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## **STANDING COMMITTEE ON THE LAW OF PATENTS**

**Third Session**

**Geneva, September 6 to 14, 1999**

**DRAFT PATENT LAW TREATY:  
WORKING DOCUMENT**

*prepared by the International Bureau*

## INTRODUCTION

1. The present document contains a revised version of the draft Patent Law Treaty (“PLT”). As agreed at the second session of the SCP, this document, together with document SCP/3/8 which contains draft Regulations under the PLT, constitutes the Working Document for the third session of the SCP. It includes all of the changes incorporated in document SCP/3/2, which take into account the views expressed in the Standing Committee on the Law of Patents at its first session, first part (June 15 to 19, 1998) and second part (November 16 to 20, 1998), and at its second session (April 12 to 23, 1999). In addition, the present document contains a number of drafting suggestions by the International Bureau, which are intended to make the draft as clean, accurate and consistent as possible. The suggestions in the present document supercede the suggestions contained in document SCP/3/2. Notes on the provisions of the draft PLT and Regulations are contained in document SCP/3/3.

2. Suggestions for changes in the text which has been adopted by the SCP, as well as International Bureau proposals as compared to the provisions presented in document SCP/2/3 which were referred to the International Bureau for study, are presented as follows:

(i) provisions which have been adopted by the SCP are indicated within a frame, without underlines or strike-throughs,

(ii) text from document SCP/2/3 which is merely moved to a different location without change in substance, as well as mere consequential changes, are not highlighted,

(iii) redrafted text for provisions referred to the International Bureau is underlined, and

(iv) text of non-adopted provisions which appeared in document SCP/2/3 but which is omitted from the present document is shown as struck-through.

3. For reference, provisions which have been adopted by the SCP are indicated within a frame. As agreed at the first session, first part, such adopted provisions are closed for further discussion, except at the express request of a Member of the Standing Committee or to approve consequential modifications suggested by the International Bureau when redrafting other provisions. Where a modification has been made in the adopted text, the changes in the text are highlighted within the frame. Unless otherwise specified in the document, these changes are consequences of redrafting other provisions referred to the International Bureau for further study or for drafting improvements. Commentaries on certain adopted provisions in which the International Bureau suggests modifications are provided in footnotes of this document.

4. A study with regard to the Interface between the Draft Patent Law Treaty and the Patent Cooperation Treaty, which forms the basis for the change to Article 5(1), (2) and (6) suggested in the present document, is contained in document SCP/3/4.

DRAFT TREATY

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DRAFT TREATY

*Article 1*

*Abbreviated Expressions*

For the purposes of this Treaty, unless expressly stated otherwise:

- (i) “Office” means the authority of a Contracting Party entrusted with the granting of patents or with other matters covered by this Treaty;
- (ii) “application” means an application for the grant of a patent, as referred to in Article 2;
- (iii) “patent” means a patent as referred to in Article 2;
- (iv) references to a “person” shall be construed as references to both a natural person and a legal entity;
- (v) “communication” means any application, or any request, declaration, document, correspondence or information relating to an application or patent, whether relating to a procedure under this Treaty or not, which is filed with the Office by means permitted by the Office;

[Article 1, continued]

(vi) “records of the Office” means the collection of information maintained by the Office, relating to and including the applications filed with, and the patents granted by, that Office or another authority with effect for the Contracting Party concerned, irrespective of the medium in which such information is maintained;

(vii)<sup>1</sup> “recordal” means ~~recordal~~ any act of including information in the records of the Office;

(viii) “applicant” means the person whom the records of the Office show as the person who is applying for the patent, or as another person who, pursuant to the applicable law, is filing or prosecuting the application;

(ix) “owner” means the person whom the records of the Office show as the owner of the patent;

(x) “representative” means any person, firm or partnership that can be a representative under the applicable law;

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<sup>1</sup> The wording recommended by the International Bureau is modeled after Note 1.06 in document SCP/3/3 and is suggested for the sake of clarity.

(xi) “signature” means any means of self-identification;

(xii) “a language accepted by the Office” means any one language accepted by the Office for the relevant procedure before the Office;

(xiii)<sup>2</sup> “translation” means a translation into a language or, where appropriate, a transliteration into an alphabet or character set, accepted by the Office;

(xiv) “procedure before the Office” means any procedure in proceedings before the Office with respect to an application or patent;

(xv) except where the context indicates otherwise, words in the singular include the plural, and *vice versa*, and masculine personal pronouns include the feminine;

(xvi) “Paris Convention” means the Paris Convention for the Protection of Industrial Property, signed on March 20, 1883, as revised and amended;

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<sup>2</sup> In order to simplify the text, the International Bureau recommends that the definition of the term “translation” also cover a transliteration, where appropriate.

