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Le Bureau international de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) présente ses compliments et a l'honneur de transmettre ./.
ci-joint le rapport (document PCT/R/WG/7/13), adopté par le groupe de travail, de la septième session du *Groupe de travail sur la réforme du Traité de coopération en matière de brevets (PCT)*, qui s'est tenue à Genève du 25 au 31 mai 2005, ainsi que le document PCT/R/WG/7/12 (en français seulement) élaboré en vue de cette même session.

Les documents de travail sont aussi disponibles sur le site Internet de l'OMPI (voir <http://www.wipo.int/pct/fr/meetings>).

Le 8 juin 2005

Pièce jointe : documents PCT/R/WG/7/12 (en français seulement) et 13

OMPI



PCT/R/WG/7/12
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ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE
GENÈVE

UNION INTERNATIONALE DE COOPÉRATION EN MATIÈRE DE BREVETS
(UNION DU PCT)

GROUPE DE TRAVAIL SUR LA RÉFORME DU TRAITÉ DE
COOPÉRATION EN MATIÈRE DE BREVETS (PCT)

Septième session
Genève, 25 – 31 mai 2005

PROPOSITION DE MODIFICATION DE LA RÈGLE 4.9

Document établi par le Bureau international

RÉSUMÉ

1. Le présent document contient une proposition de modification de forme à apporter au texte de la règle 4.9.b)¹ afin d'éviter un effet involontaire.

RAPPEL

2. À sa trente et unième session (18^e session extraordinaire), tenue à Genève en septembre-octobre 2002, l'Assemblée de l'Union du PCT a adopté des modifications du règlement d'exécution relatives à la notion de désignation et au fonctionnement du système des désignations. Ces modifications, qui sont entrées en vigueur le 1^{er} janvier 2004, ont donné effet au système de désignation globale qui permet au déposant, moyennant le dépôt d'une demande internationale, de disposer d'une couverture automatique et générale de toutes les désignations possibles selon le PCT et de tous les titres de protection, y compris une

¹ Dans le présent document, les termes "article" et "règle" renvoient respectivement aux articles du Traité de coopération en matière de brevets (PCT) et aux règles du règlement d'exécution du PCT (ci-après dénommé "règlement d'exécution"), ou aux dispositions qu'il est proposé de modifier ou d'ajouter, selon le cas. Les termes "législation nationale", "demandes nationales", "phase nationale", etc., désignent également la législation régionale, les demandes régionales, la phase régionale, etc.

protection par brevet nationale et régionale, sans devoir, au moment du dépôt, désigner chaque État contractant de façon individuelle, choisir certains titres de protection ou indiquer expressément s'il souhaite une protection nationale ou régionale (voir la règle 4.9 modifiée). Ces questions relèveraient de la phase nationale (voir la nouvelle règle 49*bis*).

3. La règle 4.9.b) prévoit une exception limitée à la désignation de tous les États contractants, afin de traiter la question des dispositions relatives à "l'autodésignation" qui figurent dans la législation nationale de certains États contractants, exception qui est rédigée dans les termes suivants :

"b) Nonobstant l'alinéa a)i), si, le 1^{er} octobre 2002, la législation nationale d'un État contractant prévoit que le dépôt d'une demande internationale qui contient la désignation de cet État et revendique la priorité d'une demande nationale antérieure produisant ses effets dans cet État a pour résultat que la demande nationale antérieure cesse de produire ses effets avec les mêmes conséquences que le retrait de ladite demande, toute requête peut, tant que la législation nationale le prévoit, contenir une indication selon laquelle la désignation de cet État n'est pas faite, à condition que l'office en question informe le Bureau international le 1^{er} janvier 2003 au plus tard que le présent alinéa s'applique aux désignations de cet État. Le Bureau international publie à bref délai dans la gazette les informations reçues."

