

## 专利合作条约（PCT）工作组

### 第十五届会议

2022 年 10 月 3 日至 7 日，日内瓦

### PCT 最低限度文献：PCT 实施细则拟议修正案

欧洲专利局和美利坚合众国提交的文件

#### 摘要

1. 如文件 PCT/WG/15/12 所述，PCT 最低限度文献工作队（“工作队”）在审查 PCT 最低限度文献方面取得了很大进展。在 PCT 国际单位会议（MIA）第二十九届会议（2022 年 6 月 20 日至 22 日）之后，工作队最终确定了在 MIA 该届会议期间讨论的 PCT 实施细则和行政规程拟议修正案。定稿的提案载于本文件的附件，并在下文中进行介绍。本文件请工作组审议这些提案，以便在 2023 年向 PCT 大会提交拟议的细则修正案。如果工作组同意向 PCT 大会提交拟议的细则修正案，其预计生效日期为 2026 年 1 月 1 日，以确保在下一轮重新指定国际单位时能够将这些修正案纳入考虑（目前的 ISA/IPEA 协议于 2027 年 12 月 31 日终止）。

#### PCT 实施细则拟议修正案

2. 本文件附件一载有细则 34、36 和 63 的拟议修正案。细则 34 和 36 的拟议修正案与提交给 MIA 上届会议的修正案（见文件 PCT/MIA/29/5）相同；细则 63 的拟议修正案旨在使该细则所规定的要求与细则 36 的拟议要求相一致。对这些细则的拟议修正案介绍如下：

- (a) 建议将所有国际检索单位的专利文献集纳入 PCT 最低限度文献，无论其官方语言是什么，并要求国际检索单位根据 PCT 行政规程中明确规定的技术和可及性要求提供其专利文献以供参考。因此，建议修改细则 36.1，增加新的(ii)，并在拟议的细则 34.1(b)(i)中添加对新细则 36.1(ii)的提及。

(b) 建议在细则 34 中避免任何基于语言的标准。同时，建议在 PCT 最低限度文献中纳入未被指定为国际检索单位的主管局的专利文献集，如果该主管局已按照 PCT 行政规程中规定的技术和可及性要求（与对国际检索单位的要求相同）提供其专利文献集以供参考。此外，建议明确规定，主管局按照行政规程中规定的要求提供其文献集时，应相应地通知国际局。这一建议体现在细则 34.1 的拟议(b) (i) 和(d) (i) 中。

(c) 建议澄清技术和可及性要求将适用于拟议细则 34.1 的(a)所定义的所有“专利文献”。这一建议体现在细则 34.1 的拟议(a) 和(b) (i) 中。拟议细则 34.1(a)规定了本细则中“专利文献”的定义，细则 34.1(b) (i) 要求(a)定义的“专利文献”须符合技术和可及性要求。

(d) 考虑到实用新型文献的重要性和一些主管局在多个场合表达的实际关切，建议在 PCT 最低限度文献中纳入实用新型文献，但仅作为一个可选的推荐部分。任何主管局的实用新型文献都可以纳入 PCT 最低限度文献，只要它们是按照行政规程中规定的技术和可及性要求提供（与对专利文献的要求相同）。这一建议体现在拟议的细则 34.1(c) 中。

(e) 建议修改细则 34.1，增加新的(d) 和(e)。拟议的新(d)是关于主管局在按照行政规程规定的要求提供其文献集时应执行的工作任务，拟议的新(e)是关于国际局在这方面应执行的工作任务（确认专利和实用新型文献的可用性，在公报上公布有关文献的详细信息以及它们成为最低限度文献的日期，管理包含单位文档的储存库）。这两段将适用于国际检索单位和其他主管局的文献。

(f) 建议删除该细则目前的(d)（重新编号为(f)）中方括号内已过时的示例。这一建议已在工作队第一次会议上得到了工作队的一致支持。此外，建议进一步修改重新编号为(f)的段落，以明确规定在重新公布申请的所有情况下，如果后续公布的版本中没有新增的事项，国际检索单位只需在其文献中保留首次公布的版本。在回答在 MIA 上届会议上收到的一条评论意见（见文件 PCT/MIA/29/10 号文件第 48 段）时，所作的澄清是，由于修改不应超出申请在提交时作出的公开，通常后续公布的版本中不应包含超出申请在提交时所载内容的新增事项。如果一些国家的规定允许后续公布的版本在某些情况下包含新增事项，那么相关主管局应仅提供包含新增事项的后续公布的版本，作为 PCT 最低限度文献的一部分以供参考。这样一来，国际检索单位就不会对它们需要保留在文献中的版本有任何疑问。

(g) 建议为 PCT 最低限度文献内容的目的澄清“公布”的含义，此处不仅指申请，也包括专利。因此，建议在细则 34.1 目前的(f)（重新编号为(g)）中，在“申请”后添加“专利”一词。

(h) 就细则 36 而言，除了上文(a)建议的新增一个(ii)外，还建议从该细则中删除对工作人员具备所要求的语言能力的要求，并将对工作人员能够在所要求的技术领域进行检索的要求移至(i)。此外，建议修改(iii)的措辞，参考行政规程，使用更新的表述方式。