[Article 1, continued]

(xvii) “Patent Cooperation Treaty” means the Patent Cooperation Treaty (“PCT”), signed on June 19, 1970, as amended and modified;

(xviii) “Contracting Party” means any State or intergovernmental organization party to this Treaty;

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “International Bureau” means the International Bureau of the Organization;

(xxi) “Director General” means the Director General of the Organization.

*Article 2*

*Applications and Patents to Which the Treaty Applies*

(1) [Applications] (a) The provisions of this Treaty and the Regulations shall apply to national and regional applications for patents for invention, and for patents of addition, which are filed with or for the Office of a Contracting Party, and which are:

(i) types of applications that can be filed as international applications under the Patent Cooperation Treaty;

(ii) divisional applications for patents for invention, or for patents of addition, as referred to in Article 4G(1) or (2) of the Paris Convention.

(b)<sup>3</sup> ~~Subject to the provisions of the Patent Cooperation Treaty, t~~ The provisions of this Treaty and the Regulations shall apply to international applications for patents for invention, and for patents of addition, under the Patent Cooperation Treaty:

(i) in respect of the time limits applicable in the Office of any Contracting Party under Articles 22 and 39(1) of the Patent Cooperation Treaty;

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<sup>3</sup> The International Bureau recommends the deletion of the words “Subject to the provisions of the Patent Cooperation Treaty”. This would avoid, for example, that PCT Rule 51bis.1(d) precludes the application of Article 5(6) of this Treaty to international applications under the PCT once they enter into the “national phase”.

[Article 2(1)(b), continued]

(ii) from the date on which processing or examination of the international application may start under Article 23 or Article 40 of that Treaty.

(2) [*Patents*] The provisions of this Treaty and the Regulations shall apply to patents for invention, and to patents of addition, which have been granted with effect for a Contracting Party.

*Article 3*

*National Security*

Nothing in this Treaty and the Regulations shall limit the freedom of any Contracting Party to take any action deemed necessary for the preservation of its national security.

*Article 4*

*Filing Date*

(1) [*Elements of Application*] (a) Subject to paragraphs (2) to (8), a Contracting Party shall provide that the filing date of an application shall be [no later than] the date on which its Office has received all of the following elements, filed, at the option of the applicant, on paper or by means permitted by the Office:

(i) an express or implicit indication to the effect that the elements are intended to be an application;

(ii) indications allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Office;

(iii) a part which on the face of it appears to be a description.

(b) A Contracting Party may, for the purposes of the filing date, accept a drawing as the element referred to in subparagraph (a)(iii).

[Article 4, continued]

(2) [*Language*] (a)<sup>4</sup> A Contracting Party may require that t The indications referred to in paragraph (1)(a)(i) and (ii) ~~may be required to be~~ in a language accepted by the Office.

(b) The part referred to in paragraph (1)(a)(iii) may, for the purposes of the filing date, be filed in any language.

(3) [*Notification*] Where the application does not comply with one or more of the requirements of paragraphs (1) and (2), the Office shall, as soon as practicable, notify the applicant, giving an opportunity to comply with any such requirement, and to make observations, within the relevant time limit prescribed in the Regulations.

(4) [*Subsequent Compliance with Requirements*] (a) Where one or more of the requirements referred to in paragraphs (1) and (2) are not complied with in the application as initially filed, the filing date shall, subject to subparagraph (b) and paragraph (5), be [no later than] the date on which all of the requirements referred to in paragraphs (1) and (2) are subsequently complied with.

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<sup>4</sup> The International Bureau recommends that this modification be made for drafting consistency with other relevant provisions of the Treaty.

[Article 4(4), continued]

(b) A Contracting Party may provide that, where one or more of the requirements referred to in subparagraph (a) are not complied with within the time limit prescribed in the Regulations, the application shall be regarded as not having been filed. Where the application is regarded as not having been filed, the Office shall notify the applicant accordingly, indicating the reasons therefore.

(5) [*Notification Concerning Missing Part of Description or Drawing*] Where, in establishing the filing date, the Office finds that a part of the description appears to be missing from the application, or that the application refers to a drawing which appears to be missing from the application, the Office shall promptly notify the applicant accordingly.

(6) [*Filing Date Where Missing Part of Description or Drawing Is Filed*] (a) Where a missing part of the description or a missing drawing is filed with the Office within the time limit prescribed in the Regulations, that part of the description or drawing shall be included in the application, and, subject to subparagraphs (b) and (c), the filing date shall be [no later than] the date on which the Office has received that part of the description or that drawing, or the date on which all of the requirements referred to in paragraphs (1) and (2) are complied with, whichever is later.

