

## FRAMEWORK PROVISIONS FOR THE DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS<sup>1</sup>

*established on March 31, 2009 and modified on July 1, 2012*

### *Digital Access Service*

1. These provisions are established by the International Bureau in accordance with a decision of the Paris Union Assembly, the PLT Assembly and the PCT Union Assembly and the recommendations of the Working Group on the Digital Access Service for Priority Documents (“the Working Group”)<sup>2</sup>.
2. The digital access service for priority documents (“the service”) operates in accordance with these provisions and having regard to the general principles and system architecture recommended by the Working Group<sup>3</sup>.
3. The aim of the service is to provide applicants and Offices with a simple and secure option whereby priority documents may be furnished for the purposes of the applicable law, having regard to relevant international agreements and understandings<sup>4</sup>.
4. The implementation of these provisions by Offices is a matter for the applicable law<sup>5</sup>.
5. These provisions come into effect from the date of their publication by the International Bureau on the WIPO website (DAS portal); until then, the service will continue its practical operations under the framework provisions as established on March 31, 2009<sup>6</sup>.
6. Words and expressions used in these provisions are to be understood with reference to paragraph 25.

### *Participating Digital Libraries*

7. A digital library participates for the purposes of these provisions (“participating digital library”):
  - (i) if it is so designated by the International Bureau when these provisions come into effect<sup>7</sup>;
  - (ii) if, upon request by an Office, it is so designated by the International Bureau at a later time after consultation with the Consultative Group.
8. The criteria referred to in paragraph 22 apply to all participating digital libraries.
9. The giving by an Office of a notification under paragraph 12 does not give rise to any obligation on the part of that Office to accept a participating digital library for the purposes of Rule 4(3) of the Regulations under the PLT<sup>8</sup>.

### *Depositing Offices and Availability of Priority Documents Via the Service*

10. An Office acting as a “depositing Office” may notify the International Bureau that copies of applications deposited by it in a participating digital library<sup>9</sup> are to be made available via the service as priority documents in accordance with these provisions. The notification also informs the International Bureau of relevant operating procedures and technical requirements referred to in paragraph 22, including any specification of options from among those available. An Office may specify that it will only deposit certain types of application in a digital library and may notify different operating procedures and different technical requirements for different types of application.
11. The applicant may submit a priority document to the International Bureau, or to an Office that is prepared to receive priority documents for the purpose, together with a request that it be deposited in a participating digital library and made available via the service.

### *Accessing Offices*

12. An Office acting as an “accessing Office” may notify the International Bureau that, for the purposes of the applicable law<sup>10</sup> and subject to paragraphs 13 to 15, the Office treats a priority document that is available to it via the service as though it had been furnished to it by the applicant. The notification also informs the International Bureau of relevant operating procedures and technical requirements referred to in paragraph 22, including any specification of options from among those available<sup>11</sup>. An Office may specify in its notification that it will act as an accessing Office only for certain types of application but it shall accept for use with those types of application any priority document available via the service which is of a type from which priority may validly be claimed for those types of application<sup>12</sup>.
13. A certificate by the International Bureau that a priority document is available via the service to accessing Offices, including bibliographic details<sup>13</sup> and the date on which the priority document became available, is made available via the service to the applicant and the Office<sup>14</sup>. The certificate is, subject to paragraphs 14 and 15, accepted by the Office for the purposes of the applicable law as proof of the matters it contains.

### *Opportunity to Comply*

14. (a) Where a certificate referred to in paragraph 13 states that a priority document became available via the service to an accessing Office on a date which is on or before the date (“the relevant date”) by which the priority document is required to be furnished under the applicable law, but the Office finds, whether before, on or after the relevant date, that the priority document is in fact not available to it, the Office so notifies the applicant, giving the opportunity to furnish the priority document to it, or to ensure that the priority document is made available to it via the service, within a time limit of not less than two months from the date of the notification<sup>15</sup>.
- (b) Where the priority document is furnished or becomes available to the Office within that time limit, it is treated as though it had been available on the date stated in the certificate. Where the priority document is not furnished or does not become available to the Office within that time limit, the consequences provided by the applicable law apply<sup>15</sup>.