(i) 建议将细则 63 规定的要求与细则 36 的拟议要求保持一致。因此，建议在细则 63.1 中添加与细则 36.1 相同的新的(ii)，并且也从细则 63 中删除对工作人员具备所要求的语言能力的要求，并将对工作人员能够在所要求的技术领域进行审查的要求移至细则 63.1 的(i)。

### 关于对细则 36 的解释的拟议谅解草案

3. 如文件 PCT/WG/15/12 所述，建议 PCT 大会通过一项谅解，说明如果一个希望被指定为国际检索单位的政府间组织是为该政府间组织成员国的国家局之间开展合作而建立，而其本身不授予专利或公

布专利申请，则该组织应如何适用细则 36 拟议修正案中的要求来提供专利文献。在这种情况下，该组织成员国的国家局应提供由其以及在适用情况下由其法定前身部门颁发的任何专利和公布的任何专利申请，作为最低限度文献的一部分以供参考。体现这一建议的谅解草案载于本文件附件二。PCT 大会可以在通过细则 36 修正案时一并通过该谅解。

#### 对 PCT 行政规程的拟议修改

4. 本文件附件三载有将专利和实用新型文献以及非专利文献纳入 PCT 最低限度文献的技术和可及性要求及程序。所有技术要求和详细信息都将载于行政规程新的附件 H 中，其中有两个新的部分提到了附件 H。在拟议的新附件 H 中引入了一些小的改动，以解决在 MIA 上届会议上收到的评论意见。

#### 拟议新附件 H 第一部分：专利和实用新型文献

5. 附件 H 第一部分的规定旨在确保属于 PCT 最低限度文献的所有专利和实用新型文献集对每个国际单位都免费开放。因此，这些新规定建立了一个机制，一方面允许有关主管局公布其文献集的相关详细信息，另一方面允许国际单位访问和有效检索这些文献集。

6. 为了确保属于 PCT 最低限度文献的专利和实用新型文献集的可及性，同时又不使国际单位为备份文件数字化而承担过重的负担，新规定建议：

(a) 其文献集属于 PCT 最低限度文献的主管局，应根据拟议新附件 H 第 3 段和第 14 段规定的条件和格式，以文本可检索的机器可读形式提供在行政规程生效之日或其后在其专利或实用新型文献集中公布的任何文件（见拟议新附件 H 第 3、11 和 14 段）。工作队认识到这样一个事实，即大多数国际单位当前都可以通过双边和/或多边协议获取属于目前的 PCT 最低限度文献的专利数据。对于这些单位来说，预计它们今后将继续以目前的方式获取专利数据。拟议新附件 H 第 3 段规定了一个后备机制，以便国际单位今后在极其罕见的特殊情况下获取属于 PCT 最低限度文献的专利数据，这种特殊情况即现有的双边或多边数据获取协议未涵盖国际单位对某一专利文献集的获取。

(b) 经过 10 年的过渡期，即从行政规程生效之日起再加 10 年，任何此类主管局都应以文本可检索的机器可读形式提供 1991 年 1 月 1 日或其后在该主管局或其法定前身部门的专利或实用新型文献集中公布的任何文件（见拟议新附件 H 第 3、12 和 14 段）。

(c) 如果以文本可检索的机器可读形式提供文件不是强制性要求，则建议主管局以文本可检索的机器可读形式提供该文件。任何未以文本可检索的机器可读形式提供的文件，最好按照拟议新附件 H 第 15 段规定的条件以电子形式提供（见拟议新附件 H 第 13 和 15 段）。

7. 建议其专利文献属于 PCT 最低限度文献的主管局使用产权组织标准 ST. 37 公布属于其文献集的专利文献的信息。

8. 拟议新附件 H 第 5 至 8 段规定了产权组织 ST. 37 单位文档中应包含的强制性数据项目。关于以文本可检索格式提供所公布的摘要、说明书、权利要求书的问题（附件 H 第 5(e) 段提到的数据项目），在 10 年的过渡期内，要求主管局仅说明在行政规程生效之日或其后每次所公布文件的可用性。在过渡期结束后，这些要求将扩大到 1991 年 1 月 1 日或其后公布的文件。

9. 拟议新附件 H 第 16 段规定了产权组织 ST. 37 单位文档中应包含的可选数据项目。

10. 拟议新附件 H 第 9 段建议, 主管局最好根据产权组织标准 ST. 37 提供一份定义文档, 其中包含其单位文档中存在的相关公布例外代码以及文献集范围概述。公布例外代码的使用为可选项, 由拟议新附件 H 第 17 段和第 18 段规定。

11. 拟议新附件 H 第 10 段建议, 国际局应将主管局提供的任何单位文档和定义文档添加到拟议细则 34.1(e) 所述的储存库中, 并在产权组织网站上提供该储存库。就每个主管局而言, 如果向国际局提供, 储存库应提供单位文档日期范围的信息, 如果向国际局提供更新, 以及更新日期和/或频次的信息。