(b) Where the missing part of a description or missing drawing is filed under subparagraph (a) to rectify its omission from an application which, at the time of filing, claims the priority of an earlier application, the filing date shall, ~~at~~ upon the request of the applicant filed within a time limit prescribed in the Regulations, and subject to the requirements prescribed in the Regulations, be [no later than] the date on which all the requirements referred to in paragraphs (1) and (2) are complied with.

(c) Where the missing part of the description or the missing drawing filed under subparagraph (a) is withdrawn within a time limit fixed by the Contracting Party, the filing date shall be [no later than] the date on which the requirements referred to in paragraphs (1) and (2) are complied with.

(7) [*Replacing Description and Drawings by Reference to a Previously Filed Application*] (a) Subject to the requirements prescribed in the Regulations, a reference, in a language accepted by the Office, to a previously filed application shall, for the purposes of the filing date of the application, replace the description and any drawings.

(b) Where the requirements referred to in subparagraph (a) are not complied with, the application may be considered as not having been filed.

[Article 4, continued]

(8) [*Exceptions*] Nothing in this Article shall limit:

(i) the right of an applicant under Article 4G(1) or (2) of the Paris Convention to preserve, as the date of a divisional application referred to in that Article, the date of the initial application referred to in that Article and the benefit of the right of priority, if any;

(ii) the freedom of any Contracting Party to apply any requirements necessary to accord the benefit of the filing date of an earlier application to any type of application prescribed in the Regulations.

*Article 5*

*Application*

(1)<sup>5</sup> [*Form or Contents of Application*] (a) Except where otherwise provided for by this Treaty or prescribed in the Regulations, and subject to paragraph (6), no Contracting Party shall require compliance with any requirement relating to the form or contents of an application different from or additional to the requirements relating to the form or contents:  
those

(i) which are provided for in respect of international applications under the Patent Cooperation Treaty;

~~except where otherwise provided for by this Treaty or prescribed in the Regulations, it being understood that~~

(ii) which, under the Patent Cooperation Treaty, may be provided for under the national law once the processing of the international application has started in the designated Office.

(b) Notwithstanding subparagraph (a), a Contracting Party shall be free to provide for requirements which, from the viewpoint of applicants, are more favorable than the requirements applicable under the Patent Cooperation Treaty.

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<sup>5</sup> The commentary concerning the modification recommended by the International Bureau is contained in document SCP/3/4.

[Article 5(1), continued]

(c) Nothing in this paragraph is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such substantive conditions of patentability as it desires.

(2)<sup>6</sup> [*Request Form or Format*] (a) A Contracting Party may require that the contents of an application which correspond to the ~~mandatory~~ contents of the request of an international application under the Patent Cooperation Treaty be presented on a request Form or in a format prescribed by that Contracting Party.

(b) Notwithstanding subparagraph (a), and subject to Article 7(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a):

(i) on a request Form, ~~filed on paper~~, if that request Form corresponds to the Patent Cooperation Treaty Request Form with any modifications provided for in the Regulations;

(ii) on a Patent Cooperation Treaty Request Form, if that request Form is accompanied by an indication to the effect that the applicant wishes the application to be treated as a national application, in which case the Request Form shall be deemed to incorporate the modifications referred to in item (i);

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<sup>6</sup> The commentary concerning the modification recommended by the International Bureau is contained in document SCP/3/4.

(iii) on a Patent Cooperation Treaty Request Form which contains an indication to the effect that the applicant wishes the application to be treated as a national application, if such a request Form is available under the Patent Cooperation Treaty.

(c) Notwithstanding subparagraph (a), and subject to Article 7(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) in a format, if that format corresponds to the Model International Request Format provided for in the Regulations.

(3)<sup>7</sup> [*Translation;—Transliteration*] A Contracting Party may require a translation ~~or,~~ where appropriate, a transliteration, of any part of the application that is not in a language accepted by its Office.

(4) [*Fees*] A Contracting Party may require that fees be paid in respect of the application.

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<sup>7</sup> The deletion recommended by the International Bureau is consequential to the modification in Article 1(xiii).

[Article 5, continued]

(5) [*Priority Document*] Where the priority date of an earlier application is claimed, a Contracting Party may require that a copy of the earlier application, and a translation where the earlier application is not in a language accepted by the Office, be filed with the Office in accordance with the Regulations.

(6)<sup>8</sup> [*Evidence*] A Contracting Party may require that evidence be filed with its Office in the course of the processing of the application only where that Office may reasonably doubt the veracity of any matter ~~contained in the request Form or format~~ referred to in paragraphs (1) and (2), or in a declaration of priority, or the accuracy of any translation ~~required under~~ referred to in paragraph (3) or (5).

