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Editor's Note

CANADA

Patent Rules (C.R.C., 1250 as last amended by SOR/89-452) (*This text replaces the one previously published under the same code number*)

Text 2-002

SPAIN

Regulations for the Implementation of the Trademark Law, No. 32/1988, of November 10, 1988 (Approved by Royal Decree No. 645 of May 18, 1990)

Text 3-002

WIPO 1991

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Notifications Concerning Treaties

Paris Convention

New Member of the Paris Union

SWAZILAND

The Government of Swaziland deposited, on February 12, 1991, its instrument of accession to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967.

Swaziland has not heretofore been a member of the International Union for the Protection of Industrial Property ("Paris Union"), founded by the Paris Convention.

The Paris Convention, as revised at Stockholm on July 14, 1967, and amended on October 2, 1979, will enter into force, with respect to Swaziland, on May 12, 1991. On that date, Swaziland will become a member of the Paris Union.

Swaziland will belong to Class VII for the purpose of establishing its contribution towards the budget of the Paris Union.

Paris Notification No. 124, of February 12, 1991.

Patent Cooperation Treaty (PCT)

New Members of the PCT Union

CÔTE D'IVOIRE

The Government of Côte d'Ivoire deposited, on January 31, 1991, its instrument of ratification of the Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970.

The said Treaty, as amended on October 2, 1979, and modified on February 3, 1984, will enter into force, with respect to Côte d'Ivoire, on April 30, 1991.

PCT Notification No. 60, of February 4, 1991.

GUINEA

The Government of Guinea deposited, on February 27, 1991, its instrument of accession to the

Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970, as amended on October 2, 1979, and modified on February 3, 1984.

The said Treaty will enter into force, with respect to Guinea, on May 27, 1991.

PCT Notification No. 61, of March 1, 1991.

MONGOLIA

The Government of Mongolia deposited, on February 27, 1991, its instrument of accession to the Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970, as amended on October 2, 1979, and modified on February 3, 1984.

The said Treaty will enter into force, with respect to Mongolia, on May 27, 1991.

PCT Notification No. 62, of March 1, 1991.

International Convention for the Protection of New Varieties of Plants

New Member of UPOV

CANADA

The Government of Canada deposited, on February 4, 1991, its instrument of ratification of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978.

Canada has not heretofore been a member of the International Union for the Protection of New Varieties of Plants, founded by the said International Convention.

The said International Convention will enter into force, with respect to Canada, on March 4, 1991. On that date, Canada will become a member of UPOV.

For the purpose of determining its share in the total amount of the annual contributions to the budget of UPOV, one (1) contribution unit is applicable to Canada.

UPOV Notification No. 37, of February 5, 1991.

WIPO Meetings

Paris Union

Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned

(The Hague, June 3 to 28, 1991)

History of the Preparations of the Patent Law Treaty (Memorandum prepared by the International Bureau) (PLT/DC/5)

1. The present document is a brief summary of the history of the proposed "Patent Law Treaty," that is, the Treaty whose draft is contained in WIPO document PLT/DC/3 (the "Basic Proposal"),¹ a document bearing the same date as the present document.

2. The history of the proposed Treaty started with a proposal, made in June 1983 by the Director General of the World Intellectual Property Organization (WIPO) to the Governing Bodies of WIPO (and, in particular, the Assembly of the Paris Union), for a study on the legal effects of public disclosure of an invention by its inventor prior to filing an application (see WIPO document AB/XIV/2, Annex A, item PRG.03(4)). The proposal was adopted and the question was considered in May 1984 by the WIPO "Committee of Experts on the Grace Period for Public Disclosure of an Invention Before Filing an Application." The "grace period," as it is popularly called, has the effect that certain disclosures, made during a specified period prior to the filing or priority date of an application, do not affect the patentability of the invention claimed in the application. Provisions in the present draft are found in Article 12.

3. It was soon realized that one could not deal with the question of a grace period alone, since it necessarily involved other issues that would have to be agreed upon at the same time as agreeing on the grace period. In particular, such issues are the identi-

fication of the inventor (since the grace period is a period primarily covering publication of the invention by the inventor) and the requirements of a filing date of the application (since the grace period has to be counted back from that date). These issues were considered for the first time in the second meeting of the Committee, held in July 1985, and are addressed in Articles 6 and 8, respectively, of the present draft.

4. In recognition of this expanded scope of its task, the name of the Committee was changed to "Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions." That name was retained throughout the preparatory work for the proposed Patent Law Treaty, which ended in November 1990. The Committee continued to meet during the six years between 1984 and 1991: once in 1985, once in 1986 and twice in each of the subsequent four years (1987 to 1990). In other words, there have been a total of 11 preparatory meetings. At each of those meetings, except those held in 1988 and the second meeting held in 1989, the scope of the proposed Patent Law Treaty grew as the Committee considered additional substantive subject matter for inclusion in it.

5. Through this gradual process of growth of its scope, the proposed Patent Law Treaty came to address many important issues in the field of patents upon which there is great divergence in treatment among national and regional laws, but for which harmonization is desired. It is intended that the Treaty achieve a legally more secure patent system, a system which is easier to apply by patent offices

¹ See *Industrial Property*, 1991, pp. 118.

and easier to use by inventors, industry and their professional representatives.