#### 拟议新附件 H 第二部分: 非专利文献

12. 拟议新附件 H 第二部分列出了国际检索单位审查现行细则 34.1(b)(iii) 所述的非专利文献项目清单 (“清单”) 的程序, 以核查项目是否继续符合纳入标准, 并考虑在清单上增加资源。要注意的是非专利文献包括传统知识资源。

13. 附件 H 第 22 至 26 段提出了一套将非专利文献纳入 PCT 最低限度文献的客观标准。拟议标准概述如下:

- (a) 项目必须有一个单独的标题。
- (b) 项目必须以电子方式提供:
  - (i) 以至少一种所有单位可随时获得和接受的数字格式向国际检索单位提供, 以及
  - (ii) 以合理的商业费用向公众在线提供作为个人或机构订阅的一部分, 或免费向公众提供。
- (c) 项目必须是全文, 并可通过机构可用的检索界面访问。项目还最好以文本编码的格式提供, 以便将该项目纳入检索界面。
- (d) 基于订阅的资源必须能被机构获取。
- (e) 项目必须提供使用条款, 允许作为国际检索和初步审查程序的一部分向申请人分送引文副本, 并根据条约第 20 条第(3)款和细则 44.3 的要求向指定局或选定局分送引文副本。

14. 为了确保 PCT 最低限度文献中的非专利文献项目清单一直保持最新状态, 新规定建议对非专利文献清单进行两次不同但互补的审查, 即:

- (a) 每五年对项目清单和任何建议资源进行一次全面审查, 以及
- (b) 对清单进行年度审查, 找出过时的和不再使用的资源, 并更新清单中的任何元数据。

15. 拟议新附件 H 第 27 至 35 段详细说明了上述全面审查的组织和步骤。全面审查的工作应委托给一个由国际检索单位代表组成的 PCT 最低限度文献常设工作队进行。工作队定期向国际检索单位报告, 通常在国际单位会议 (MIA) 上报告。工作队应每五年由一个国际检索单位 (经其他国际检索单位同意) 召开一次会议。会议结束后, 工作队向国际检索单位提交一份经修订的名单, 以便根据细则 34.1(b)(ii) 同意将其作为最新名单。这一程序预计将在 MIA 进行, 所有国际检索单位都将参与其中。但是, 由于 MIA 不是 PCT 的决策机构, 因此附件 H 述及国际检索单位根据细则 34.1(b)(ii) 同意对名单的修改。

16. 此外，建议国际检索单位可以通过工作队的电子论坛分享不在名单上但被认为可供审查员在国际检索阶段参考的资源（见拟议新附件 H 第 34 段）。

17. 此外，建议国际局提供机制供公众就可在国际检索阶段参考但未列入清单的资源提出建议。国际局将在工作队的电子论坛上公布任何此类建议，并请下文提到的志愿国际检索单位对其进行评估（见拟议新附件 H 第 35 段）。

18. 拟议新附件 H 第 37 段和第 38 段规定了对上述名单的年度审查。在这方面，建议工作队制定一个志愿国际检索单位的时间表，以轮转的方式对清单进行年度审查。进行年度审查的志愿国际检索单位应通过工作队电子论坛与工作队分享审查结果，提供理由，并向国际局提供任何需要对清单作出的更新。

19. 这部分还提出，将要求国际检索单位至少保持从当前日期开始计算的最近五年的内容全文检索。非专利文献最低限度文献清单通过后，国际检索单位将有两年的时间来达到这个要求并获得所需的资源。

#### 接下来的工作

20. 本文件及其附件列有上述 PCT 实施细则拟议修正案和对行政规程的拟议修改，目的是向 2023 年 PCT 大会提交拟议的细则修正案。如果工作组同意向 PCT 大会提交细则修正案，其预计生效日期为 2026 年 1 月 1 日，以确保在下一轮重新指定国际单位时将其纳入考虑。

21. 请工作组就本文件附件一中的 PCT 实施细则拟议修正案、本文件附件二中的谅解草案以及本文件附件三中对行政规程的拟议修改发表评论意见。

[后接附件]

PCT 实施细则临时修正案草案<sup>1</sup>

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<sup>1</sup> 拟议增加和删减的部分在有关案文中分别以下划线和删除线来表示。

## 第 34 条 最低限度文献

### 34.1 定义

(a) 条约第 2 条 (i) 和 (ii) 的定义不适用于本条。为本条的目的，“专利文献”应包括：

(i) 公布的国际 (PCT) 申请；

(ii) 公布的地区专利

(iii) 在 1920 年和该年以后由国家局或其法定前身颁发的国家专利；

(iv) 法国在 1920 年和该年以后颁发的实用证书；

(v) 前苏联颁发的发明人证书；以及

(vi) 在 1920 年和该年以后公布的对上文 (ii) 至 (v) 项中所提到的任何权利形式的申请。

(b) 尽管有 (c) 的规定，条约第 15 条 (4) 所述的文献 (“最低限度文献”) 应包括：

(i) 下面 (c) (a) 指定的“国家专利文献”，这些文献由或代相关国家局或其法定后继部门，或视情况由国际局根据行政规程规定的技术和可及性要求，以及在适用的情况下根据本细则 36.1 (ii) 的规定提供；以及