4. La règle 4.9.b) modifiée visait à permettre une telle exclusion uniquement dans le cas d'une demande internationale qui revendique la priorité d'une demande nationale antérieure déposée dans un État contractant où des dispositions relatives à "l'autodésignation" s'appliquent (voir le paragraphe 50 du document PCT/A/31/6), étant entendu qu'une notification en vertu de cette règle a été effectuée par l'office désigné concerné. Toutefois, pris de manière littérale, le libellé de la règle modifiée a eu pour effet involontaire d'autoriser l'exclusion d'un tel État dans le cas de toute demande internationale, qu'elle revendique ou non la priorité d'une demande nationale antérieure déposée dans cet État, c'est-à-dire que la question de "l'autodésignation" se pose ou non dans le cas considéré. C'est pourquoi il est proposé d'apporter une correction au libellé de la règle 4.9.b) afin d'indiquer expressément qu'elle s'applique uniquement lorsque la demande internationale revendique la priorité d'une demande nationale antérieure produisant ses effets dans l'État considéré.

5. Les modifications proposées pour donner effet à cette correction figurent dans l'annexe. Elles indiquent en outre clairement que l'application de cette disposition est subordonnée à l'existence d'une notification actualisée effectuée par l'office désigné concerné. Afin d'éviter des dispositions transitoires compliquées, il semble préférable d'exiger qu'une nouvelle notification soit effectuée en vertu de cette règle par les offices désignés des pays dont la législation nationale comporte des dispositions relatives à "l'autodésignation", étant donné le faible nombre de notifications effectuées lorsque la version actuelle de ladite règle a été adoptée, en 2002.

6. *Le groupe de travail est invité à examiner les propositions contenues dans l'annexe.*

[L'annexe suit]

ANNEXE

PROPOSITIONS DE MODIFICATION DU RÈGLEMENT D'EXÉCUTION DU PCT² :

PROPOSITION DE MODIFICATION DE LA REGLE 4.9
(EXCEPTIONS LIMITEES AU SYSTEME DE DESIGNATION GL OBALE)

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² Les dispositions qu'il est proposé d'ajouter sont soulignées et celles qu'il est proposé de supprimer sont biffées. Certaines dispositions qu'il n'est pas proposé de modifier ont été reproduites pour faciliter la compréhension.

Règle 4

Requête (contenu)

4.1 à 4.8 [Sans changement]

4.9 *Désignation d'États, titres de protection, brevets nationaux et régionaux*

a) [Sans changement] Le dépôt d'une requête

i) vaut désignation de tous les États contractants qui sont liés par le traité à la date du dépôt international;

ii) vaut indication du fait que la demande internationale doit être traitée, à l'égard de chaque État désigné auquel l'article 43 ou 44 s'applique, comme une demande tendant à la délivrance de tout titre de protection disponible au moyen de la désignation de cet État;

iii) vaut indication du fait que la demande internationale doit être traitée, à l'égard de chaque État désigné auquel l'article 45.1) s'applique, comme une demande tendant à la délivrance d'un brevet régional et, sauf si l'article 45.2) s'applique, d'un brevet national.

[Règle 4.9, suite]

b) Nonobstant l'alinéa a)i), si, le 5 octobre 2005³, ~~1^{er} octobre 2002~~, la législation nationale d'un État contractant prévoit que le dépôt d'une demande internationale qui contient la désignation de cet État et revendique la priorité d'une demande nationale antérieure produisant ses effets dans cet État a pour résultat que la demande nationale antérieure cesse de produire ses effets avec les mêmes conséquences que le retrait de ladite demande, toute requête dans laquelle la priorité d'une demande nationale antérieure produisant ses effets dans cet État est revendiquée peut, ~~tant que la législation nationale le prévoit~~, contenir une indication selon laquelle la désignation de cet État n'est pas faite, à condition que l'office en question notifie au ~~informe le~~ Bureau international le 5 janvier 2006³ ~~1^{er} janvier 2003~~ au plus tard que le présent alinéa s'applique aux désignations de cet État et que cette notification soit toujours en vigueur à la date du dépôt international. Le Bureau international publie à bref délai dans la gazette les informations reçues.