6. Among those issues addressed by the Committee, and in addition to those three already mentioned in paragraphs 1 and 2, above, the following deserve special mention (in the order of the Articles of the proposed draft):

(i) What should be the requirements of disclosure, particularly in the case of applications referring to biologically reproducible material? (Article 3(1)(b))

(ii) How should "unity of invention" be defined and what should be the legal consequences if the requirements of unity of invention are not fulfilled? (Article 5 and Rule 4)

(iii) What should be the requirements of identifying and mentioning (in publications) the inventor and of indicating the applicant's entitlement (if he is not the inventor) to file an application? (Article 6)

(iv) Should it be possible to claim priority belatedly and, if so, under what conditions? (Article 7)

(v) Should it be allowed that an application incorporate the contents of another application by a mere reference to the other application? Could applications be filed in an Office in a language other than the official language of that Office? (Article 8)

(vi) Should the "first-to-file" principle prevail over the "first-to-invent" principle? (Article 9)

(vii) Should a Contracting Party have the possibility of excluding from patenting inventions belonging to certain fields of technology and, if so, what should be the permitted cases of exclusion? Alternatively, should the Treaty be silent on this issue? (Article 10)

(viii) Should applications be published and, if so, how many months after their filing? (Article 15)

(ix) Should time limits be fixed for the search and the substantive examination of applications? (Article 16)

(x) Should pre-grant oppositions be prohibited and the possibility of the administrative revocation of patents be institutionalized? (Article 18)

(xi) Should the Treaty deal with the question of the rights of the patent owner and, if so, what should be the minimum list of those rights? (Article 19)

(xii) Should the Treaty—particularly in view of the "first-to-file" principle—prescribe the minimum rights of a "prior user" of an invention for which a patent has been granted? (Article 20)

(xiii) What should be the principles governing the interpretation of the claims, particularly as far as "equivalents" are concerned? (Article 21)

(xiv) Should the Treaty set a minimum term of patents and, if so, should that term be 20 years, calculated from the filing date of the application? (Article 22)

(xv) What remedies (including injunctions and damages) should be available when the patent is infringed, including the case when the prohibited activity takes place before the grant of the patent? (Article 23)

(xvi) Should the Treaty deal with the question of the reversal of the burden of proof in the case of the infringement of certain process patents? (Article 24)

(xvii) Should the Treaty deal with the obligations of the patentee and, if so, in what way and with what remedial measures if an obligation is disregarded? (Articles 25 and 26)

7. As to the chronology in which these and other issues took the form of draft articles, the following information may be of interest:

(i) At its third meeting (March 1986), the Committee considered a total of six new issues, namely, what is covered in the present draft by Article 4 (various aspects of claims in a patent application), Article 5 (the requirement of unity of invention), Article 13 (the prior art effect of earlier-filed applications that would otherwise not be considered prior art because they had not yet been published at the time a later application is filed), Article 14 (the amendment or correction of applications), Article 19 (the rights conferred by a patent), and Article 24 (the question of the reversal of burden of proof in the case of products obtained through a patented process).

(ii) At its fourth meeting (March 1987), the Committee took up four new issues, namely, what is covered in the present draft by Article 3 (the requirements of disclosure), Article 9 (the right to a patent, in particular, when an invention is made and applied for by two applicants, requiring a choice between the "first-to-file" and "first-to-invent" principles), Article 21 (the extent of protection and interpretation of claims) and Article 22 (the term of patents).

(iii) At its fifth meeting (November 1987), the Committee considered four issues for the first time. The first of them concerned the delayed submission of a priority claim and the delayed filing of an application which claims or could have claimed the priority of an earlier application. This issue is dealt with in Article 7 of the present draft. The other three issues are covered in the present draft by Article 10 (in what fields, if any, of technology could a Contracting Party exclude the availability of patent protection), Article 20 (the principle of prior use, whereby a person who was using an invention before the filing date or priority date of an application in respect of that invention, may continue such use) and Article 23 (enforcement of rights, whether based on a patent or a published application).

(iv) At its eighth meeting (April 1989), the Committee considered five new issues, namely, what is covered in the present draft by Article 11 (the

conditions to be satisfied for an invention to be considered patentable), Article 15 (the obligation to publish applications), Article 16 (time limits for search and substantive examination), Article 17 (the right of an owner of a patent to request an Office to make changes in his patent) and Article 18 (administrative—that is, by the Office—revocation of a patent, in whole or in part, at the request of any person).

(v) At its eleventh, and final, meeting (October/November 1990), the Committee considered two new provisions, which constitute, in the present draft, Article 25 (enumeration of certain obligations of the owner of a patent) and Article 26 (remedial measures for non-compliance with the obligations referred to in Article 25).

8. Thus, along with an article establishing a new Union (Article 1) and an article containing 14 definitions (Article 2), the present draft includes 26 substantive articles. Twelve of them are accompanied by draft Rules, which form part of the present draft.

9. The present draft also contains 13 articles dealing with administrative and other miscellaneous matters, as well as the final clauses. They are: Articles 27 (the Assembly of the Union, including the question of voting), 28 (the International Bureau), 29 (reference to the Regulations to be adopted together with the Treaty), 30 (settlement of disputes among Contracting Parties), 31 (possibility of revising the Treaty), 32 (possibility of concluding protocols to supplement the Treaty), 33 (becoming party to the Treaty by States and by certain intergovernmental organizations), 34 (effective date of ratifications and accessions), 35 (reservations to certain provisions of the Treaty), 36 (special notifications, particularly by intergovernmental organizations party to the Treaty), 37 (denunciation of the Treaty), 38 (languages and signature of the Treaty) and 39 (depository functions). With the exception of the subject matter of Articles 32 and 36, the drafts of Articles 27 to 39 were first considered at the ninth (November 1989) meeting of the Committee. Drafts of Articles 32 and 36 were first considered by the Committee at its eleventh (October/November 1990) meeting.