~~(ii) 公布的国际 (PCT) 申请，公布的地区专利申请和发明人证书申请，以及公布的地区专利和发明人证书；~~

~~(iii) 公布的其他非专利文献，这些非专利文献应经各国际检索单位同意，并由国际局在首次同意时以及在任何时候变化时以清单公布。~~

(c) 除了参考 (b) 所述的规定文献以外，国际检索单位最好还参考包括在 1920 年和该年以后由或代国家局或其法定后继部门颁布的实用新型和公布的实用新型申请的实用新型文献，条件是上述实用新型文献已根据行政规程规定的技术和可及性要求由或代相关国家局或其法定后继部门提供。

~~(d) 除了 (d) 和 (e) 另有规定以外，“国家专利文献”应包括：~~

~~(i) 在 1920 年和该年以后由法国、前德国专利局、日本、前苏联、瑞士 (只限于使用法文和德文)、英国和美国颁发的专利；~~

~~(ii) 德意志联邦共和国、中华人民共和国、韩国和俄罗斯联邦颁发的专利；~~

~~(iii) (i) 和 (ii) 项中所提到的国家在 1920 年和该年以后公布的专利申请（如果有的话），~~

~~(iv) 前苏联颁发的发明人证书；~~

~~(v) 法国颁发的实用证书和已公布的法国实用证书申请；~~

~~(vi) 1920 年以后在任何其他国家用英文、法文、德文或者西班牙文颁发的专利或者公布的专利申请，而且这些专利或者专利申请没有要求优先权，但条件是这些利益有关国家的国家局分检出了这些文献，并提供给每个国际检索单位随意使用。~~

(d) 根据行政规程规定的要求提供其专利文献，并在适用的情况下提供其实用新型文献的每个国家局应：

(i) 相应通知国际局；

(ii) 定期提供新公布的专利文献，并在适用的情况下定期提供实用新型文献；以及

(iii) 根据行政规程，至少每年向国际局提供一份单位文档，详细说明可用专利文献和适用情况下实用新型文献的现有范围；

(e) 国际局应确认根据 (d) 所通知的专利和实用新型文献的可用性，并在公报上公布有关文献的详细信息以及它们成为最低限度文献的日期。国际局应管理一个包含 (d) (iii) 所述的行政规程所规定之单位文档的储存库。

~~(d)(f) 在一份申请文件再次公布（如联邦德国的公开说明书和展出说明书）或者再次公布一次以上时，如果随后公布的版本不包含新增事项，任何每个国际检索单位均无有义务在其文献中仅保存所有版本第一次公布的版本；因此，每一检索单位应有权只保存一种版本。此外，在申请已获批准，并已发给专利或者实用证书（法国）时，任何国际检索单位均无义务在其文献中同时保存申请和专利或者实用证书（法国）；因此，每一国际检索单位应有权只保存申请，或者只保存专利或者实用证书（法国）。~~

~~(e) 任何一个国际检索单位其官方语言或者官方语言之一不是中文、日文、韩文、俄文或西班牙文的，有权在其文献中不收入那些一般没有英文摘要的中华人民共和国、日本、韩国、俄罗斯联邦、前苏联的专利文件以及西班牙文的专利文件。本细则生效之日以后英文摘要一般可以得到的，应在该英文摘要一般可以得到后不超过 6 个月内，将该英文摘要所涉及的专利文件包括在专利文献中。在以前一般可以得到英文摘要的技术领域内，如果英文摘要服务工作中断，大会应采取适当措施迅速恢复上述领域内的英文摘要服务工作。~~



~~(f)~~ (g) 为本条的目的，仅仅为提供公众查阅而公开展示的申请和专利，不认为是公布的申请和专利。

## 第 36 条

### 对国际检索单位的最低要求

#### 36.1 最低要求的定义

条约第 16 条 (3) (c) 所述的最低要求如下：

(i) 国家局或者政府间组织至少必须拥有 100 名具有在所要求的技术领域足以胜任检索工作的技术资格的专职人员；

(ii) 该局或该组织必须根据行政规程规定的要求，提供由其以及在适用情况下由其法定前身部门颁发的任何专利和公布的任何专利申请，作为本细则 34 所述的最低限度文献的一部分以供参考。

~~(ii)(iii) 该局或者该组织根据行政规程为检索目的至少必须拥有或能够保持利用本细则 34 所述的最低限度文献，并且为检索目的而妥善整理的载于纸件、缩微品或储存在电子媒介上；~~

~~(iii) 该局或者该组织必须拥有一批工作人员，能够对所要求的技术领域进行检索，并且具有至少能够理解用来撰写或者翻译本细则 34 所述最低限度文献的的语言的语言能力；~~