15. (a) Paragraph 14 does not apply to an accessing Office whose applicable law provides that it shall notify the applicant where the priority document is not available to it on the date by which it is required to be furnished under that law, giving the opportunity to furnish the priority document to it, or to ensure that the priority document is made available to it via the service, within a time limit of not less than two months from the date of the notification. Where the priority document is not furnished or does not become available to the Office within that time limit, the consequences provided by the applicable law apply<sup>15</sup>.
- (b) An accessing Office need not apply paragraph 14 where, under the applicable law:
- (i) there is no fixed date, calculated from either the filing or the priority date, by which the priority document must be received by or made available to the Office;
  - (ii) it is required that the priority document be received by or made available to the Office before grant; and
  - (iii) the Office provides an online file inspection service enabling the applicant to monitor whether the priority document has been received by or made available to the Office<sup>15</sup>.

*Priority Documents Becoming Available Via the Service*

16. Subject to paragraph 17, a priority document available to the service from a participating digital library is available via the service only the Offices by which access is authorized by the applicant in accordance with the operating procedures and technical requirements referred to in paragraph 22.
17. A trademark priority document available to the service from a participating digital library at the request of the applicant (to the relevant depositing Office) is available to any accessing Office.

*Translations of Priority Documents*

18. The International Bureau may establish procedures, after consultation with the Consultative Group, to enable translations of priority documents to be deposited and made available under the service<sup>16</sup>.

*Publication of Information*

19. The International Bureau publishes on WIPO's website information relating to the service, including:
- (i) the establishment of these provisions, any subsequent modifications of them and any transitional arrangements;
  - (ii) the commencement of practical operations of the service;
  - (iii) participating digital libraries<sup>17</sup>;
  - (iv) notifications and information received from Offices<sup>18</sup> under paragraphs 10 and 12;
  - (v) operating procedures and technical requirements referred to in paragraph 22.

### *Consultative Group*

20. The Consultative Group consists of:
- (i) Offices from which the International Bureau receives a notification under paragraph 10 or 12;
  - (ii) as observers, any other Offices and interested organizations invited to meetings of the Working Group that notify the International Bureau that they wish to participate in the Consultative Group.
21. The proceedings of the Consultative Group take place primarily through correspondence and an electronic forum on WIPO's website.

### *Operating Procedures and Technical Requirements*

22. The International Bureau may, after consultation with the Consultative Group, establish and modify operating procedures and technical requirements useful for the operation of the service, including criteria for the participating digital libraries<sup>19</sup> under paragraph 7 and the means by which applicants authorize access<sup>20</sup> for the purpose of paragraph 16. Such operating procedures may include the establishment of service level agreements to be adhered to by the International Bureau and by depositing Offices.

### *Modification*

23. These provisions may be modified by the International Bureau in accordance with recommendations of the Working Group or after consultation with all of the members of the Working Group.

### *Languages*

24. These provisions are established in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic<sup>21</sup>.

### *Meanings of Words and Expressions*

25. In these provisions:
- (i) "applicable law" means the national law or regional legal enactments under which an Office operates;
  - (ii) "applicant" means a person who appears as applicant in the records of the Office with which an application was filed, and includes a representative of the applicant recognized under the applicable law;
  - (iii) "application" means an application for the grant of a patent, for the grant of a utility model, for the registration or grant of an industrial design, or for the registration of a trademark (including a collective mark or a certification mark)<sup>22</sup>.
  - (iv) "certified" means certified for the purposes of these provisions and Article 4D(3) of the Paris Convention, whether by the Office with which the application concerned was filed or by the International Bureau in connection with access via the service, and having regard to the agreed understanding of the Paris Union Assembly and the PCT Union Assembly concerning certification of priority documents<sup>23</sup>;