(7) [*Notification*] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (5) are not complied with, or where evidence is required by the Office under paragraph (6), the Office shall notify the applicant, giving an opportunity to comply with any such requirement, and to make observations, within the relevant time limit prescribed in the Regulations.

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<sup>8</sup> The commentary concerning the modification recommended by the International Bureau is contained in document SCP/3/4.

(8) [*Non-Compliance with Requirements*] (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to subparagraph (b) and Article 4, apply such sanction as is provided for in its law.

(b) Where any requirement applied by the Contracting Party under paragraph (1), (5) or (6) in respect of a priority claim is not complied with within the time limit prescribed in the Regulations, the priority claim may be considered non-existent. Subject to Article 4(7)(b), no other sanctions may be applied.

*Article 6*

*Representation*

(1) [*Representatives*] (a) A Contracting Party may require that a representative appointed for the purposes of any procedure before the Office:

(i) have the right, under the applicable law, to practice before the Office in respect of applications and patents;

(ii) provide an address on a territory prescribed by the Contracting Party.

(b) Subject to subparagraph (c), an act, with respect to any procedure before the Office, by or in relation to a representative who complies with the requirements applied by the Contracting Party under subparagraph (a), shall have the effect of an act by or in relation to the applicant, owner or other interested person who appointed that representative.

(c) Any Contracting Party may provide that, in the case of an oath or declaration or the revocation of a power of attorney, the signature of a representative shall not have the effect of the signature of the applicant, owner or other interested person who appointed that representative.

(2) [*Mandatory Representation*] A Contracting Party may require that an applicant, owner or other interested person appoint a representative for the purposes of any procedure before the Office after the filing date, other than:

(i) the payment of maintenance fees;

[(ii) any procedure referred to in Article 4;]

[(iii) the payment of fees;]

[(iv) the filing of a translation;]

[(v) any other procedure as prescribed in the Regulations; ]

(vi) the issue of a receipt or notification by the Office in respect of any procedure referred to in items (i) to (v).

(3) [*Appointment of Representative*] A Contracting Party shall accept that the appointment of the representative be filed with the Office in a manner prescribed in the Regulations.

[Article 6, continued]

(4)<sup>9</sup> [*Prohibition of Other Requirements*] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the matters dealt with in those paragraphs, except where otherwise provided for by this Treaty or prescribed in the Regulations.

(5) [*Notification*] Where one or more of the requirements applied under paragraphs (1) to (3) are not complied with, or where evidence is required under the Regulations pursuant to paragraph (3), the Office shall notify the applicant, owner or other interested person, giving an opportunity to comply with any such requirement, and to make observations, within the relevant time limit prescribed in the Regulations.

(6) [*Non-Compliance with Requirements*] Where one or more of the requirements applied under paragraphs (1) to (3) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may apply such sanction as is provided for in its law.

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<sup>9</sup> The modification is recommended in order to allow a Contracting Party to impose formal requirements other than those referred to in paragraphs (1) to (3), for example, the requirements under Article 7 and Rule 8.

*Article 7*

*Communications; Addresses*

(1) [*Form, Format and Means of Filing of Communications*] (a) Except for the establishment of a filing date under Article 4(1), the Regulations shall, subject to subparagraphs (b) and (c), set out the requirements which a Contracting Party shall be permitted to apply as regards the form, format and means of filing of communications.

(b)<sup>10</sup> No Contracting Party shall be obliged to accept the filing of communications ~~in a form, or by means,~~ other than on paper.

(c) No Contracting Party shall be obliged to exclude the filing of communications on paper.

(d) A Contracting Party shall accept the filing of communications on paper for the purpose of complying with a time limit.

(2) [*Language of Communications*] A Contracting Party may, except where otherwise provided for by this Treaty or the Regulations, require that a communication be in a language accepted by the Office.

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<sup>10</sup> The modification is recommended for further drafting consistency with subparagraph (c).

[Article 7, continued]

(3) [*Model International Forms; Model International Formats*] Notwithstanding paragraph (1)(a), and subject to paragraph (1)(b), a Contracting Party shall accept the presentation of the contents of a communication on a Form or in a format which corresponds to a Model International Form or a Model International Format provided for in the Regulations, if any.

(4) [*Signature of Communications*] (a) Where a Contracting Party requires a signature for the purposes of any communication, that Contracting Party shall accept any signature that complies with the requirements prescribed in the Regulations.

(b) No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature which is communicated to its Office, except as prescribed in the Regulations.

(c) Subject to subparagraph (b), a Contracting Party may require that evidence be filed with the Office where the Office may reasonably doubt the authenticity of any signature.

(5) [*Indications in Communications*] A Contracting Party may require that any communication contain one or more indications prescribed in the Regulations.