10. The 13 articles referred to in the preceding paragraph are similar to those in other treaties administered by WIPO, with the exception of Articles 30, 32 and 33. Article 30, proposed to the Committee by the International Bureau, contains detailed provisions on the settlement of disputes. Article 33 addresses the question of who may become party to the Treaty: as proposed to the Committee by the International Bureau, this Article would allow not only States but also certain intergovernmental organizations, such as the European Communities, the European Patent Organisation and the Organisation africaine de la propriété intel-

lectuelle, to become party to the Treaty. Article 32, also based on a proposal by the International Bureau, is inspired by the evolutionary nature of the process of harmonization manifested by the history of the preparations of the Treaty. It envisages the possibility of the Contracting Parties adopting one or more protocols to the Patent Law Treaty.

11. As the scope of discussion expanded, so too did the size of the Committee. From the first meeting in 1984 to the last meeting in 1990, the participation of member States of the Paris Union increased from 11 to 54. Similar increases were realized for observer States (from two in 1987 to 11 in 1990), intergovernmental organizations (from one in 1984 to six in 1990), and non-governmental organizations (from eight in 1984 to 30 in 1990). A table showing the attendance of all participants in the meetings of the Committee is provided in the Annex to this document.

12. In all meetings of the Committee, the International Bureau acted as secretariat.

13. Moreover, the International Bureau conducted surveys of relevant national and regional law and prepared studies on issues considered by the Committee. Indeed, with the exception of Articles 14 (Amendment and Correction of Application), 25 (Obligations of the Right Holder), and 26 (Remedial Measures Under National Legislation), the International Bureau prepared studies on the subject matter of each of the substantive articles in the present draft. Those studies are as indicated below in respect of the article of the present draft to which they relate, the reference numbers of the latest WIPO document on each topic being shown in parentheses: Article 3, "Requirements in Respect of Manner of Description of Invention in Patent Applications" (HL/CE/III/3); Article 4, "Requirements in Respect of the Manner of Claiming in Patent Applications" (HL/CE/III/2 Supp. 1); Article 5, "Requirements in Respect of Unity of Invention in Patent Applications" (HL/CE/III/2 Supp. 2); Article 6, "Requirements in Respect of the Naming of the Inventor and in Respect of Evidence to be Furnished Concerning the Entitlement of the Applicant" (HL/CE/II/2); Article 7, "Restoration of the Right to Claim Priority" (HL/CE/IV/INF/3); Article 8, "Requirements in Respect of the Granting of a Filing Date to a Patent Application" (HL/CE/III/2 Supp. 1); and Article 9 "The Right to a Patent Where Several Inventors Have Made the Same Invention Independently" (HL/CE/III/4).

14. The Committee also considered the following studies in respect of Article 10, "Exclusions from Patent Protection" (HL/CE/IV/INF/1); Articles 11, 15, 16, 17 and 18, "Information on Provisions

Concerning Publication of Application; Time Limits for Search; Time Limits for Substantive Examination; Opposition and Administrative Revocation and Cancellation of Patents; Changes in Granted Patents; Patentable Inventions" (HL/CE/VII/INF/1); Article 12, "Grace Period for Public Disclosure of an Invention before Filing an Application; Existing Legislative Provisions; Arguments For and Against a Grace Period; Desirability of a Uniform Solution" (HL/CE/I/2); Article 13, "Prior Art Effect of Previously Filed But Yet Unpublished Applications" (HL/CE/III/2 Supp. 3); Articles 19 and 24, "Extension of Patent Protection of a Process to the Products Obtained by that Process; Proof of Infringement of a Process Patent" (HL/CE/II/5); Articles 20, 22 and 23, "Duration of Patents; Maintenance Fees; Provisional Protection of Applicant; Prior Users' Rights" (HL/CE/IV/INF/2) and "Interpretation of Patent Claims" (HL/CE/III/5).

15. The most important task of the Secretariat, however, consisted in preparing, for each meeting, beginning with the third meeting (March 1986), the draft texts of the Treaty and the Regulations to be discussed in the meeting, always accompanied by explanatory notes. The volume of those texts and notes is considerable: an average of over 80 pages for each meeting, with a total of almost 900 pages for the 11 meetings.

16. Towards the end of each meeting, the Secretariat prepared a draft report, summarizing the discussions and any conclusions reached on specific points. The average number of paragraphs in each of the 11 reports is nearly 300, so that the total number of paragraphs of the 11 reports amounts to over 3,000.

17. It should be noted that the discussions in each meeting were among three main groups of participants: the representatives of governments and inter-governmental organizations, the representatives of non-governmental organizations, and the Secretariat which explained and, if the trend of the discussion so required, modified its draft proposals. The participation of the representatives of non-governmental organizations reflected the views of the users of the patent system since such representatives were mainly patent lawyers or agents, both corporate counsel and independent practitioners.