4.10 à 4.18 [Sans changement]

[Fin de l'annexe et du document]

³ Le 5 octobre 2005 est la date à laquelle l'Assemblée de l'Union du PCT devrait adopter le rapport sur sa 34^e session ainsi que les présentes modifications et d'autres modifications du règlement d'exécution. Le 5 janvier 2006 tombe trois mois après cette date.

WIPO



PCT/R/WG/7/13

ORIGINAL: English

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

WORKING GROUP ON REFORM OF THE PATENT
COOPERATION TREATY (PCT)

Seventh Session
Geneva, May 25 to 31, 2005

REPORT

adopted by the Working Group

INTRODUCTION

1. The Working Group on Reform of the PCT held its seventh session in Geneva from May 25 to 31, 2005.

2. The following members of the Working Group were represented at the session: (i) the Member States of the International Patent Cooperation Union (PCT Union): Antigua and Barbuda, Australia, Austria, Benin, Brazil, Bulgaria, Canada, China, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Kyrgyzstan, Latvia, Lithuania, Mexico, Morocco, Netherlands, Nigeria, Norway, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States of America; (ii) the European Patent Office (EPO).

3. The following Member State of the International Union for the Protection of Industrial Property (Paris Union) participated in the session as an observer: Qatar.

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4. The following intergovernmental organizations were represented by observers: African Intellectual Property Organization (OAPI), African Regional Industrial Property Organization (ARIPO), Eurasian Patent Organization (EAPO), European Commission (EC), South Centre (SC).

5. The following international non-governmental organizations were represented by observers: Asian Patent Attorneys Association (APAA), Centre for International Industrial Property Studies (CEIPI), Exchange and Cooperation Centre for Latin America (ECCLA), Institute of Professional Representatives Before the European Patent Office (EPI), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), Union of Industrial and Employers' Confederations of Europe (UNICE).

6. The following national non-governmental organizations were represented by observers: American Intellectual Property Law Association (AIPLA), Brazilian Association of Industrial Property Agents (ABAPI), Intellectual Property Institute of Canada (IPIC), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA).

7. The list of participants is contained in the Annex to this report.

OPENING OF THE SESSION

8. Mr. Francis Gurry, Deputy Director General, on behalf of the Director General, opened the session and welcomed the participants. Mr. Claus Matthes (WIPO) acted as Secretary to the Working Group.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

9. The Working Group unanimously elected Mr. Alan Troicuk (Canada) as Chair for the session, and Ms. Isabel Chng Mui Lin (Singapore) and Mrs. Margit Sümeghy (Hungary) as Vice-Chairs.

ADOPTION OF THE AGENDA

10. The Working Group noted that the revised agenda contained in document PCT/R/WG/7/1 Rev. reflected a request by Switzerland that discussion of its proposals regarding the declaration of the source of genetic resources and traditional knowledge in patent applications (document PCT/R/WG/7/9) be postponed to the next session of the Working Group, and that a proposal to amend Rule 4.9¹ (document PCT/R/WG/7/12) had been added to the agenda as item 3(j).

¹ References in this document to "Articles" and "Rules" are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT ("the Regulations"), or to such provisions as proposed to be amended or added, as the case may be. References to "national laws", "national applications", "the national phase", etc., include reference to regional laws, regional applications, the regional phase, etc.

11. Following a suggestion by the International Bureau, the Working Group agreed to add a further item *2bis*, entitled “Adoption of the agenda”, to the revised agenda contained in document PCT/R/WG/7/1 Rev. The Working Group adopted the agenda as so further revised.

MISSING ELEMENTS AND PARTS OF THE INTERNATIONAL APPLICATION

12. Discussions were based on document PCT/R/WG/7/2.

13. The Working Group approved the proposed amendments of the Regulations set out in Annex I to document PCT/R/WG/7/2 with a view to their submission to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, subject to the comments and clarifications appearing in the following paragraphs and to possible further drafting changes to be made by the International Bureau.

14. Two delegations reiterated concerns expressed at earlier sessions of the Working Group to the effect that there was no basis in the Treaty itself for the incorporation by reference of a missing element or missing part of an international application and that an amendment of the Treaty would be required in order to implement provisions of the kind envisaged. Both delegations indicated that, should the Assembly decide to adopt those amendments, they would make use of the proposed reservation provisions.