(iv) 该局或该组织必须根据国际检索共同细则，设置质量管理体系和内部复查措施；

(v) 该局或该组织必须被指定为国际初步审查单位。

## 第 63 条 对国际初步审查单位的最低要求

### 63.1 最低要求的定义

条约第 32 条 (3) 中所述的最低要求如下：

(i) 国家局或者政府间组织至少必须拥有 100 名在所要求的技术领域具有足以胜任审查工作的技术资格的专职人员；

(ii) 该局或该组织必须根据行政规程规定的要求，提供由其以及在适用情况下由其法定前身部门颁发的任何专利和公布的任何专利申请，作为本细则 34 所述的最低限度文献的一部分以供参考；

~~(ii)(iii)~~ 该局或者该组织至少必须拥有本细则 34 所述的为审查目的而妥善整理的最低限度文献；

~~(iii) 该局或者该组织必须拥有一批能对所要求的技术领域进行审查，并且具有至少能够理解用来撰写或者翻译本细则 34 所述的最低限度文献的的语言的语言条件的工作人员；~~

(iv) 该局或者该组织必须根据国际初步审查共同细则设置质量管理体系和内部复查机构；

(v) 该局或者该组织必须被指定为国际检索单位。

[后接附件二]

### 关于对细则 36.1 (ii) 的解释的谅解草案

“大会通过对条约第十六条 (3) (c) 所述的最低要求作出规定的细则 36.1 修正案，同意如果一个政府间组织是为该政府间组织成员国的国家局之间开展合作而建立，而其本身不颁发专利或公布专利申请，则细则 36.1 (ii) 对该组织的要求是，这些国家的国家局应提供由其以及在适用情况下由其法定前身颁发的任何专利和公布的任何专利申请，作为最低限度文献的一部分以供参考。”

[后接附件三]

## PROPOSED NEW PROVISIONS OF THE PCT ADMINISTRATIVE INSTRUCTIONS

### **PART 1**

#### **INSTRUCTIONS RELATING TO GENERAL MATTERS**

##### **Section 116**

###### **Minimum Documentation**

Patent documents made available under Rule 34.1(b)(i) for inclusion in the documentation referred to in Article 15(4) and utility model documents made available under Rule 34.1(c) shall comply with Part I of Annex H.

### **PART 5**

#### **INSTRUCTIONS RELATING TO THE INTERNATIONAL SEARCHING AUTHORITY**

##### **Section 521**

###### **Minimum Documentation**

International Searching Authorities shall agree on the items of non-patent literature under Rule 34.1(b)(ii) for inclusion in the documentation referred to in Article 15(4) following the procedure in Part II of Annex H.

## ANNEX H

### TECHNICAL AND ACCESSIBILITY REQUIREMENTS AND PROCEDURE FOR INCLUSION OF PATENT AND UTILITY MODEL DOCUMENTS AND NON-PATENT LITERATURE IN THE MINIMUM DOCUMENTATION

#### INTRODUCTION

1. This Annex sets out the technical and accessibility requirements and procedure for inclusion of patent and utility model documents and non-patent literature in the minimum documentation, as defined in Rule 34.1.

#### PART I

##### PATENT AND UTILITY MODEL DOCUMENTATION

2. In this part, “patent documents” and “utility model documents” are as defined in Rule 34.1(a) and Rule 34.1(c), respectively.

##### **Making Available of Documents**

3. Each Office or successor Office whose patent collection, and, where applicable, utility model collection, belongs to the minimum documentation shall set up one or more secure repositories in which its text-searchable minimum documentation data is stored in either WIPO Standard ST.36 or ST.96 format, or in plain text format, or any combination thereof. Each said Office shall provide the International Bureau with all the relevant information and authorization details necessary to access this data, for example the links, passwords, etc., so that the International Bureau and International Authorities can access the data for free in bulk format electronically, preferably via FTP, SFTP or Web Services, and in accordance with paragraph 20. The International Bureau shall provide the said information and authorization details to any International Authority on request. Each Office shall ensure that all published data is made available in a repository no later than one month after its publication date. If an Office also provides a search interface to its data, it shall preferably also provide access to such a search interface for free. Any Office that is not an International Authority, but whose patent collection, and, where applicable, utility model collection, belongs to the minimum documentation, can delegate to an International Authority or the International Bureau the task of granting access to its data in accordance with the provisions set out in this paragraph.

##### **Authority File**

4. The structure and file format of the authority file provided by an Office under Rule 34.1(d)(iii) and the data elements contained in that authority file shall comply with WIPO Standard ST.37.

