.

Possibility of Errors

10. The system is highly secure against release of documents directly to third parties or Offices which have not been given the right to access the document. However, there remains a risk that an incorrect application number may be given to the system (either as a result of an error by an applicant at the Office of second filing or because of a transcription error by the Office itself). If that other (incorrect) application is known to DAS and the applicant for that application happens to have permitted access to the document for the relevant Office of second filing, the document will be successfully retrieved by DAS. If the error is not noticed by the Office of second filing, that application may then be made publicly available on the file of an application which was not intended to claim priority from it.
 11. Essentially the same risk exists at the moment for paper priority documents being filed with the wrong application. However, the increased degree of automation possible using the electronic exchange of priority documents increases the risk that the error will not be spotted before the document is made available to the public and the increased use of public file inspection systems means that the risk of such a document then being seen by a third party before it ought to have been published is also significantly increased.
- III. Availability of Information to Applicants Under the Present System
12. The DAS applicant portal at present has two main functions:
 - (a) it allows the applicant to specify which Offices should have access to the priority document:

*Figure 1
Current Access Control List Update Screen
(from demo system showing many Offices not yet participating)*

Access Control List			
Select	Office code ↕	State or Office of second filing ↕	Access Granted on ↕
<input checked="" type="checkbox"/>	CN	6 Xituchenglu, Jimen Bridge, Haidian District, P.O. Box 8020, Beijing 100088	May 10, 2011
<input checked="" type="checkbox"/>	EP	Phoenix Support Help Desk Att. C. Hamm, Room S00G12, P.O. Box 5818 NL- 2280 HV Rijswijk	May 13, 2011
<input type="checkbox"/>	JP	403 Kasumigaseki 3-chome, Chiyoda-ku, TOKYO 100-8915	
<input checked="" type="checkbox"/>	US	Commissioner for Patents, P.O.Box 1450 Alexandria VA 22313-1450	May 13, 2011
<input type="checkbox"/>	CA	Canadian Patent Office The Commissioner of Patents Ottawa Ontario K1A 0C9	
<input type="checkbox"/>	AU	IP Australia P.O. Box 200 Woden ACT 2606	
<input type="checkbox"/>	ES	Paseo de la Castellana 75, 28020 Madrid	
<input type="checkbox"/>	FR	Service de l'Examen des Demandes PCT 97, boulevard Carnot F-59040 Lille Cedex	
<input type="checkbox"/>	IL	Head, PCT Division Israel Patent Office 4 Hasadna Street, Talpiot Jerusalem 93420	
<input type="checkbox"/>	KR	Government Complex-Daejeon 139 Seonsa-ro, Seo-gu Daejeon 302-701	
<input checked="" type="checkbox"/>	SE	Valhallavagen 136S-102 42 Stockholm 5 , Stockholm	May 13, 2011
<input type="checkbox"/>	SG	Intellectual Property Office of Singapore (IPOS) 51 Bras Basah Road #04-01 Plaza By The Park Singapore 189554	
<input type="checkbox"/>	ZA	South African Patents and Trade Marks Office Private Bag X400 Pretoria 0001	
<input checked="" type="checkbox"/>	FI	Arkadiankatu 6A FIN-00100 Helsinki	May 13, 2011
<input type="checkbox"/>	IB	Bureau international de l'OMPI 34, chemin des Colombettes Geneve 20 12111	

- (b) it shows information about the dates when access were given to different Offices and whether they have in fact accessed the document or not:

*Figure 2
Current Access Control List Information Screen
(from demo system showing Offices not yet participating)*

Query Pdoc
Update Access Control List
Update Control Code
Update Applicant Email

Entry Details - Route A			
Application info	Applicant Confirmation Date	OFF Confirmation Date	Publicly Available Date
GB 0990001.0	Sep 11, 2009		<input style="width: 80%;" type="text"/> <input type="button" value="Update"/>

Access Control List				
	OSF Code ↕	State or Office of second filing ↕	Access Granted on ↕	First Accessed on ↕
<input checked="" type="checkbox"/>	SE	Valhallavagen 136S-102 42 Stockholm 5 , Stockholm	May 13, 2011	
<input checked="" type="checkbox"/>	CN	6 Xituchenglu, Jimen Bridge, Haidian District, P.O. Box 8020, Beijing 100088	May 10, 2011	
<input checked="" type="checkbox"/>	FI	Arkadiankatu 6A, FIN-00100 Helsinki	May 13, 2011	
<input checked="" type="checkbox"/>	EP	Phoenix Support Help Desk Att. C. Hamm, Room S00G12, P.O. Box 5818 NL- 2260 HV Rijswijk	May 13, 2011	
<input checked="" type="checkbox"/>	US	Commissioner for Patents, P.O.Box 1450 Alexandria VA 22313-1450	May 13, 2011	