Rule 4.18

15. The Working Group agreed that the following sentence should be added to the end of Rule 4.18:

“Such a statement, if not contained in the request on that date, may be added to the request if, and only if, it was otherwise contained in, or submitted with, the international application on that date.”

16. There was no support for the suggestion of a representative of users that the scope of the proposals should be extended by deleting, in Rule 4.18 as proposed to be amended, the words “for the purposes of Rule 20.6”, so as to allow the incorporation of the contents of the earlier application also for other purposes, such as the rectification of obvious errors under Rule 91, and so as to not detract from rights existing under the national law of certain Contracting States to incorporate by reference the contents of earlier applications for other purposes. The Delegation of the United States of America confirmed that the present proposals would not detract from any such rights existing under its national law.

Rule 20.3

17. The Working Group agreed that the words “as applicable and” should be deleted from the *chapeau* of Rule 20.3(a), noting that the receiving Office should not be required to decide which of the options offered under items (i) (invitation to correct) or (ii) (invitation to confirm incorporation by reference) it might be appropriate for the applicant to select.

Rule 20.5

18. The Working Group agreed that, in Rule 20.5(a), the words “as applicable and” should be deleted from the *chapeau*, similarly to the deletion of those words from Rule 20.3(a) (see above), and that the word “or” should be added at the end of item (i).

19. The Working Group agreed that, in Rule 20.5(c), the words “, notify the applicant accordingly” should be inserted after the words “the date on which the receiving Office received that part”.

Rule 20.6

20. In response to the concern expressed by one delegation as to how to achieve consistency in receiving Offices’ practices in determining whether a missing element or part was completely contained in the earlier application, the Secretariat noted that it would be necessary to draft and consult on appropriate modifications of the PCT Receiving Office Guidelines in advance of the entry into force of the amendments concerned.

21. One delegation expressed the view that the determination of whether a missing element or part was contained in the earlier application should be made by the International Searching Authority rather than the receiving Office, noting that such determination might involve more than a simple clerical check, particularly if different languages were involved or where, for other reasons, the texts of the elements or parts concerned were not identical, for example, where different reference signs were used. Other delegations, however, considered that the determination should be carried out by the receiving Office, which was responsible for the according of the international filing date, and stated that, in their view, Rule 82^{ter} as proposed to be amended provided a sufficient safeguard, permitting designated or elected Offices, in the national phase, to rescind or correct the international filing date should it turn out that the element or part concerned was not in fact completely contained in the earlier application.

22. The Working Group agreed that Rule 20.6 should be amended to read:

“20.6 *Confirmation of Incorporation by Reference of Elements and Parts*

(a) The applicant may submit to the receiving Office, within the applicable time limit under Rule 20.7, a written notice confirming that an element or part is incorporated by reference in the international application under Rule 4.18, accompanied by:

(i) a sheet or sheets embodying the entire element as contained in the earlier application or embodying the part concerned;

(ii) where the applicant has not already complied with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document, a copy of the earlier application as filed;

(iii) where the earlier application is not in the language in which the international application is filed, a translation of the earlier application into that language or, where a translation of the international application is required under Rule 12.3(a) or 12.4(a), a translation of the earlier application into both the language in which the international application is filed and the language of that translation; and

(iv) in the case of a part of the description, claims or drawings, an indication as to where that part is contained in the earlier application and, where applicable, in any translation referred to in item (iii).

(b) Where the receiving Office finds that the requirements of Rule 4.18 and paragraph (a) have been complied with and that the element or part referred to in paragraph (a) is completely contained in the earlier application concerned, that element or part shall be considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

(c) Where the receiving Office finds that a requirement under Rule 4.18 or paragraph (a) has not been complied with or that the element or part referred to in paragraph (a) is not completely contained in the earlier application concerned, the receiving Office shall proceed as provided for in Rule 20.3(b)(i), 20.5(b) or 20.5(c), as the case may be.”

