



C. PCT 887  
- 21.1

December 19, 2002

Madam,  
Sir,

*Questionnaire: Application of the Criteria of “Due Care” and  
“Unintentionality” in Cases of Restoration of Rights*

1. This Circular is addressed to your Office in its capacity as a national or regional Office of or acting for a State party to the Patent Cooperation Treaty (PCT). It concerns proposals for amendment of the Regulations under the PCT which would include provisions for restoration of the right of priority similar to those under the Patent Law Treaty (PLT).
2. At its third session, held in Geneva from November 18 to 22, 2002, the Working Group on Reform of the PCT considered proposals for amendment of the Regulations under the PCT relating to the restoration of the right of priority. Noting that there was no general agreement in the Working Group as to which of the two criteria for restoration provided for in the PLT, namely, “due care” and “unintentionality,” should apply under the PCT in the case of determinations by a receiving Office, it was agreed that the International Bureau should send a questionnaire to all PCT Offices and Authorities requesting information as to the application of such criteria under the various national laws and practices. As stated in the summary of the session by the Chair, document PCT/R/WG/3/5, paragraphs 20 and 27:

“20. Several delegations suggested that guidance should be provided in the context of the PCT as to the application of the two criteria, noting that no such guidance was provided in the context of the provisions concerning the matter in the PLT and that little information was available as to the present practices of the various Offices. One delegation suggested that it would be useful to conduct a survey of present practices by sending a questionnaire to all PCT Offices and Authorities.

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That survey should seek information as to the application of the criteria of “due care” and “unintentionality” in general, that is, not restricted to cases where restoration of the right of priority was sought, but also in cases, for example, of late payment of annuities, in order to obtain guidance as to the differences between the two criteria and to assist in the establishment of guidelines. The questionnaire should also seek information as to the proof required.

[...]

“27. It was also agreed that the International Bureau should send a questionnaire to all PCT Offices and Authorities requesting information as to the application of such criteria under the various national laws and practices.”

3. In order to obtain more information about the experience of national Offices and Authorities concerning the application of the criteria of “due care” and “unintentionality” under the various national laws and practices, in particular, as to the differences between the two criteria, and to assist in the establishment of guidelines, you are kindly requested to complete the attached questionnaire. The International Bureau would appreciate receiving your reply by January 24, 2003, preferably by e-mail sent to [pct.reform@wipo.int](mailto:pct.reform@wipo.int) or by fax sent to (+41-22) 338 8780.

Sincerely yours,



Francis Gurry  
Assistant Director General

Enclosure: Questionnaire concerning the application of the criteria of “due care” and “unintentionality” in cases of restoration of rights

QUESTIONNAIRE:\*

APPLICATION OF THE CRITERIA OF “DUE CARE” AND  
“UNINTENTIONALITY” IN CASES OF RESTORATION OF RIGHTS

Name of Office: .....

Country: .....

*Person completing this Questionnaire:*

Name: .....

Title: .....

Dep./Section: .....

Tel.: .....

Fax: .....

E-mail: .....

*Application of the criteria of “due care” and “unintentionality” under the applicable national law and practice*

*Question 1:* Does the national law and/or practice applicable by your Office in cases of restoration of rights (that is, not restricted to cases where restoration of the right of priority is sought, and not restricted to the patent procedure) provide for the application of the criteria of “due care” and/or “unintentionality”? If so, in which context?

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\* You are kindly requested to complete this Questionnaire and to return it to the International Bureau by January 24, 2003, preferably by e-mail sent to [pct.reform@wipo.int](mailto:pct.reform@wipo.int) or by fax sent to (+41-22) 338 8780. If you wish to receive this Questionnaire by e-mail (and return it by the same means), or for any further information, please contact Claus C. Matthes, Head, PCT Reform Section, Patent Policy Department, World Intellectual Property Organization; tel.: (+41-22) 338 98 09; fax.: (+41-22) 338 8780; e-mail: [claus.matthes@wipo.int](mailto:claus.matthes@wipo.int)



*Question 5 (only applicable if the answer to question 1 is “yes”):* What are the main problems, if any, with regard to the application of the two criteria?

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[End of Annex and of Circular]