[View certificate](#)

13. The information function is very important within the system for two reasons:
- (i) It gives feedback to applicants allowing them the certainty that documents will definitely be available to a particular Office of second filing and informing them when access has actually occurred. Otherwise, the applicant will be dependent on the IT systems or notifications of the Offices of first and second filing to discover whether any transfer has occurred and such systems and notifications vary widely.
 - (ii) It offers certification of the fact that an applicant had in fact made the document available to the Office – in cases where a system error means that an Office cannot in fact retrieve a priority document, this will (subject to some, usually more generous, exceptions) guarantee applicants that they will not lose their priority date as a result of events which were not their fault, as long as the document is somehow made available to the Office within 2 months of the applicant being informed that there is a problem (see paragraph 14 of the Framework Provisions).
14. Assuming that the system retains the same basic model, the International Bureau believes that the applicant portal should be improved to provide more information and to help mitigate the complexity of the process of making a document available through DAS.
- IV. PROPOSALS
15. The following proposals relate to developments of the present system architecture, which will not be relevant if the Working Group decides to adopt “Route D” as a complete replacement for Routes A and C (see paragraphs 34 to 36, below).

Information to Be Passed by System

16. At present, the system only requires Offices of first and second filing to pass the country code and application number of a document. The system has the ability to store additional bibliographic details, but in general, this is not sent.

Information given by OFF

17. It is proposed that the Office of first filing should make available the following information relating to the priority document in machine-readable format, to be sent either on registration of the priority document with the system, or together with the priority document when it is retrieved by an Office of second filing:
- (i) The country code and application number, as at present.
 - (ii) The filing date.
 - (iii) The applicant's name.
 - (iv) The title of the invention.
 - (v) The language of the application (assisting machine translation of the other details).
 - (vi) Any IPC codes which have been given to the priority document.
18. At least items (ii) to (iv) will already appear on the priority document as a cover page, but usually as an image, which does not allow the system to extract the information.

Information given by OSF

19. The Office of second filing would then send the following information as part of a request for a priority document:
- (i) The country code and application number of the priority document, as at present.
 - (ii) The filing date of the priority document.
 - (iii) The number of the later application claiming priority from the priority document.
 - (iv) The name of the applicant for the later application.
 - (v) The title of the invention in the later application.
 - (vi) The language of the later application (assisting machine translation of the other details).

Checking a request for document retrieval

20. The system should check the filing date given by the Office of second filing against the filing date for the relevant application as recorded by the Office of first filing. If the dates matched – and the applicant had given permission for that Office of second filing to retrieve the document as at present – the document would be released.

21. If the dates did not match, the system would return one of two possible error messages:
 - (i) If the applicant had not given permission for the Office of second filing to retrieve the document, a simple "document not known or access not permitted" error message would be sent.
 - (ii) If the applicant had given permission, the system would not return the document, but would instead send back a warning message containing the relevant bibliographic details, including the filing date given by the Office of first filing so that the Office of second filing could then review that information and decide whether it was appropriate to order the document using the date given by the Office of first filing or rather to go back to the applicant to check the priority claim details.
22. The proposed form of the second error message is important to deal effectively with the fact that a surprisingly large number of international applications (and presumably similarly with national applications) are found to have a disparity between the dates quoted by the applicant in priority claims and those which appear on the priority documents issued by the Office of first filing. It is desirable for the Office of second filing to be able to make ex-officio "corrections" for the purpose of retrieving documents where the bibliographic data makes clear that the application number is in fact the intended one.
23. The other bibliographic information which is proposed to be passed is of little value for automated checks because it is to be expected that these will be different between Offices of first and second filing:
 - (a) The applicants, in the case of companies, will often be different and even the name of the same natural person may be rendered in different character sets used by different Offices.
 - (b) The titles of inventions will often be in different languages and may have changed in line with developments within the priority year.
 - (c) The IPC codes will frequently not have been applied at all, may be provisional codes assigned for the purposes of distribution of the files to examining groups and may in any case differ.
24. Nevertheless, this information will be very useful to both Offices and applicants in checking quickly whether a priority claim is as expected.