Rule 20.7

23. So as to avoid a possible “circular effect” in the calculation of time limits having regard to the wording of Rules 20.6(a) and (b), the Working Group agreed that Rule 20.7 should be split into paragraphs (a) and (b), the latter reading as follows:

“(a) The applicable time limit referred to in Rules 20.3(a) and (b), 20.4, 20.5(a), (b) and (c), and 20.6(a) shall be:

(i) where an invitation under Rule 20.3(a) or 20.5(a), as applicable, was sent to the applicant, two months from the date of the invitation;

(ii) where no such invitation was sent to the applicant, two months from the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

(b) Where a correction under Article 11(2) or a notice under Rule 20.6(a) confirming the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e) is received by the receiving Office after the expiration of the applicable time limit under paragraph (a) but before that Office sends a notification to the applicant under Rule 20.4(i), that correction or notice shall be considered to have been received within that time limit.”

24. The Working Group agreed that the time limit under both items (i) and (ii) of Rule 20.7(a) should be fixed at two months from the date of invitation or from the date on which one or more elements referred to in Article 11(1)(iii) were first received, respectively. While certain delegations would have preferred a one-month time limit, noting that the PCT imposed tight deadlines on actions to be taken during the international phase, the Working Group agreed that the matter should be resolved by fixing a two-month time limit consistently with the Patent Law Treaty.

Rule 20.8

25. The Working Group agreed that, in proposed Rule 20.8(a) and (b), the words “[*three months from the date of adoption of these modifications by the PCT Assembly*]” should be replaced by the words “[*six months from the date of adoption of these modifications by the PCT Assembly*]”.

26. One delegation stressed the importance of Rule 48.2(b)(v), in particular for designated Offices which had made use of the reservation provisions under Rule 20.8, allowing such Offices to easily identify those international applications whose international filing date was accorded on the basis of the provisions relating to the incorporation by reference of missing elements or parts and to process those applications in the national phase in accordance with the applicable national law as if the international filing date had been accorded under Rule 20.3(b)(i) or 20.5(b), or corrected under Rule 20.5(c), as applicable.

27. The Working Group agreed that the Assembly should be invited, in adopting Rule 20.8(a), to express the understanding that the availability of the procedure under the Rule would depend on the existence of an incompatibility with the Rules referred to in that Rule of the national law applicable to a national Office in its capacity as a PCT receiving Office, as distinct from its capacity as a designated Office, and that such incompatibility might arise either from express national law provisions dealing with the subject matter in question or from the more general operation of the national law.

28. There was no support for the suggestion of a representative of users that express provision should be included referring to the possibility that the international application might be transmitted to the International Bureau as receiving Office where the original receiving Office had made a notification of incompatibility with the national law applied by it as receiving Office and did not apply the provisions relating to the incorporation by reference of missing elements or parts.

Rule 26.2

29. The Working Group agreed that the time limit for correction under Rule 26.2 should be two months from the date of the invitation to correct (for similar reasons to those outlined in connection with Rule 20.7, above).

Rule 48.2

30. The Working Group agreed that proposed Rule 48.2(b)(v) should read:

“(v) where the international filing date was accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part, an indication to that effect, together with an indication as to whether the applicant, for the purposes of Rule 20.6(a)(ii), relied on compliance with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document or on a separately submitted copy of the earlier application concerned.”

Rule 51bis

31. The Working Group agreed that proposed Rule 51bis.1(e) should read:

“(e) The national law applicable by the designated Office may, in accordance with Article 27, require the applicant to furnish a translation of the priority document, provided that such a translation may only be required:

(i) where the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable; or

(ii) where the international filing date has been accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part, for the purposes of determining under Rule 82ter.1(b) whether that element or part is completely contained in the priority document concerned, in which case the national law applicable by the designated Office may also require the applicant to furnish, in the case of a part of the description, claims or drawings, an indication as to where that part is contained in the translation of the priority document.”