5. For each publication, the authority file provided by an Office shall contain the following data elements referred to in WIPO Standard ST.37:

- (a) two-letter alphabetic code of the Office publishing the document (publication authority);
- (b) publication number;
- (c) kind code of the patent document (kind-of-document code);
- (d) publication date of the patent document; and

- (e) subject to paragraph 7, indication of whether the abstract, description, claims of a publication are text-searchable, through selection of one of the following codes:
- (i) “N” – Not available
  - (ii) “U” – Unknown
  - (iii) two-letter language code(s) in which the searchable text is available, either in the original language or in the language of an official translation.
6. The Office shall provide the data elements referred to in paragraph 5(a) to 5(d) as of [DATE OF ENTRY INTO FORCE OF AI] for each publication made by that Office or by its legal predecessor published on or after January 1, 1991.
7. With regard to the data elements referred to in paragraph 5(e), the Office shall provide indications:
- (a) from [DATE OF ENTRY INTO FORCE OF AI], at least for each publication on or after that date; and
  - (b) from [DATE OF ENTRY INTO FORCE OF AI + 10 YEARS], at least for each publication or that of its legal predecessor on or after January 1, 1991.
8. Offices having documents available in text-searchable machine-readable form published between January 1, 1920 and December 31, 1990 shall preferably include, for these documents, the data elements referred to in paragraph 5(a) to 5(e).
9. An Office shall preferably provide a definition file in accordance with WIPO Standard ST.37 containing relevant publication exception codes that are present in its authority file and an overview of the scope of the document collections.
10. The International Bureau shall add any authority and definition files provided by an Office to the repository referred to in Rule 34.1(e) and shall make the repository available on the WIPO website. For each Office, the repository shall provide information on the date coverage of the authority file and information on dates and/or frequency of updates if provided to the International Bureau.

### **Making Available Documents Belonging to the Minimum Documentation**

11. An Office shall make available in text-searchable machine-readable form in accordance with paragraph 14 any document published on or after [DATE OF ENTRY INTO FORCE OF AI] in its patent or utility model collection.
12. As of [DATE OF ENTRY INTO FORCE OF AI + 10 YEARS], an Office shall make available in text-searchable machine-readable form in accordance with paragraph 14 any document published on or after January 1, 1991 in its patent or utility model collection or that of a legal predecessor.
13. Where it is not mandatory to make a document available in text-searchable machine-readable form, an Office is recommended to make the document available in text-searchable machine-readable form in accordance with paragraph 14. Any document that is not made available in text-searchable machine-readable form shall preferably be made available in electronic form in accordance with paragraph 15.

### **Documents Made Available in Text-Searchable Machine-Readable Form**

14. For each document that is made available in text-searchable machine-readable form, an Office shall provide International Searching Authorities with access to at least the full text of the abstract, description and claims in either XML format in compliance with WIPO Standard ST.36 or ST.96, or in plain text format. An Office shall also provide access to any electronically available sequence listings in a document. For any documents in XML format, the bibliographic data tags should be filled. The same conditions as already described in paragraph 3 also apply here.

### **Documents Not Made Available in Text-Searchable Machine-Readable Form**

15. For each patent document or utility model document that is part of the minimum documentation but not made available in text-searchable machine-readable form, the Office or its legal successor shall provide International Searching Authorities, upon request, with access to a copy, preferably in electronic form. The copies of such documents shall preferably be in machine-readable electronic image format, e.g. PDF. For such documents, the code in the authority file for the data elements referred to in paragraph 5(e) should be "N" for elements that are not available in a text-searchable format, or "U" for documents whose availability is unknown, or if the Office cannot easily provide an indication of such availability.

### **Optional Elements for each Document in a Collection**

16. Each Office shall preferably provide, insofar as they are available in machine-readable format, the following data elements for each document in its collection, using the appropriate tags foreseen for them:

- (a) the application number of the document;
- (b) the application numbers and filing dates of any earlier applications from which the patent or application claims priority;
- (c) the IPC (International Patent Classification) symbols assigned to the document;
- (d) any classification symbols assigned to the document according to any other classification scheme, e.g. CPC classification symbols or F/F-term symbols.

### **Use of Publication Exception Codes**

17. The authority file may optionally include the relevant publication exception code for any document in the collection of an Office for which the complete publication in machine-readable form is not available. If an authority file does not use publication exception codes, then for those documents that are not available in machine-readable format, the following applies:

- for documents that are not available in a text searchable format, the code in the authority file for the data elements referred to in paragraph 5(e) should be "N".
- for documents whose availability is unknown, or if the Office cannot easily provide an indication of such availability, the code in the authority file for the data elements referred to in paragraph 5(e) should be "U".

18. Any publication exception codes included in the authority file shall be limited in the following ways:

- the code "P" shall not be used for patent documents published after [DATE OF ENTRY INTO FORCE OF AI];



- the code “X” shall not be used for patent documents published after [DATE OF ENTRY INTO FORCE OF AI] to indicate that a document is not available in machine-readable form; and
- as long as their use does not contravene the two immediately preceding bullet points above, an Office using specific customized codes before [DATE OF ENTRY INTO FORCE OF AI] may only continue to use those codes if it properly identifies the place where the definition of those codes is made freely available.

### **Notification to the International Bureau and Validation of Collections**

19. The notification to the International Bureau under Rule 34.1(d)(i) shall specify the date as of which the patent documents and, where applicable, the utility model documents are available in accordance with the requirements set out in this Annex. Each Office shall provide access to its documents made available in text-searchable machine-readable form as described in paragraph 3, as well as provide a link to its authority file and any definition file.