(6) [*Address for Correspondence and Address for Legal Service*] A Contracting Party may, subject to any provisions prescribed in the Regulations, require that an applicant, owner or other interested person indicate:

(i) an address for correspondence;

(ii) an address for legal service;

(iii) any other address provided for in the Regulations.

(7) [*Notification*] Where one or more of the requirements applied under paragraphs (1) to (3), (4)(a) and (b), (5) and (6) are not complied with in respect of communications, or where evidence is required under paragraph (4)(c), the Office shall notify the applicant, owner or other interested person, giving an opportunity to comply with any such requirement, and to make observations, within the relevant time limit prescribed in the Regulations.

(8) [*Non-Compliance with Requirements*] Where one or more of the requirements applied under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to Article 4 and to any exceptions prescribed in the Regulations, apply such sanction as is provided for in its law.

*Article 8*

*Notifications*

(1) [*Sufficient Notification*] Any notification under this Treaty or the Regulations which is sent by the Office to an address for correspondence or address for legal service indicated under Article 7(6), or any other address provided for in the Regulations for the purpose of ~~this~~ that provision, and which complies with the provisions with respect to that notification, shall constitute a sufficient notification for the purposes of this Treaty and the Regulations.

(2) [*If Indications Allowing Contact Were Not Filed*] Nothing in this Treaty and in the Regulations shall oblige a Contracting Party to send a notification to an applicant, owner or other interested person, if indications allowing that applicant, owner or other interested person to be contacted have not been filed with the Office.

(3) [*Failure to Notify*] Subject to Article 9(1), where an Office does not notify an applicant, owner or other interested person of a failure to comply with any requirement under this Treaty or the Regulations, that absence of notification does not relieve that applicant, owner or other interested person of the obligation to comply with that requirement.

*Article 9*

*Validity of Patent; Revocation*

(1) [*Validity of Patent Not Affected by Non-Compliance with Certain Formal Requirements*] Once a patent has been granted, it may not be revoked or invalidated, either totally or in part, by the Office, or by a court, a board of appeal or any other competent authority of a Contracting Party, on the ground of non-compliance with one or more of the formal requirements with respect to an application referred to in Articles 5(1), (2), (4) and (5) and 7(1) to (4), except where the non-compliance with the formal requirement occurred as a result of a fraudulent intention.

(2) [*Opportunity to Make Observations, Amendments or Corrections in Case of Intended Revocation or Invalidation*] A patent may not be revoked or invalidated, either totally or in part, by the Office, a court, a board of appeal or any other competent authority of a Contracting Party, without the owner being given at least one opportunity to make observations on the intended revocation or invalidation, and to make amendments and corrections where permitted under the applicable law, within a reasonable time limit.

Article 10

Relief in Respect of the Non-Compliance With a Time Limit

(1) [Obligation] A Contracting Party shall provide for relief in respect of non-compliance with a time limit fixed by the Office for an action in a procedure before the Office in respect of an application or a patent, if:

(i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;

(ii) the request is made within the time limit prescribed in the Regulations.

(2) [Form of Relief] The consequence of the relief referred to in paragraph (1) shall be at least that the time limit fixed by the Office shall be considered to have been met without a loss of rights, or, at the option of the Contracting Party, that there shall be continued processing with regard to the application or patent and, if necessary, re-instatement of the rights of the applicant or owner with respect to that application or patent.

[Article 10, continued]

(3) [Exceptions] No Contracting Party shall be required to provide for the relief referred to in paragraph (1) with respect to the exceptions prescribed in the Regulations.

(4) [Fees] A Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(5) [Prohibition of Other Requirements] No Contracting Party may require that requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the relief provided for under paragraph (1), except where otherwise provided for by this Treaty or prescribed in the Regulations.

(6) [Opportunity to Make Observations in Case of Intended Refusal] A request under paragraph (1) may not be refused without the applicant or owner being given at least one opportunity to make observations on the intended refusal within a reasonable time limit.

*Article 11*

*Continued Processing and Re-instatement of Rights  
Without a Finding of Due Care by the Office*

[To be deleted, with consequential re-numbering of Articles, if the recommendation concerning draft Article 10 is accepted by the SCP.]

*Article 12*

*Re-instatement of Rights After a Finding of Due Care  
or Unintentionality by the Office*

(1) [*Request*] Where an applicant or owner has failed to comply with a time limit for an action in a procedure before the Office, and that failure has the direct consequence of causing a loss of rights with respect to an application or patent, the Office shall re-instate the rights of the applicant or owner with respect to the application or patent concerned, if:

(i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;

(ii) the request is made, and all of the requirements in respect of which the time limit for the said action applied are complied with, within the time limit prescribed in the Regulations;

~~(iii) the failure to comply with the time limit for the said action applied has the direct consequence of causing a loss of rights with respect to the application or patent;~~

(~~iv~~ iii) the request states the grounds on which it is based; and

[Article 12(1), continued]

(~~v~~ iv) the Office finds that the failure to comply with the time limit occurred in spite of all due care required by the circumstances having been taken or, at the option of the Contracting Party, that any delay was unintentional.