32. The Working Group agreed that, in proposed Rule 51bis.1(f), the words “[*three months from the date of adoption of these modifications by the PCT Assembly*]” should be replaced by the words “[*six months from the date of adoption of these modifications by the PCT Assembly*]”.

33. The Working Group agreed that the Assembly should be invited, in amending Rule 51bis.1(f), to adopt a decision ensuring that reservations made previously under Rule 51bis.1(f) in respect of the proviso in present paragraph (e) (paragraph (e)(i) as proposed to be amended) continued to be effective.

Rule 82ter

34. The Working Group agreed that proposed Rule 82ter.1(b) and (c) should read:

“(b) Where the international filing date was accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part but the designated or elected Office finds that:

(i) the applicant has not complied with Rule 17.1(a), (b) or (b-bis) in relation to the priority document; or

(ii) a requirement under Rule 4.18, 20.6(a)(i) or 51bis.1(e)(ii) has not been complied with; or

(iii) the element or part is not completely contained in the priority document concerned;

the designated or elected Office may, subject to paragraph (c), treat the international application as if the international filing date had been accorded under Rule 20.3(b)(i) or 20.5(b), or corrected under Rule 20.5(c), as applicable, provided that Rule 17.1(c) shall apply *mutatis mutandis*.

(c) The designated or elected Office shall not treat the international application under paragraph (b) as if the international filing date had been accorded under Rule 20.3(b)(i) or 20.5(b), or corrected under Rule 20.5(c), without giving the applicant the opportunity to make observations on the intended treatment, or to make a request under paragraph (d), within a time limit which shall be reasonable under the circumstances.”

PROPOSED AMENDMENT OF RULE 4.9

35. Discussions were based on document PCT/R/WG/7/12.

36. The proposed amendments of the Regulations set out in Annex I to document PCT/R/WG/7/12 were approved by the Working Group with a view to their submission to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, subject to the clarifications appearing in the following paragraph and to possible further drafting changes to be made by the International Bureau.

Rule 4.9

37. The Working Group agreed that, in Rule 4.9(b) as proposed to be amended, the words “having effect in” should be replaced by the words “filed in”. Furthermore, in the English text only, the words “that that notification” should be replaced by the words “that the notification”.

RESTORATION OF THE RIGHT OF PRIORITY

38. Discussions were based on document PCT/R/WG/7/3.

39. The Working Group approved the proposed amendments of the Regulations set out in Annex I to document PCT/R/WG/7/3 with a view to their submission to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, subject to the comments and clarifications appearing in the following paragraphs and to possible further drafting changes to be made by the International Bureau.

40. Several delegations reiterated concerns expressed at earlier sessions of the Working Group that the inclusion of provisions allowing for restoration of the right of priority in the Regulations would provide, in effect, for a 14-month priority period in certain cases, and that this would be inconsistent with Article 8(2)(a) of the PCT which referred to the Paris Convention with regard to the conditions for, and the effect of, any priority claim contained in an international application, and thus to the 12-month priority period under Article 4C(1) of the Paris Convention. Two of those delegations also expressed the view that Article 58(1) did not provide a sufficient basis for this matter to be dealt with in the Regulations only. All of those delegations indicated that, should the Assembly decide to adopt those amendments, they would make use of the proposed reservation provisions.

41. In reply to a query by one delegation, the Secretariat explained that, under the proposals, if an Office wished not to apply any of the provisions relating to the restoration of the right of priority, in its capacity as either a receiving Office or as a designated Office, such Office would need to make reservations under all of amended Rules 26bis.3(j), 49ter.1(g) and 49ter.2(h).

42. A number of delegations and a representative of users welcomed the general approach taken in the document, noting the importance of provisions for the restoration of the right of priority as a safeguard for applicants. They expressed the view that provisions for the restoration of the right of priority were in compliance with the provisions of the Paris Convention, which only provided for a minimum standard with regard to the length of the priority period and thus left room for member States of the Paris Union to grant longer periods of priority if they so wished.