18. The evolution of the draft Treaty was not only reflected by the documents of the Secretariat

distributed to each government and interested organization but also by the publication, in the monthly issues of the WIPO periodical *Industrial Property*, of a Note on each of the meetings of the Committee. (For Notes on the first through the tenth meetings see *Industrial Property*, 1984, p. 313; 1985, p. 267; 1986, p. 309; 1987, p. 204; 1988, pp. 179 and 358; 1989, pp. 53 and 269; 1990, pp. 140 and 297. The Note for the eleventh meeting, held in October/November 1990, will be published in the January 1991 issue of *Industrial Property*.¹) Thus, not only the invitees to the meetings but also the general public were kept informed of the development of the proposed Patent Law Treaty.

19. In consequence of a decision taken by the Assembly of the Paris Union in September 1989 (see WIPO document, P/A/XIV/4, paragraphs 37 and 38), a "Consultative Meeting of Developing Countries on the Harmonization of Patent Laws" was held in June 1990. In preparation for that meeting, the International Bureau prepared three documents: "Provisions of Special Interest to Developing Countries in the Draft Treaty on the Harmonization of Patent Laws" (HL/CM/1); "Exclusions from Patent Protection" (HL/CM/INF/1 Rev.); and "Duration of Patents" (HL/CM/INF/2).

20. At the time of writing these notes (December 1990), it is not yet known whether the Uruguay Round of the GATT (General Agreement on Tariffs and Trade) negotiations will result in the adoption of norms in the field of intellectual property. But from what is reflected by the latest document (November 1990) of GATT in this area, at least some countries proposed that such norms cover the following questions also covered by the proposed Treaty: exclusions from patent protection, rights of the owner of the patent, term of the patent, enforcement of patent rights and reversal of the burden of proof in the case of certain process patents, obligations of the right holder and remedial measures under national legislation. These are dealt with in the present draft of WIPO in Articles 10, 19, 22, 23, 24, 25 and 26, respectively. The subject matter covered by the remaining 18 substantive articles of the present draft does not seem to be covered, or is covered only marginally, by the GATT draft.

² *Ibid.*, p. 41.

ANNEX

Participants in Meetings of Committees of Experts Relating to the Patent Law Treaty

I. States Members of the Committee
(States Party to the Paris Convention)

State	Meeting										
	May 1984	July 1985	May 1986	Mar 1987	Nov 1987	June 1988	Dec 1988	Apr 1989	Nov 1989	June 1990	Nov 1990
Algeria				x		x		x	x	x	x
Argentina				x	x	x	x	x	x	x	
Australia				x	x	x	x	x	x	x	x
Austria			x	x	x				x	x	x
Bangladesh (party to the Paris Convention as from March 1991)								x	x		
Barbados		x									
Belgium		x	x	x	x	x	x	x	x	x	x
Brazil	x		x	x	x	x	x	x	x	x	x
Bulgaria				x	x	x	x	x	x	x	
Cameroon		x	x				x	x		x	x
Canada			x	x	x	x	x	x	x	x	x
China		x	x	x				x	x	x	x
Côte d'Ivoire				x				x			x
Cuba				x		x				x	
Czechoslovakia							x	x	x	x	x
Democratic People's Republic of Korea				x					x	x	x
Denmark	x	x	x	x	x	x	x	x	x	x	x
Egypt		x			x		x	x	x	x	
Finland		x	x	x	x	x	x	x	x	x	x
France	x	x	x	x	x	x	x	x	x	x	x
German Democratic Republic (until October 2, 1990)							x	x	x	x	
Germany, Federal Republic of	x	x	x	x	x	x	x	x	x	x	x
Ghana						x	x	x	x	x	x
Greece				x		x	x		x	x	
Guinea											x
Hungary		x	x	x	x	x	x	x	x	x	x
Iceland			x								
Indonesia			x					x	x	x	x
Iraq									x	x	
Iran (Islamic Republic of)											x
Ireland				x	x	x	x	x	x	x	x
Israel				x		x		x	x	x	x
Italy	x		x	x	x	x	x	x	x	x	x
Japan	x	x	x	x	x	x	x	x	x	x	x
Kenya									x	x	x
Lebanon										x	
Lesotho (party to the Paris Convention as from September 1989)					x						
Libya									x	x	x
Madagascar		x	x	x	x	x		x	x	x	x
Malawi		x								x	
Mexico				x	x	x	x	x	x	x	x
Morocco				x					x	x	
Netherlands		x	x	x	x	x	x	x	x	x	x
New Zealand						x		x	x	x	x
Nigeria			x					x	x	x	x

State	Meeting										
	May 1984	July 1985	May 1986	Mar 1987	Nov 1987	June 1988	Dec 1988	Apr 1989	Nov 1989	June 1990	Nov 1990
Norway		x	x	x	x	x	x	x	x	x	x
Philippines			x				x	x		x	x
Poland			x	x		x	x	x		x	x
Portugal			x	x	x	x		x	x	x	x
Republic of Korea			x	x	x	x	x	x	x	x	x
Romania										x	x
Senegal								x	x		x
Soviet Union	x	x	x	x	x	x	x	x	x	x	x
Spain			x	x	x	x	x	x	x	x	x
Sudan		x									
Sweden	x	x	x	x	x	x	x	x	x	x	x
Switzerland	x	x	x	x	x	x	x	x	x	x	x
Syria										x	
Tunisia			x				x	x	x		x
Turkey				x	x		x	x	x	x	
United Kingdom	x	x	x	x	x	x	x	x	x	x	x
United Republic of Tanzania									x	x	
United States of America	x	x	x	x	x	x	x	x	x	x	x
Uruguay		x		x	x	x	x		x	x	
Viet Nam											x
Yugoslavia				x		x					
Zaire						x				x	
Zambia								x			
Total	11	22	30	39	31	36	35	45	49	55	46