Information available to applicant from OFF

25. The fact of an attempt to retrieve a priority document by an Office of second filing would be reported back to the applicant at the Office of first filing through the DAS applicant portal. This might result in enhanced version of the information screen shown in Figure 2, such as the following:

*Figure 3
Proposed Revised Information Available to Applicant at Office of First Filing*

OSF Code	State or Office of second filing	Access Granted on	Retrieval Requests
FI	National Board of Patents and Registration of Finland	April 3, 2011	May 6, 2011 (successful) <i>Application:</i> FI 20111234 (May 2, 2011) <i>Applicant:</i> Smith Industries (FI) Corp. <i>Title (fi):</i> Keksintö <i>Title (en - machine translation):</i> An invention
GB	United Kingdom Intellectual Property Office	April 3, 2011	May 15 (successful) <i>Application:</i> GB 1101234.5 (May 3, 2011) <i>Applicant:</i> Smith Industries (GB) Co. <i>Title (en):</i> An invention May 26 (transmission to OSF still pending) <i>Application:</i> GB 1101235.9 (May 3, 2011) <i>Applicant:</i> Smith Industries (GB) Co. <i>Title (en):</i> An invention
JP	Japan Patent Office	April 3, 2011	
US	United States Patent and Trademark Office	[access not granted]	May 26 (refused) <i>Application:</i> US 11/456,789 (May 6, 2011) <i>Applicant:</i> Jones Corporation <i>Title (en):</i> A different invention

26. Updates to this list might be notified to applicants by e-mail. Assuming that the applicant portal is developed to allow an applicant account-based system (see paragraph 30, below), the applicant could choose whether to receive (a) detailed information sent by e-mail (more convenient) or (b) an indication that new information is available in their account (more secure), such as:

(a) *“WIPO DAS Retrieval Request Refused*

“The United States Patent and Trademark Office has requested a copy of your application AU 2010012345 for the purpose of a priority claim from application US 11/456,789 (Jones Corporation) titled “A different invention”.

“This request was refused because you have not permitted access to this application for the United States Patent and Trademark Office.

“If you recognize this patent application and intended it to be retrieved through DAS, you should log into the WIPO DAS applicant portal, give access permission to the United States Patent and Trademark Office and then contact that Office to ensure that they make a further attempt to retrieve it.

“If you do not recognize this patent application, it is most likely an error in the bibliographic data which will be corrected. There is no need to worry. Your priority document remains confidential.”

(b) *“WIPO DAS Retrieval Request Refused*

“A request by the United States Patent Office to retrieve one of your applications registered with the WIPO Digital Access Service for Priority Documents has been refused. Please check the WIPO DAS applicant portal for details.”

27. Ideally, the system would in fact take an even more active approach and:
- (a) for retrieval requests which were successful but not recognized by the applicant at the Office of first filing, allow that applicant to send a message directly to the Office of second filing asking them to check the priority claim carefully.
 - (b) for retrieval requests which were initially refused, include a button on the failure notice giving the option to open up access and push the document to the Office of second filing in a single click if access was intended.
28. It should be emphasized that this would not be intended as placing the burden of checking that work was done correctly on the applicant at the Office of first filing, but rather of allowing him, as the person most likely to be adversely affected by errors, an opportunity to be aware of errors which may prejudice his interests and to mitigate them.

Level of Security

29. Clearly, this arrangement does not provide a perfect defence against errors, since there will generally be many applications sharing a filing date at any particular Office so that errors in the final few digits of the application number may allow a false match. However, it reduces the risks to be lower than those which presently exist for paper-based document transmissions and gives the applicant at the Office of first filing a real opportunity to become aware of any errors which are made and to ensure that they are rectified before any damage is done.

Account-based Applicant Portal

30. The current DAS applicant portal is used on a “per application” basis. This means that each application number is, in effect, a user id and each access code is the password relating to that user id. In response to request from Member States when the system was first created, the International Bureau developed most of a system allowing applicants instead to have a single user account to manage access to all of their applications. Work on this system was put on hold when the proposal for an alternative system architecture was received, but essentially all that remains to be done is integration with the new WIPO Identity Management System and testing. If completed and brought into use, it would have the following features:
- (a) Each application would need its access code only once, to associate it with a portfolio of applications managed through a single WIPO account. After that, the access code would become invalid for any further use and would not need to be remembered or managed by the applicant.
 - (b) Alternatively, if permitted by the relevant Office of first filing, the applicant could give his WIPO account customer id to the Office of first filing (who could even associate it with a national profile so that it only needed to be given once) and the Office of first filing could register the application directly with the WIPO account, removing the need for any code to be transmitted at all.