- (v) "Consultative Group" means the Consultative Group referred to in paragraph 20;
- (vi) "digital library" means a digital library of patent, trademark, industrial design or utility model applications;
- (vii) "International Bureau" means the International Bureau of WIPO;
- (viii) "Office" means an authority entrusted with the granting of patents or utility models, the registration of trademarks, the granting or registration of industrial designs or the processing of patent applications, trademark applications, industrial design applications or utility model applications by a State that is party to the Paris Convention or is a member of WIPO or by an intergovernmental organization at least one of whose member States is party to the Paris Convention or a member of WIPO<sup>24</sup>;
- (ix) "Paris Convention" means the Paris Convention for the Protection of Industrial Property;
- (x) "Paris Union" means the Paris Union for the Protection of Industrial Property;
- (xi) "PCT" means the Patent Cooperation Treaty;
- (xii) "PCT Union" means the International Patent Cooperation Union;
- (xiii) "PLT" means the Patent Law Treaty;
- (xiv) "priority document" means a certified copy of an application<sup>25</sup>;
- (xv) "WIPO" means the World Intellectual Property Organization.

## EXPLANATORY NOTES

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1. The framework provisions are supplemented by these notes, prepared by the International Bureau for explanatory purposes, which do not form part of the framework provisions themselves but were approved by the Working Group together with the framework provisions (see document WIPO/DAS/PD/WG/3/7, paragraph 15). The explanatory notes may be modified by the International Bureau after consultation, on changes of substance, with the Consultative Group.
2. For the Assemblies' decision that the service be established according to the recommendations of the Working Group, see their report, adopted on October 3, 2006, document A/42/14, paragraph 220. For the recommendations of the Working Group, see its report, adopted on July 14, 2011, document WIPO/DAS/PD/WG/3/7.
3. See document WIPO/DAS/PD/WG/2/4, paragraphs 23 and 35 and Annexes I and II and WIPO/DAS/PD/WG/3/3.
4. The relevant international agreements and understandings include, in particular:
  - (i) the Agreed Statement by the Diplomatic Conference for the Adoption of the PLT, adopted on June 1, 2000, urging WIPO to expedite the creation of a digital library system for priority documents and noting that such a system would be of benefit to patent owners and others wanting access to priority documents (see Agreed Statement No. 3 appearing in document PT/DC/47 and in WIPO Publication No. 258);
  - (ii) the provisions of the Paris Convention, the PLT and the PCT concerning declarations of priority and priority documents (see, in particular: Paris Convention, Article 4D; PLT Article 6 and Rule 4; and PCT Article 8 and Rule 17);
  - (iii) the agreed understanding adopted by the Paris Union Assembly and the PCT Union Assembly on October 5, 2004, concerning the certification of priority documents provided, stored and disseminated in electronic form (see document A/40/7, paragraph 173, referring to document A/40/6, paragraph 9);
  - (iv) the obligations of Members of the World Trade Organization that are not party to the Paris Convention to recognize priority rights, for which purpose priority documents may also be deposited and accessed via the service.
5. The framework provisions do not create international treaty-style obligations for participating Offices. The provisions are intended to facilitate the furnishing of priority documents for the purposes of the Paris Convention but do not affect the basic rights and obligations established by that Convention, the PLT, the Trademark Law Treaty (TLT) or the Singapore Treaty on the Law of Trademarks (Singapore Treaty) or give rise to any new obligation under the Paris Convention, the PLT, the TLT or the Singapore Treaty; see, in particular, paragraph 9 of the framework provisions.