(2) [*Exceptions*] No Contracting Party shall be required to provide for the re-instatement of rights under paragraph (1) with respect to the exceptions prescribed in the Regulations.

(3) [*Fees*] A Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(4) [*Evidence*] A Contracting Party may require that a declaration or other evidence in support of the grounds referred to in paragraph (1)(iv) be filed with the Office within a time limit fixed by the Office.

(5) [*Opportunity to Make Observations in Case of Intended Refusal*] A request under paragraph (1) may not be refused, totally or in part, without the requesting party being given at least one opportunity to make observations on the intended refusal within a reasonable time limit.

*Article 13*

Correction or Addition of Priority Claim; ~~and~~ Restoration of Priority Claim Right

(1) [Correction or Addition of Priority Claim] ~~The Office shall, upon a request made in a communication to the Office signed by the applicant, add a priority claim to~~ A Contracting Party may provide for the correction or addition of a priority claim with respect to an application (“the subsequent application”), if:

(i) a request to that effect is made to the office in accordance with the requirements prescribed in the Regulations;

(ii) the request is made within the time limit prescribed in the Regulations;  
and

(iii) the filing date of the subsequent application is not later than the date of the expiration of the priority period calculated from the filing date of the earlier application whose priority is claimed.

[Article 13, continued]

(2) [*Delayed Filing of the Subsequent Application*] Where an application (“the subsequent application”) which claims or could have claimed the priority of an earlier application has a filing date which is later than the date on which the priority period expired, but within the time limit prescribed in the Regulations, the Office shall restore the right of priority, ~~upon a request made in a communication to the Office signed by the applicant, if:~~

(i) ~~the request is made before the expiration of the said time limit and before any technical preparations for publication of the subsequent application have been completed~~ a request to that effect is made in accordance with the requirements prescribed in the Regulations;

(ii) the request is made within the time limit prescribed in the Regulations;

(iii) the request states the ground on which it is based; and

(~~iii~~iv) the Office finds that the failure to file the subsequent application within the priority period occurred in spite of all due care required by the circumstances having been taken or, at the option of the Contracting Party, was unintentional; and

(iv) ~~where the application did not claim the priority of the earlier application, the request is accompanied by the priority claim.~~

[Article 13, continued]

(3) [*Failure to File a Copy of Earlier Application*] ~~(a)~~ Where a copy of an earlier application required under Article 5(5)~~(a)~~ is not filed with the Office within the time limit ~~referred to in~~ prescribed in the Regulations pursuant to that Article, the Office shall restore the right of priority, ~~upon a request made, in a communication to the Office signed by the applicant, within that time limit~~, if:

(i) a request to that effect is made in accordance with the requirements prescribed in the Regulations ~~the request for restoration indicates the Office to which the request for a copy of an earlier application had been made and the date of that request; and~~

(ii) the Office finds that the request for the copy to be provided had been filed with the Office with which the earlier application was filed, within the time limit prescribed in the Regulations.

~~(b) — A Contracting Party may require that:~~

~~(i) — a declaration or other evidence in support of the request referred to in subparagraph (a) be furnished to the Office within a time limit fixed by the Office;~~

~~(ii) — the copy of the earlier application referred to in subparagraph (a) be furnished to the Office within the time limit prescribed in the Regulations.~~

[Article 13, continued]

~~(4) — [Request Form or Format] Article 11(3) shall apply, *mutatis mutandis*, to requests under paragraphs (1) to (3).~~

~~(5) — [Requests Filed on Paper or in Electronic Form or by Other Means] Article 5(3) shall apply, *mutatis mutandis*, to requests under paragraphs (1) to (3).~~

~~(5) — [Language] Article 5(3) shall apply, *mutatis mutandis*, to requests under paragraphs (1) to (3).~~

~~(46) [Fees] A Contracting Party may require that a fee be paid in respect of Article 5(4) shall apply, *mutatis mutandis*, to a requests under paragraphs (1) to (3).~~

~~(57) [Opportunity to Make Observations] A request under paragraphs (1) to (3) may not be refused, totally or in part, without the requesting party being given at least one opportunity to make observations on the intended refusal within a reasonable time limit.~~

~~{(9) — [Intervening Rights] Article 14(9) shall apply, *mutatis mutandis*, where a request under paragraphs (1) to (3) is allowed.}~~

*Article 14*

*Regulations*

- (1) [Content] (a) The Regulations annexed to this Treaty provide rules concerning:
- (i) matters which this Treaty expressly provides are to be “prescribed in the Regulations”;
  - (ii) details useful in the implementation of the provisions of this Treaty;
  - (iii) administrative requirements, matters or procedures.
- (b) The Regulations also provide rules concerning the formal requirements which a Contracting Party shall be permitted to apply in respect of requests for:
- (i) recordal of change in name and address;
  - (ii) recordal of change in applicant or owner;
  - (iii) recordal of a licensing agreement or security interest;
  - (iv) correction of a mistake.