*II. Observer States
(States Not Party to the Paris Convention)*

State	Meeting										
	May 1984	July 1985	May 1986	Mar 1987	Nov 1987	June 1988	Dec 1988	Apr 1989	Nov 1989	June 1990	Nov 1990
Angola									x		
Chile								x	x	x	x
Colombia				x				x			
Ecuador								x	x	x	
El Salvador						x		x	x		
Guatemala										x	
Honduras					x			x			
India								x	x	x	x
Namibia										x	
Nicaragua										x	
Pakistan					x						
Panama					x	x	x	x	x	x	
Paraguay								x			
Peru						x				x	x
Qatar					x						
Swaziland										x	x
Venezuela				x	x					x	
Yemen									x	x	
Total				2	5	3	1	8	7	11	4

State	Meeting											
	May 1984	July 1985	May 1986	Mar 1987	Nov 1987	June 1988	Dec 1988	Apr 1989	Nov 1989	June 1990	Nov 1990	
Pacific Industrial Property Association (PIPA)			x	x	x	x		x	x	x		
Patent and Trademark Institute of Canada (PTIC)					x	x	x		x	x	x	
International Confederation of Free Trade Unions (ICFTU)			x	x					x			
International Chamber of Commerce (ICC)		x	x	x	x	x	x	x	x	x	x	
International Federation of Pharmaceutical Manufacturers' Associations (IFPMA)		x	x	x	x	x	x	x	x	x	x	
International Federation of Inventors' Associations (IFIA)	x	x		x		x	x	x				
Intellectual Property Owners, Inc. (IPO)				x	x	x		x	x	x	x	
International Patent and Trademark Association (IPTA)				x	x	x						
Japanese Patent Association (JPA)						x	x	x	x	x	x	
The Patent Attorneys Association of Japan (JPAA)			x	x			x	x	x	x	x	
Licensing Executives Society (LES)		x		x	x	x	x	x	x	x	x	
International League on Competition Law (LIDC)		x	x	x	x							
Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI)			x		x	x	x	x	x	x	x	
New York Patent, Trademark and Copyright Law Association (NYPTC)		x	x	x	x	x	x	x	x	x	x	
Trade Marks, Patents and Designs Federation, United Kingdom (TMPDF)								x		x	x	
Union of European Practitioners in Industrial Property (UEPIP)	x	x	x	x	x	x	x	x	x	x	x	
Union of Industrial and Employers' Confederations of Europe (UNICE)	x	x	x	x	x	x	x	x	x	x	x	
Total	8	18	21	26	30	29	25	29	30	30	26	

Studies

The Registration of Trademarks and Other Distinctive Signs, and the Grant Procedure Under the New Spanish Trademark Law

A. CASADO CERVIÑO*

New Items

The Patent Cooperation Treaty (PCT) in 1990

Since 1978, the PCT system has offered inventors and industry an advantageous route for filing international applications for obtaining patent protection abroad.

The steep growth in recent years of international applications filed under the PCT continued during 1990. WIPO received 19,159 international applications filed worldwide, which represents an increase over 1989 of 28.8% and an increase over 1987 of 108.2%. These international applications had, in the PCT Contracting States, the effect of 402,335 national applications.

During 1990, Canada, Greece and Poland became PCT Contracting States, bringing the number of Contracting States to the PCT to 45.

With effect from September 1, 1990, the Republic of Korea withdrew its reservation to Chapter II of the PCT and can now be elected for international preliminary examination.

Since October 3, 1990, the PCT has had effect in the territory of the former German Democratic Republic as a result of its accession to the Federal Republic of Germany.

Inventions can be protected through the PCT in most industrialized countries and in a number of developing countries. The 45 States party to the PCT on January 1, 1991, are the following:

In Africa: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Gabon, Madagascar, Malawi, Mali, Mauritania, Senegal, Sudan, Togo.

In the Americas: Barbados, Brazil, Canada, United States of America.

In Asia and the Pacific: Australia, Democratic People's Republic of Korea, Japan, Republic of Korea, Sri Lanka.

In Europe: Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Norway, Poland, Romania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom.

The system of patent cooperation under the PCT means that, with the filing of only one application,

and, initially, without translations of the application or payment of national fees, the PCT applicant can obtain the effect of national regular filings in all the States listed in the preceding paragraph. Under the PCT procedure, applicants file international patent applications in their own language directly with the patent office of their own country and pay fees in their own currency. In other words, with relatively little work and small expense, important results are achieved.

Each international application is subjected to an international search. The international search establishes the relevant prior art. It is carried out by one of the major patent offices of the world.

If the applicant so wishes, he can request that the international application be subjected to an international preliminary examination by a major patent office and obtain an opinion whether the invention claimed fulfills the main patentability criteria.