### **Use of data**

20. Any patent and utility model data made available by Offices to International Authorities within the context of, and in accordance with the requirements set out in, this Annex may only be used by International Authorities for the purpose of conducting prior art search and related activities, including providing copies of cited documents to applicants and third parties. In case the said data is used for other purposes without the express consent of the providing Office, the access to the data in bulk format may be blocked by the International Bureau. This paragraph neither prevents Offices from having bilateral or multilateral agreements with the Offices providing the patent data to use and transform this data for other purposes, nor intends to replace any such existing bilateral or multilateral agreements.

## **PART II NON-PATENT LITERATURE**

### **Evaluation of Non-Patent Literature for Inclusion in the Minimum Documentation**

21. Part II sets out the process for International Searching Authorities to review the list of items of non-patent literature referred to in Rule 34.1(b)(ii) (“the list”) with a view to verify that items continue to meet the criteria for inclusion and to consider resources for addition to the list.

[DRAFTING COMMENT<sup>2</sup>: This part has been drafted to use the term “list” for the non-patent literature minimum documentation, “item” for an entry on the list (the same terminology used in Rule 34.1(b)(ii)) and “resource” for something that an examiner could consult that might be eligible for inclusion on the list.]

[COMMENT: Non-patent literature includes Traditional Knowledge resources.]

### **Criteria for Inclusion**

22. An item must be represented by an individual title.

23. An item must be available electronically:

- (a) to International Searching Authorities in at least one digital format that is readily available and acceptable to all Authorities, and

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<sup>2</sup> Comments are for explanatory purposes only and do not form part of the Administrative Instructions.

(b) to the public, online, for a reasonable commercial fee, as part of a personal or institutional subscription, or at no cost.

[COMMENT: Digital format covers both digital and digitized].

24. An item must be full text and accessible through an institutionally available search interface. Preferably, an item should also be available in a text-coded format that would allow it to be incorporated into a search interface. Full text, for the purpose of non-patent literature, is defined as an electronic resource that provides the entire text or content of a single work; not necessarily in a text-searchable machine-readable form.

25. Resources whose only electronic availability is as part of a subscription (“subscription-based resources”) must be institutionally accessible to be eligible for inclusion as an item; email subscription resources, or other personal use subscription resources, are not eligible for consideration. “Institutionally accessible” is defined as a resource that can be subscribed to or purchased by a single institution, with terms of use and search functionality applicable to all authorized users of the institution.

26. An item must provide terms of use that allow for copies of cited documents to be distributed to applicants as part of the international search and preliminary examination procedure, and to designated or elected Offices (DO/EO) upon request under Article 20(3) and Rule 44.3.

### **Updating the List of Minimum Documentation**

27. A Task Force comprising representatives of International Searching Authorities (“the Task Force”) shall perform the review referred to in paragraph 21 and report on a regular basis to the International Searching Authorities. In that context, the Task Force shall convene a meeting every five years to undertake a comprehensive review of the list of items and any recommended resources based on the criteria in paragraph 31. International Searching Authorities shall agree on the International Searching Authority responsible for convening and organizing that meeting of the Task Force at least six months before the meeting.

28. Any International Searching Authority may recommend a resource that meets the criteria in paragraphs 22 to 26 for inclusion in the list by submitting a proposal to the Task Force at least four months before the meeting. The proposal shall include an explanation to show that the resource meets the criteria and may include information to accompany the recommendation such as details of usage of the resource, the need to include the subject matter of the resource in the minimum documentation, the value of the resource to search examiners, the impact factor of a journal resource, etc. The International Searching Authority shall provide the Task Force with any further information relevant to the recommendation if requested by any member of the Task Force.

29. The Task Force will not consider a resource that does not meet the criteria in paragraphs 22 to 26 for inclusion in the list.

30. Prior to the meeting, any International Searching Authority may comment on the suitability of a recommended resource for inclusion on the list, such as providing further information on the usage of the resource, its contribution to the minimum documentation, and the impact of adding the resource on the list such as costs of obtaining access to the resource.

31. The Task Force shall evaluate the recommended resources for inclusion against the following:

- (a) the criteria in paragraphs 22 to 26;
- (b) international search report citation metrics from the preceding three years;
- (c) other evidence that demonstrate the value of a resource to an examiner performing international search and preliminary examination such as usage and examiner input;
- (d) subject matter of the resource, with a view to the list constituting a balanced representation of subject matter across all sections of the International Patent Classification scheme; and
- (e) cost of subscription or access to the resource.

32. The Task Force shall verify that existing items on the list continue to meet the inclusion criteria in paragraphs 22 to 26 and identify any items that have been discontinued.

33. Following the meeting referred to in paragraph 27, the Task Force shall submit a revised list to the International Searching Authorities for them to agree upon as the updated list under Rule 34.1(b)(ii). The revised list shall include any items recommended by the Task Force for addition to the list after the evaluation under paragraph 31 and all items that have been verified under paragraph 32 as continuing to meet the inclusion criteria and are either current or discontinued.