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6. This will enable the service to continue its operations without interruption until the time when the modified framework provisions come into effect.
  7. The International Bureau envisages that the initial designation of participating digital libraries will be of those Offices that are already in practice exchanging priority documents in electronic form via the WIPO Digital Access Service on the date of publication of the modified framework provisions, namely, July 1, 2012.
  8. While a participating Patent Office would not be obliged to accept a participating digital library for the purposes of PLT Rule 4(3), it would of course be free to accept such a digital library for that purpose if it so wished.
  9. An Office may notify the International Bureau that it will act as a depositing Office only with respect to priority documents relating to patents or trademarks or industrial designs or utility models or any combination thereof. An Office which is not able, or does not wish, to establish and maintain its own digital library (either of patent, trademark, industrial design or utility model priority documents) may make arrangements with the International Bureau, or with another Office that is prepared to handle such deposits, to deposit priority documents in the digital library maintained by the International Bureau or that other Office. The International Bureau is prepared for this purpose to receive such documents in electronic form or to scan them if received in paper form. The arrangements made would need to provide for certain technical matters such as the use of an appropriate data format.
  10. See notes 4 and 5, above, as to the way in which the provisions operate in the context of the applicable law and the provisions of the Paris Convention and other international agreements and understandings.
  11. An Office may notify the International Bureau that it will act as an accessing Office only with respect to priority documents relating to patents and utility models or to trademarks or to industrial designs and utility models or any combination thereof.
  12. For example, an accessing Office may notify that it will access the service only to retrieve priority documents for industrial design applications. However, in this case it must accept priority documents based on earlier utility model applications as well as earlier industrial design applications. Offices which have previously participated in the system as accessing Offices for patent applications would similarly be expected to accept priority documents based on earlier utility model applications.
  13. Which bibliographic details would be included is a matter to be addressed by the Consultative Group, having regard, for example, to requirements under applicable laws as to maintaining the confidentiality of unpublished applications.
  14. Certificates would be available to the applicant and the Office concerned (but not to others) for viewing on-line or by transmission on request.
  15. The purpose of paragraph 14 of the framework provisions is to assure applicants that, if they make use of the service complying with the requirements of the provisions, their priority rights will be protected in a case where the priority document concerned is found not to be available to an accessing Office via the service. The time limit of two months referred to in paragraph 14(a) is consistent with the time limit prescribed in PLT Rule 6(1). An Office which follows in general the practice of sending notifications referred to in paragraph 14(a) before the relevant date may of course do so whether or not the priority document in question is the subject of a certificate referred to in paragraph 13. Paragraph 14 does not apply to an accessing Office whose procedures provide for safeguards of the kind set out in paragraph 15(a), such as the European Patent Office, and need not be applied by an accessing Office whose procedures provide for safeguards of the kind set out in paragraph 15(b), such as the United States Patent and Trademark Office.

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Notifications by accessing Offices given to the International Bureau under paragraph 12, and published under paragraph 20(iv), include details of the applicable procedures under paragraphs 14 and 15.

16. Operating procedures and technical requirements providing for the deposit of and access to translations would need to be established under paragraph 22 of the framework provisions before a date could be determined under paragraph 18. The framework provisions do not address or limit the kind of certification, etc., that accessing Offices are entitled to require in the case of translations, and do not assure that a translation submitted under the services would satisfy the needs of any particular accessing Office; those matters would be left to the applicable law in each Office. It is to be hoped, however, that future work might achieve a degree of commonality of approach on the matter, with the result that a single translation might be able to be accepted by a number of accessing Offices.
17. Published details concerning participating digital libraries would include, for example, the date on which a digital library is to commence operations under the service, document format requirements, etc.
18. The publication of up-to-date details of notifications and Office requirements, and changes therein, is of course vital to applicants wishing to rely on the service as a secure means of satisfying requirements for the provision of priority documents. As an example, it will be important to publish details of which possible routes for entry of priority documents into the service (see document WIPO/DAS/PD/WG/3/3) are available in a particular Office of first filing.
19. It is envisaged that the criteria for participating digital libraries might include, for example, criteria as to giving access and ensuring confidentiality and a requirement that arrangements be in place for deposited priority documents to be stored for a specified period from the priority date. By way of comparison, it is noted that files relating to international applications under the PCT must be kept by the International Bureau for 30 years from the date of receipt of the record copy; see PCT Rule 93.2(a).
20. As explained in document WIPO/DAS/PD/WG/3/6, paragraphs 18 to 39, the applicant's authorization of access is by means of an "access code" which is generated by the Office of first filing or the International Bureau and provided by the applicant to the Office of second filing.
21. The working languages of the service in its practical operations are Chinese, English, French, Japanese, Korean and Spanish. The International Bureau will seek to add any other language of publication of the PCT when an Office for whose users that language would be of benefit indicates a definite intention to join the system.
22. This includes international applications filed under the PCT and under the Hague Agreement for the International Registration of Industrial Designs.
23. See note 4(iii), above. This agreed understanding applies to priority documents relating to patents, trademarks, industrial designs and utility models.
24. See also Note 4(iv), above.
25. See also the definition of "certified" in paragraph 25(iv) of the framework provisions.

[End of Annex II and of document]