- (c) The applicant would be able to choose whether to receive notifications for some or all of the following events:
 - (i) registration of a new application with DAS;
 - (ii) successful retrieval requests by an Office of second filing; and
 - (iii) failed retrieval requests by an Office of second filing.
- (d) The applicant would be able to set “default” access rights for Offices where subsequent filings are most commonly made, so that it would only be necessary to visit the portal to deal with error messages or to add or delete access for Offices where applications claiming priority were being made in a different set of Offices from the default values.
- (e) The applicant would be able to set access rights for multiple applications in a single action.
- (f) The extra steps which applicants currently need to take for “Route C” applications could be hidden, allowing applicants to see exactly the same screens as “Route A” applications except in the case where association of the application with the account fails (for example, because a step required at the Office of first filing has not been taken, such as the filing of a confidentiality waiver at the United States Patent and Trademark Office). That is, in the list of actions set out in paragraph 8, above, the applicant would go straight from action (i) (obtaining the access code) to action (v) (setting the access rights, albeit provisionally pending confirmation from the Office of first filing) and would only see further steps in the event that the Office of first filing reported a problem.
- (g) In a later version, based on technology currently being tested in the PCT Online Services “ePCT” system, the applicant would be able to transfer ownership rights for any particular application to a different account in case of assignment or staff changes, and to give information viewing rights to applicants at the Offices of second filing without relinquishing control over the access rights for that application or the viewing rights for any other applications in the portfolio.

Improvements to Requesting Use of the System

- 31. Much of the confusion in the present system is a result of the significantly different processes required at the various Offices of first filing to add an application to the system. Ideally, adding an application to DAS should be a single action undertaken before the Office of first filing, being one of the following:
 - (a) Checking a box on the application form at the time of filing;
 - (b) Sending a letter or form; or
 - (c) A single click option from a secure online file inspection system which can be selected by an authorized representative.
- 32. Ideally, in any of these cases, the action should permit the option of supplying a WIPO account customer id, with which to associate the application (removing the need to generate an access code) and a list of two letter codes for the Offices which should be permitted access, removing the need to visit the WIPO account in most cases.

33. Clearly for the Offices which have chosen to use Route C for legal reasons, some consideration will need to be given to how these can be implemented effectively and legally. However, given that all Offices which currently use Route C have sophisticated IT systems, it should be possible to turn a request made through a secure file inspection system to make a priority document available to DAS into a combined confidentiality waiver request (where required) and specific request to transfer the relevant information, overcoming the legal obstacles while hiding the additional steps of the process from the applicant by performing them automatically.

V. RELATIONSHIP BETWEEN THESE PROPOSALS AND "ROUTE D"

34. As noted in paragraph 3, above, these proposals relate to development of the existing system architecture and are not directly applicable to "Route D" as proposed by Japan in document WIPO/DAS/PD/WG/3/6. Adoption of that route would mean that the DAS applicant portal might no longer be used since:
- (a) it would be a security risk to use the access code generated in that route to give access to the applicant portal if it is also transmitted to potentially many other parties to send to Offices of second filing;
 - (b) it would introduce too much complication to provide a second code specifically for use with the applicant portal; and
 - (c) there may be insufficient incentive for Offices of first filing to develop systems of associating an application directly with an account at the DAS applicant portal if this is not essential for allowing access to applications by other Offices.
35. It should also be noted that it is highly undesirable to introduce Route D in addition to Routes A and C because of the complication that this would cause in understanding all the possible options which might apply depending on which Offices of first and second filing were used. Route D should only be used as a complete replacement for Routes A and C. Consequently, if that proposal is adopted, the applicant portal would also only remain for Route A and C applications as a transitional measure while all Offices moved over fully to the new system.
36. Consequently, under Route D, it would depend on Offices of first and second filing to ensure that their systems give enough information to applicants to be certain that priority document transfers had occurred successfully since there would be little scope for providing this information through a common central service.

37. *The Working Group is invited to consider the proposals in this document.*

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