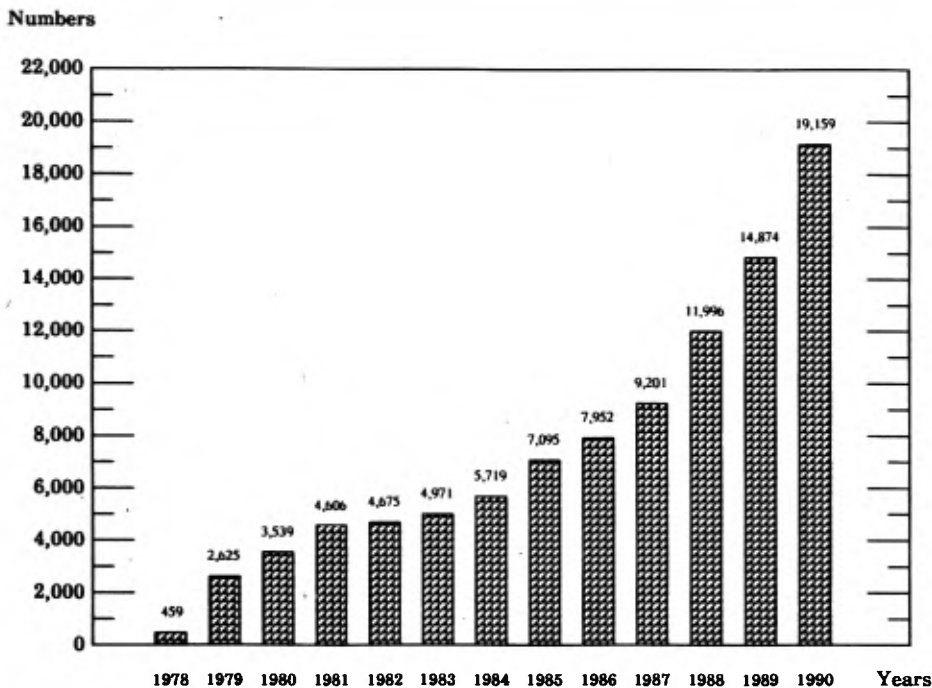
With the international search report and, where requested, the international preliminary examination report, applicants are in a much better position to take the decision whether to initiate the national patent granting procedure before the various patent offices.

It is only if the applicant is convinced, in the light of such reports, that it is worthwhile to seek patent protection in the various countries, that he will have to pay national patent office fees, the cost of translations and honoraria for patent agents abroad.

Statistics¹

The number of international applications received by the International Bureau of WIPO in 1990 amounted to 19,159. The corresponding numbers in each calendar year since the beginning of PCT operations are as follows:

¹ For the purposes of comparison, the corresponding numbers and, if applicable, percentages relating to 1989 are indicated in brackets.



The increase in filings, which averaged 27.7% per year in the last three years, can be attributed mainly to the increasing awareness of inventors, industry and patent attorneys of the advantages offered by the PCT.

The following table shows the country of origin of international applications received by the International Bureau in 1990 and the corresponding percentages:

Country of Origin*	Applications Received*			
	Number		Percentage	
	1990	(1989)	1990	(1989)
Australia	610	(562)	3.18	(3.78)
Austria	159	(161)	0.83	(1.08)
Belgium	106	(70)	0.55	(0.47)
Brazil	25	(11)	0.13	(0.07)
Canada	439	(-)	2.29	(-)
Democratic People's Republic of Korea	1	(-)	0.01	(-)
Denmark	344	(314)	1.80	2.11
Finland	309	(241)	1.61	(1.62)
France	944	(728)	4.93	(4.90)
Germany	2,695	(2,007)	14.07	(13.50)
Greece	9	(-)	0.05	(-)
Hungary	83	(73)	0.43	(0.49)
Italy	237	(164)	1.24	(1.10)
Japan	1,716	(1,357)	8.96	(9.12)
Luxembourg	14	(6)	0.07	(0.04)
Mauritania	-	(1)	-	(0.01)
Netherlands	257	(137)	1.34	(0.92)
Norway	184	(137)	0.96	(0.92)
Republic of Korea	23	(12)	0.12	(0.08)
Romania	2	(-)	0.01	(-)
Soviet Union	264	(318)	1.38	(2.14)
Spain	56	(-)	0.29	(-)
Sri Lanka	-	(2)	-	(0.01)
Sweden	850	(783)	4.44	(5.26)
Switzerland**	396	(315)	2.07	(2.12)
United Kingdom***	2,126	(1,545)	11.10	(10.39)
United States of America	7,310	(5,930)	38.15	(39.87)
Total	19,159	(14,874)	100.00	(100.00)

In 1990, the average number of Contracting States designated per international application was 20.01 (1989: 15.78). The average number of designation fees payable, however, was 8.27 (1989: 6.86). This difference is due to the fact that in the case of the designation of several countries for regional (European or OAPI) protection, only one designation fee is due and to the fact that each designation beyond the first 10 for which designation fees are due is free of charge. The difference also reflects the fact that applicants eliminate a certain number of designations—made at no cost at the time of filing—by the time they pay the designation fee, a natural result of the PCT procedure. In 1990, a European patent was sought in 17,328 international applications, which represents 93.57% (1989: 13,317 = 89.53%) of the total. The number of applications containing more than 10 designations was 3,774 (19.70%); those applicants thus benefited from the advantage of the maximum amount of the designation fee according to which (as already stated) any designation in excess of 10 is free of charge.

A copy of every international application is sent to the competent International Searching Authority (ISA). The number of such international applications sent to each ISA in 1990 was as follows:

* 2,248 (=11.73%) of the international applications received were filed with the European Patent Office (EPO); they are included in the figures concerning the EPO Member State of which the applicant is a national or resident.

** Includes figures for Liechtenstein, since the national Office of Switzerland also acts for nationals and residents of Liechtenstein.

