

# WIPO



SCP/2/11

ORIGINAL: English

DATE: April 16, 1999

WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

## STANDING COMMITTEE ON THE LAW OF PATENTS

Second Session  
Geneva, April 12 to 23, 1999

### DRAFT ARTICLE 5(5)(A)

*Proposal by the Delegation of the United Kingdom*

1. The following proposal was submitted by the Delegation of the United Kingdom:
2. As reported in SCP 1/11, paragraph 39, it was agreed at the meeting held in November 1998 that the United Kingdom would circulate a proposal on Article 5(5)(a) which would be discussed as a matter of priority at a future session of the SCP.

You may recall that the United Kingdom proposed that this provision should be amended. This draft provision as currently drafted in SCP/2/3, Article 5(5) removes Contracting Parties from an obligation to require the filing of copies of all priority documents where the priority of an earlier application is claimed. However, the ability to have access to such priority documents is very important for third parties. Indeed, it may not be appreciated by Offices, that third parties frequently need to view priority documents, for example, when checking the validity of a patent or during infringement searches. In addition, Offices may belatedly require third parties to supply copies of priority documents to support foreign applications. This is already causing problems where Offices destroy unprocessed applications after a set period of time.

To overcome this difficulty for third parties, it is proposed that the text of Article 5(5)(a) be amended to read as follows:

“(5) [Priority document] (a) Subject to subparagraph (c), where the priority of an earlier application is claimed, a Contracting Party may require that a copy of the earlier application be furnished to the Office within the time limit prescribed in the Regulations.

(*abis*) Where a Contracting Party does not require a copy of an earlier application to be furnished in accordance with paragraph (5)(a) above, and if, at the expiry of 18 months from the claimed priority date, no copy of the earlier application has been furnished to its Office, that Office shall notify the Office at which the earlier application was filed of the existence of the later application, and the Office at which the earlier application was filed shall either:

(i) keep a copy of the earlier application for [30] years from its date of filing, and, upon demonstration that the later application has been published, supply copies of the earlier application to third parties on demand; or

(ii) furnish a copy of the earlier application to an approved document depositary which will, upon demonstration that the later application has been published, supply copies of the earlier application to third parties on demand.”

[End of document]