34. Notwithstanding the process in paragraphs 28 to 31, an International Searching Authority may share resources with the Task Force that are not on the list but could be useful for examiners to consult during international search. International Searching Authorities are also encouraged to ask questions or share any information and experiences that may contribute to enhancing the use of the minimum documentation during international search.

35. The International Bureau shall provide a mechanism for the public to suggest resources to consult during international search that are not on the list. The International Bureau shall share any such suggestion with the Task Force and ask the volunteer International Searching Authority, referred to in paragraph 38, to assess it. If it believes that the conditions are met, the volunteer International Searching Authority may recommend the resource to the Task Force for consideration in accordance with paragraphs 28 to 31.

#### **Traditional Knowledge Non-Patent Literature**

36. The present set of criteria applies to all sources of non-patent literature prior art, including Traditional Knowledge resources. Therefore, Offices recommending their Traditional Knowledge as part of the minimum documentation must comply with the present criteria. However, if, in the future, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and other relevant bodies within WIPO decide that Traditional Knowledge prior art should be treated differently than other non-patent literature prior art, then the Task Force shall meet to discuss additional criteria that is specifically directed to Traditional Knowledge resources in line with any new understanding on the treatment of such prior art.

#### **Annual Review of List**

37. The Task Force shall establish a schedule of volunteer International Searching Authorities to conduct an annual review of the list on a rotational basis for obsolete and discontinued resources, as well as metadata updates.

38. The volunteer International Searching Authority conducting the annual review shall verify the list for any discontinued or obsolete items and update any metadata from the list. This Authority shall share the findings from this review with the Task Force and provide the International Bureau with any updates that are required to the list, including removal of discontinued or obsolete items.

#### **Access to Items on List**

39. International Searching Authorities are required, at a minimum, to maintain full text access to the most recent five years of content calculated from the current date. When an item is added to the list, International Searching Authorities are required to obtain access to the item within two years from the date that the item is added.

40. An International Searching Authority may report to the volunteer International Searching Authority conducting the annual review under paragraph 38 at any time if it considers that an item on the list no longer meets the inclusion criteria in paragraphs 22 to 26, and inform the Task Force accordingly.

## Appendix 1:

## Example of an Authority File

Country Code	Publication Number	Kind Code	Publication Date	Exception Code (Optional)	Text-searchable Abstract as officially published Available? (Language codes/NU)	Text-searchable Description Available? (Language codes/NU)	Text-searchable Claims Available? (Language codes/NU)	
1	EP	1	A1	19781220		de	de	de
2	EP	12493			U	U	U	U
3	EP	216086	A2	19870401	M	de	de	de
4	EP	272830	A2	19880629	M	en	en	en
5	EP	394856	A1	19901031		de,en	de	de
6	EP	394856	B1	19970604		en	de	de,en,fr
7								
8	CA	2787765	A1	20140222		en,fr	en	en
9								
10	CH	710284	A1	20160429		de	de	de
11	CH	711700	A2	20170428		it	it	it
12								
13	FI	101368	B	19980615		fi,sv	fi	fi
14	FI	20165833	L	20180508		fi,en	N	N
15								
16	WO	2010037978	A2	20100408		en,fr	fr	fr
17	WO	2021073392	A1	20210422		en,fr,zh	zh	zh

Table 1

The text below is a Version 2.2 ST.37 authority file, produced by an International Searching Authority or those Offices wishing their publications to be included in the minimum documentation set, represented using a TXT structure where the data elements are separated by a comma. It represents the data in Table 1 shown above:

...

EP,1,A1,19781220,ABST-de,DESC-de,CLMS-de<CRLF>

EP,12493,,U,ABST-U,DESC-U,CLMS-U<CRLF>

EP,216086,A2,19870401,M,ABST-de,DESC-de,CLMS-de<CRLF>

EP,272830,A2,19880629,M,ABST-en,DESC-en,CLMS-en<CRLF>

EP,394856,A1,19901031,,ABST-en,ABST-de,DESC-de,CLMS-de<CRLF>

EP,394856,B1,19970604,,ABST-en,DESC-de,CLMS-de,CLMS-en,CLMS-fr<CRLF>

,,,,,,

CA,2787765,A1,20140222,,ABST-en,ABST-fr,DESC-en,CLMS-en<CRLF>

,,,,,,

CH,710284,A1,20160429,, ABST-de, DESC-de, CLAMS-de<CRLF>

CH,711700,A2,20170428,,ABST-it, DESC-it, CLMS-it<CRLF>

\*\*\*\*\*

FI,101368,B,19980615,,ABST-fi, ABST-sv, DESC-fi, CLMS-fi<CRLF>

FI,20165833,L,20180508,,ABST-fi, ABST-en, DESC-N, CLMS-N<CRLF>

\*\*\*\*\*

WO,2010037978,A2,20100408,,ABST-en, ABST-fr,DESC-fr,CLMS-fr<CRLF>

WO,2021073392,A1,20210422,,ABST-en, ABST-fr, ABST-zh, DESC-zh, CLMS-zh<CRLF>

[附件三和文件完]