*** Includes figures for Hong Kong and the Isle of Man, since the national Office of the United Kingdom also acts for residents of Hong Kong and the Isle of Man.

ISA	Number of Applications		Percentage of Total	
	1990	(1989)	1990	(1989)
Australia	610	(561)	3.18	(3.77)
Austria	119	(87)	0.62	(0.58)
Japan	1,668	(1,313)	8.72	(8.83)
Soviet Union	265	(318)	1.38	(2.14)
Sweden	1,631	(1,450)	8.51	(9.75)
United States of America	5,118	(4,051)	26.71	(27.24)
European Patent Office	9,748	(7,094)	50.88	(47.69)
Total	19,159	(14,874)	100.00	(100.00)

The languages of filing of the international applications received in 1990 by the International Bureau were as follows:

Language of Filing	Number of Applications		Percentage of Total	
	1990	(1989)	1990	(1989)
Danish	130	(138)	0.68	(0.93)
Dutch	83	(32)	0.43	(0.21)
English	12,097	(9,301)	63.14	(62.53)
Finnish	110	(103)	0.57	(0.69)
French	1,071	(804)	5.59	(5.40)
German	3,098	(2,399)	16.17	(16.13)
Japanese	1,667	(1,313)	8.70	(8.83)
Norwegian	104	(65)	0.55	(0.44)
Russian	265	(318)	1.38	(2.14)
Spanish	51	(-)	0.27	(-)
Swedish	483	(401)	2.52	(2.70)
Total	19,159	(14,874)	100.00	(100.00)

In 1990, 8,769 demands for international preliminary examination under Chapter II of the PCT (1989: 6,548) were filed with the Offices indicated below, which act as International Preliminary Examining Authorities (IPEA).

IPEA	Number of Demands		Percentage of Total	
	1990	(1989)	1990	(1989)
Australia	405	(380)	4.62	(5.80)
Austria	18	(16)	0.21	(0.24)
Japan	155	(170)	1.77	(2.60)
Soviet Union	10	(1)	0.11	(0.02)
Sweden	888	(807)	10.13	(12.32)
United Kingdom	1,193	(813)	13.60	(12.42)
United States of America	2,808	(2,161)	32.02	(33.00)
European Patent Office	3,292	(2,200)	37.54	(33.60)
Total	8,769	(6,548)	100.00	(100.00)

The growth of 33.92% in the number of demands for international preliminary examination in 1990 compared to 1989 can be attributed to the fact that most of the Contracting States can now be elected for international preliminary examination. This permits applicants, instead of having to file separate applications directly in each country within 12 months from the priority date, to postpone such filings until 30 months from the priority date.

Publications under the PCT

The fortnightly publication of the *PCT Gazette*, in separate English and French editions, was continued throughout 1990. In addition to a substantial volume of information of a general character, the *PCT Gazette* included entries relating to the 16,103 (1989: 12,950) international applications which were published in the form of PCT pamphlets (in English, French, German, Japanese, Russian or Spanish, depending on the language of filing) on the same day as the relevant issues of the *PCT Gazette*. Three special issues of the *PCT Gazette* were published, two with consolidated information of a general character and one with the text of the PCT Receiving Office Guidelines. The numbers of international applications published as pamphlets in each of the above-mentioned languages and the corresponding percentages are as follows:

Language of Publication	Number of Applications Published		Percentage of Total	
	1990	(1989)	1990	(1989)
English	10,988	(8,769)	68.24	(67.71)
French	868	(711)	5.39	(5.49)
German	2,565	(1,995)	15.93	(15.41)
Japanese	1,371	(1,243)	8.51	(9.60)
Russian	294	(232)	1.83	(1.79)
Spanish	17	(-)	0.10	(-)
Total	16,103	(12,950)	100.00	(100.00)

The International Bureau started, in cooperation with the European Patent Office, the production of CD-ROMs, each containing the full text and the drawings of about 500 published international applications as well as the corresponding bibliographic data in coded, searchable form. All international applications published in 1990 are available in CD-ROM format (a total of 32 CD-ROMs).

Meetings

The Assembly of the PCT Contracting States met in September 1990. It dealt, among others, with a progress report on the status and further development of a document-imaging and computer-assisted publication system for the processing of international applications under the PCT.

The International Authorities under the PCT, namely, the patent offices which act as International Searching and/or International Preliminary Examining Authorities, held a first meeting in Geneva from January 15 to 19, 1990. All authorities were represented, namely: the Australian Patent Office, the Austrian Patent Office, the European Patent Office (EPO), the Japanese Patent Office, the Royal Patent and Registration Office (Sweden), the United

Kingdom Patent Office, the United States Patent and Trademark Office (USPTO) and the USSR State Committee for Inventions and Discoveries. The meeting considered reports by these authorities concerning their practice and experience, discussed the revision of the International Search and International Preliminary Examination Guidelines and considered the desirability of amending certain provisions of the PCT Regulations concerning Chapter II of the PCT.

The PCT Committee for Administrative and Legal Matters held its third session in two parts from July 2 to 6 and from September 10 to 14, 1990, and the first part of its fourth session from December 10 to 14, 1990. The Committee considered amendments to the PCT Regulations proposed by the International Bureau.

In 1990, officials of the International Bureau participated in meetings on the use and advantages of the PCT in Canada, France, Germany, Greece, Israel, Japan, Madagascar, Malaysia, Mexico, the Netherlands, the Philippines, Poland, Portugal, the Republic of Korea, Spain, Switzerland and the United Kingdom.