[Article 14(1), continued]

(c) The Regulations also provide for the establishment of Model International Forms and Model International Formats, and for the establishment of the modifications referred to in Article 5(2)(b), by the Assembly, with the assistance of the International Bureau.

(2) [*Amending the Regulations*] (a) The Assembly may amend the Regulations and shall determine the conditions for the entry into force of each amendment.

(b) Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.

(3) [*Requirement of Unanimity*] (a) The Regulations may specify provisions of the Regulations which may be amended only by unanimity.

(b)<sup>11</sup> Any amendment of the Regulations resulting in ~~an~~ the addition of provisions to, or the deletion of provisions from, the list of provisions specified in the Regulations pursuant to subparagraph (a) ~~as requiring unanimity for amendment~~ shall require unanimity.

(4) [*Conflict Between the Treaty and the Regulations*] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

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<sup>11</sup> The modification is recommended by the International Bureau for purposes of clarity.

*Article 15*

*Relation to the Paris Convention*

(1) [*Obligation to Comply with the Paris Convention*] Any Contracting Party shall comply with the provisions of the Paris Convention which concern patents.

(2) [*Obligations and Rights Under the Paris Convention*] (a) Nothing in this Treaty shall derogate from obligations that Contracting Parties have to each other under the Paris Convention.

(b) Nothing in this Treaty shall derogate from rights that applicants and owners enjoy under the Paris Convention.

*Article 16*

*Assembly*

(1) [*Composition*] (a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2) [*Tasks*] The Assembly shall:

(i) deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty;

(ii) establish Model International Forms and Model International Formats referred to in Article 14(1)(c);

(iii) perform the function allocated to it under Article 19(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty;

(iv) perform such other functions as are appropriate under this Treaty.

(3) [Voting] (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this Treaty is a Member State of ~~other~~another such intergovernmental organization and that other intergovernmental organization participates in that vote.

(4) [Sessions] The Assembly shall meet in ordinary session once every two years upon convocation by the Director General.

[Article 16, continued]

(5) [*Rules of Procedure*] The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty and Regulations, the required majority for various kinds of decisions.

*Article 17*

*International Bureau*

The International Bureau shall perform the administrative tasks concerning the Treaty.

*Article 18*

*Revisions*

(1) [*Revision of the Treaty*] Subject to paragraph (2), this Treaty may be revised by a conference of the Contracting Parties. The convocation of any revision conference shall be decided by the Assembly.

(2) [*Amendment of Certain Provisions of the Treaty*] (a) Proposals for the amendment of Article 16(2) and (4) may be initiated by any Contracting Party or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(b) Amendments to the provisions referred to in subparagraph (a) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast.

(c) Any amendment to the provisions referred to in subparagraph (a) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties which were Contracting Parties at the time the Assembly adopted the amendment. Any amendment to the said provisions thus accepted shall bind all the Contracting Parties at the time the amendment enters into force, or which become Contracting Parties thereof at a subsequent date.

*Article 19*

*Eligibility for Becoming Party to the Treaty*

(1) [States] Any State which is a party to the Paris Convention or which is a member of the Organization, and in respect of which patents may be obtained, either through the State's own Office or through the Office of another Contracting Party, may become party to this Treaty.

(2)<sup>12</sup> [Intergovernmental Organizations] The Assembly may decide to admit any intergovernmental organization to become party to this Treaty if ~~all the~~ at least one member States of that intergovernmental organization ~~are~~ is a party to the Paris Convention or a members of the Organization, and the intergovernmental organization declares that ~~it is~~ competent to grant patents with effect for its member States and that it had has been duly authorized, in accordance with its internal procedures, to become party to this Treaty and that:-

(i) it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by the Treaty; or

(ii) it is competent to grant patents with effect for its member States.

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<sup>12</sup> Following informal consultations with the European Community, as agreed at the second session of the SCP (paragraph 138 of document SCP/2/13), the International Bureau recommends that this provision also cover an intergovernmental organization that falls under proposed item (i). The International Bureau also recommends that this provision allow an intergovernmental organization to become party to the Treaty if at least one, but not necessarily all, of the member States of that intergovernmental organization is a party to the Paris Convention or a member of WIPO. This modification is modeled after Article 27 of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, signed on July 6, 1999.