Rule 4.10

43. Noting the proposal for amendment of Rule 26bis.1 contained in document PCT/R/WG/7/6, clarifying that the addition of a priority claim after the filing of the international application is to be made “to the request”, the Working Group agreed that, in the second sentence of the *chapeau* to Rule 4.10(a), the words “, subject to Rule 26bis.1” should be deleted.

Rule 26bis.3

44. The suggestion by one representative of users to provide that the request for the restoration of the right of priority may be filed, at the applicant’s option, either with the receiving Office or the International Bureau, so as to allow applicants to have such requests decided on the basis of both criteria (due care and unintentionality) where the receiving Office only applied one of the criteria, or where such requests could not be filed with that Office because it had made use of the reservation provision, was not supported by the Working Group.

45. The Working Group agreed that Rule 26bis.3 should be further amended to read as follows:

“26bis.3 Restoration of Right of Priority by Receiving Office

(a) Where the international application has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the receiving Office shall, on the request of the applicant, and subject to paragraphs (b) to (g) of this Rule, restore the right of priority if the Office finds that a criterion applied by it (“criterion for restoration”) is satisfied, namely, that the failure to file the international application within the priority period:

- (i) occurred in spite of due care required by the circumstances having been taken; or
- (ii) was unintentional.

Each receiving Office shall apply at least one of those criteria and may apply both of them.

(b) A request under paragraph (a) shall:

(i) be filed with the receiving Office within the time limit applicable under paragraph (e);

(ii) state the reasons for the failure to file the international application within the priority period; and

(iii) preferably be accompanied by any declaration or other evidence required under paragraph (f).

(c) Where a priority claim in respect of the earlier application is not contained in the international application, the applicant shall submit, within the time limit applicable under paragraph (e), a notice under Rule 26*bis*.1(a) adding the priority claim.

(d) The submission of a request under paragraph (a) may be subjected by the receiving Office to the payment to it, for its own benefit, of a fee for requesting restoration, payable within the time limit applicable under paragraph (e). The amount of that fee, if any, shall be fixed by the receiving Office.

(e) The time limit referred to in paragraphs (b)(i), (c) and (d) shall be two months from the date on which the priority period expired, provided that, where the applicant makes a request for early publication under Article 21(2)(b), any request under paragraph (a) or any notice referred to in paragraph (c) submitted, or any fee referred to in paragraph (d) paid, after the technical preparations for international publication have been completed shall be considered as not having been submitted or paid in time.

(f) The receiving Office may require that a declaration or other evidence in support of the statement of reasons referred to in paragraph (b)(iii) be filed with it within a time limit which shall be reasonable under the circumstances. The applicant may furnish to the International Bureau a copy of any such declaration or other evidence filed with the receiving Office, in which case the International Bureau shall include such copy in its files.

(g) The receiving Office shall not refuse, totally or in part, a request under paragraph (a) without giving the applicant the opportunity to make observations on the intended refusal within a time limit which shall be reasonable under the circumstances. Such notice of intended refusal by the receiving Office may be sent to the applicant together with any invitation to file a declaration or other evidence under paragraph (f).

(h) The receiving Office shall promptly:

(i) notify the International Bureau of the receipt of a request under paragraph (a);

(ii) make a decision upon the request;

(iii) notify the applicant and the International Bureau of its decision and the criterion for restoration upon which the decision was based.

(i) Each receiving Office shall inform the International Bureau of which of the criteria for restoration it applies and of any subsequent changes in that respect. The International Bureau shall promptly publish such information in the Gazette.

(j) If, on [*date of adoption of these modifications by the PCT Assembly*], paragraphs (a) to (i) are not compatible with the national law applied by the receiving Office, those paragraphs shall not apply to that receiving Office for as long as paragraphs (a) to (i) continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [*six months from the date of adoption of these modifications by the PCT Assembly*]. The information received shall be promptly published by the International Bureau in the Gazette.”

Rule 48.2

46. The Working Group agreed that, in the English text only, Rule 48.2(a)(xi) should be further amended to read as follows:

“(xi) any information concerning a request under Rule 26*bis*.3 for restoration of the right of priority and the decision of the receiving Office upon such request, including information as to the criterion for restoration upon which the decision was based.”