Ordering of PCT Publications

The *PCT Applicant's Guide*, a loose-leaf publication of more than 600 pages (available in English and French), the *PCT pamphlets* publishing international applications (in various languages, depending on the language of filing, but containing the title and the abstract in English), the *PCT Gazette* (in English and French), a *brochure* containing the *texts of the PCT and the PCT Regulations* (in Arabic, English, French, German, Italian, Portuguese, Russian and Spanish) and another *brochure* containing the *text of the PCT Administrative Instructions* (in English and French) may be purchased from the International Bureau of WIPO, P.O. Box 18, 1211 Geneva 20, Switzerland. The CD-ROMs containing published international applications may be ordered from the European Patent Office in Munich, Germany.

A leaflet entitled "*Basic Facts about the Patent Cooperation Treaty (PCT)*" (in English, French and German) is available free of charge from the International Bureau of WIPO.

NIGER

Director of Industry and Promotion of Private Investment

We have been informed that Mrs. Brigitte Dia has been appointed Director of Industry and Promotion of Private Investment.

Calendar of Meetings

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1991

April 8 to 11 (Geneva)

Committee of Experts on the Development of the Hague Agreement Concerning the International Deposit of Industrial Designs

The Committee will study possibilities of improving the system of international deposit of industrial designs under the Hague Agreement.

Invitations: States members of the Hague Union and, as observers, States members of the Paris Union not members of the Hague Union and certain organizations.

April 15 to 18 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Ninth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (April 1989) and make recommendations on the future orientation of the said Program.

Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

May 21 to 27 (Madrid)

Working Group on the Application of the Madrid Protocol of 1989 (Third Session)

The Working Group will continue to study Regulations for the implementation of the Madrid Protocol.

Invitations: States members of the Madrid Union, States having signed or acceded to the Protocol, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.

June 3 to 28 (The Hague)

Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as Far as Patents Are Concerned

The Diplomatic Conference will negotiate and adopt a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).

Invitations: States members of the Paris Union, the European Patent Organisation and the Organisation africaine de la propriété intellectuelle and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

June 19 to 21 (Paris)

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: Intergovernmental Committee (Ordinary Session) (convened jointly with ILO and Unesco)

The Committee will review the status of the international protection of neighboring rights under the Rome Convention.

Invitations: States members of the Intergovernmental Committee and, as observers, other States members of the United Nations and certain organizations.

July 1 to 4 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Fourteenth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May/June 1989) and make recommendations on the future orientation of the said Program.

Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

- July 8 to 12 (Geneva)** **PCT Assembly (Extraordinary Session)**
 The Assembly will hold an extraordinary session to adopt amendments to the Regulations under the Patent Cooperation Treaty.
Invitations: States members of the PCT Union and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.
- September 2 to 6 (Geneva)** **Committee of Experts on the Settlement of Intellectual Property Disputes Between States (Third Session)**
 The Committee will continue the preparations for a possible multilateral treaty.
Invitations: States members of the Paris Union, the Berne Union or WIPO or party to the Nairobi Treaty and, as observers, certain organizations.
- September 23 to October 2 (Geneva)** **Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Second Series of Meetings)**
 All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary session every two years in odd-numbered years. In the 1991 sessions, the Governing Bodies will, *inter alia*, review and evaluate activities undertaken since July 1990, and consider and adopt the draft program and budget for the 1992-93 biennium.
Invitations: As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States members of the United Nations and certain organizations.
- November 11 to 18 (Geneva)** **Working Group on the Application of the Madrid Protocol of 1989 (Fourth Session)**
 The Working Group will continue to study Regulations for the implementation of the Madrid Protocol.
Invitations: States members of the Madrid Union, States having signed or acceded to the Protocol, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.
- December 2 to 5 (Geneva)** **Committee of Experts on the International Protection of Indications of Source and Appellations of Origin (Second Session)**
 The Committee will examine a preliminary draft of a treaty on the international protection of indications of source and appellations of origin.
Invitations: States members of the Paris Union and, as observers, certain organizations.

UPOV Meetings

(Not all UPOV meetings are listed. Dates are subject to possible change.)

1991

- October 21 and 22 (Geneva)** **Administrative and Legal Committee**
Invitations: Member States of UPOV and, as observers, certain non-member States and inter-governmental organizations.
- October 23 (Geneva)** **Consultative Committee (Forty-Fourth Session)**
 The Committee will prepare the twenty-fifth ordinary session of the Council.
Invitations: Member States of UPOV.
- October 24 and 25 (Geneva)** **Council (Twenty-Fifth Ordinary Session)**
 The Council will examine the reports on the activities of UPOV in 1990 and the first part of 1991 and approve the program and budget for the 1992-93 biennium.
Invitations: Member States of UPOV and, as observers, certain non-member States and inter-governmental organizations.

Other Meetings Concerned with Industrial Property

1991

- May 29 (Paris) Compagnie Nationale des Conseils en Brevets d'Invention: Conference (organized within the framework of the celebrations to mark the bicentenary of the French patent) on the theme: "*La propriété industrielle dans le marché unique européen – Brevet et marque communautaires*"
- September 15 to 20 (Lucerne) International Association for the Protection of Industrial Property (AIPPI): Council of Presidents
- September 30 to October 4 (Harrogate) International Federation of Industrial Property Attorneys (FICPI): Congress