[Article 19, continued]

(3) [*Regional Patent Organizations*] [The European Patent Organization][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][ and the African Intellectual Property Organization], having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty as intergovernmental organizations.

*Article 20*

*Signature of the Treaty*

This Treaty shall be open for signature until [reserved], by any State that is eligible for becoming party to the Treaty under Article 19 and by [the European Patent Organisation][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][ and the African Intellectual Property Organization].

*Article 21*

*Entry into Force*

(1) [*Entry into Force of This Treaty*] This Treaty shall enter into force three months after ten instruments of ratification or accession by States have been deposited with the Director General.

(2) [*Effective Dates of Ratifications and Accessions*] This Treaty shall bind:

(i) the ten States referred to in paragraph (1), from the date on which this Treaty has entered into force;

(ii) each other State, from the expiration of three months after the date on which the State has deposited its instrument with the Director General, or from any later date indicated in that instrument;

(iii)<sup>13</sup> each of [the European Patent Organisation][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][ and the African Intellectual Property Organization], from the expiration of three months after the deposit of its instrument of ratification or accession, or from any later date indicated in that instrument, if such instrument has been deposited after the entry into force of this Treaty according to paragraph (1), or three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession, or from any later date indicated in that instrument.

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<sup>13</sup> This suggested modification, which is based on the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, signed on July 6, 1999, is intended to make it clear that the effective date for each organization is independent of the deposit of instruments by the other organizations.

Article 21bis<sup>14</sup>

Application of the Treaty to Existing Applications and Patents

(1) [Principle] Subject to paragraph (2), a Contracting Party shall apply the provisions of this Treaty and the Regulations to applications which are pending, and to patents which are in force, as of the date on which this Treaty binds that Contracting Party under Article 21.

(2) [Procedures] No Contracting Party shall be obliged to apply the provisions of this Treaty and the Regulations to any procedure in proceedings with respect to applications and patents referred to in paragraph (1), if such procedure commenced before the date on which this Treaty binds that Contracting Party under Article 21.

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<sup>14</sup> This Article was first presented as new Article 26 in document SCP/3/2. The Notes to this Article may be found in document SCP/3/3, Notes 26.01 to 26.03. If this draft Article is accepted by the SCP, there will be a consequential renumbering of Articles.

*Article 22*

*Reservations*

(1) [~~Declaration~~ Reservation] Any State or intergovernmental organization may declare through a reservation that the provisions of Article 5(1) shall not apply to any requirement relating to unity of invention applicable under the Patent Cooperation Treaty to an international application.

(2) [*Modalities*] Any reservation under paragraph (1) shall be made in a declaration accompanying the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the reservation.

(3) [*Withdrawal*] Any reservation under paragraph (1) may be withdrawn at any time.

(4) [*Prohibition of Other Reservations*] No reservation to this Treaty other than the reservation allowed under paragraph (1) shall be permitted.

*Article 23*

*Denunciation of the Treaty*

(1)<sup>15</sup> [*Notification*] Any Contracting Party may denounce this Treaty by ~~written~~ notification addressed to the Director General.

(2)<sup>16</sup> [*Effective Date*] Any denunciation shall take effect one year from the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Treaty to any application pending or any patent in force in respect of the denouncing Contracting Party at the time of the ~~expiration of the said period~~ coming into effect of the denunciation.

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<sup>15</sup> The International Bureau recommends that the word “written” be deleted in order to avoid an *a contrario* interpretation of other provisions containing the word “notification” without the modifier “written.”

<sup>16</sup> The modification recommended by the International Bureau is modeled after Article 32(2) of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs signed on July 6, 1999.

*Article 24*

*Languages of the Treaty*

(1)<sup>17</sup> [*Original Texts*] This Treaty is signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, ~~the versions in all these languages~~ texts being equally authentic.

(2) [*Official Texts*] An official text in any language other than those referred to in paragraph (1) shall be established by the Director General, after consultation with the interested parties. For the purposes of this paragraph, interested party means any State which is party to the Treaty, or is eligible for becoming party to the Treaty under Article 19(1), whose official language, or one of whose official languages, is involved, and [the European Patent Organization][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][ and the African Intellectual Property Organization] and any other intergovernmental organization that is party to the Treaty, or may become party to the Treaty, if one of its official languages is involved.

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<sup>17</sup> The modification recommended by the International Bureau is modeled after Article 33(1)(a) of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs signed on July 6, 1999.

*Article 25*

*Depositary; Registration*

- (1) [*Depositary*] The Director General is the depositary of this Treaty.
  
- (2) [*Registration*] The Director General shall register this Treaty with the Secretariat of the United Nations.

[End of document]