47. In reply to a query by one delegation, the Secretariat confirmed that, where an Office based its decision on both criteria referred to in Rule 26*bis*.3(a) (due care and unintentionality), Rule 48.2(a)(xi) would require that information to that effect be included in the publication of the international application. It was agreed that an explanatory note to this effect should be included with the proposals to be submitted to the Assembly.

Rule 49ter.1

48. One delegation noted that the provision of two alternative criteria (due care and unintentionality) for the restoration of the right of priority under Rule 26*bis*.3 complicated the provisions on the effect of restoration under Rule 49*ter*.1, and suggested that it would be more user-friendly to provide for a single criterion. The Chair noted that although, at previous sessions, many delegations had expressed a preference for having a single criterion, it had not proved possible to achieve a consensus on which of the two criteria should be adopted.

49. The Working Group noted that, although no change to the text of Rule 49*ter*.1(c) itself was required, contrary to what was stated in the Comment following that Rule in Annex I to document PCT/R/WG/7/3 and the conclusion of the Working Group at its fifth session (see the summary of the fifth session by the Chair, document PCT/R/WG/5/13, paragraph 54), it should be possible for a designated Office to base a finding of non-compliance with a requirement under Rule 26.3(a), (b)(ii) or (c) (as amended) not only on information or evidence as furnished to the receiving Office but also on any information or evidence which is otherwise available to that Office.

50. The Working Group agreed that, in proposed amended Rule 49*ter*.1(d), the words “those doubts” should be replaced by “that doubt”.

51. The Working Group agreed that the Assembly should be invited to express the understanding, in adopting Rule 49ter.1(g), that a reservation under the Rule would have both procedural and substantive effects, as outlined in the Comment following the Rule in Annex I to document PCT/R/WG/7/3 (for example, there would be consequences both in terms of calculating the time limit for national phase entry before the designated Office concerned and in terms of the assessment of novelty and inventive step during the national search and examination).

52. The Working Group agreed that, in proposed Rule 49ter.1(g), the words “[*three months from the date of adoption of these modifications by the PCT Assembly*]” should be replaced by the words “[*six months from the date of adoption of these modifications by the PCT Assembly*]”.

Rule 49ter.2

53. The Working Group agreed that, in proposed Rule 49ter.2(a), the words “claims the priority of an earlier application and” should be inserted after “Where the international application”.

54. The Working Group also agreed that, in the French text only, paragraphs (a) and (b)(ii) of Rule 49ter.2 should be changed along the same lines of the proposed modifications to paragraphs (a) and (b)(ii) of Rule 26bis.3.

55. The Working Group agreed that the Assembly should be invited to express the understanding, in adopting Rule 49ter.2(b), that, where the effect of the international application provided for in Article 11(3) had ceased because the applicant failed to perform the acts referred to in Article 22 or 39(1) within the applicable time limit but the designated Office reinstated the rights of the applicant with respect to that international application in accordance with Rule 49.6 or 76.5(ii), respectively, such reinstatement would extend to all time limits calculated on the basis of the applicable time limit under Article 22 or 39(1), respectively, including the time limit under Rule 49ter.2(b)(i).

56. The Working Group agreed that the reference in Rule 49ter.2(e) to “paragraph (d)” should be replaced by a reference to “paragraph (c)”.

57. The Working Group agreed that proposed Rule 49ter.2(g) should read as follows:

“(g) Each designated Office shall inform the International Bureau of which of the criteria for restoration it applies, of the requirements, where applicable, of the national law applicable in accordance with paragraph (f), and of any subsequent changes in that respect. The International Bureau shall promptly publish such information in the Gazette.”

58. The Working Group agreed that, in proposed Rule 49ter.2(h), the words “[*three months from the date of adoption of these modifications by the PCT Assembly*]” should be replaced by the words “[*six months from the date of adoption of these modifications by the PCT Assembly*]”.

Rule 76.5

59. The Working Group noted that a reference to Rule 13^{ter}.3 had erroneously been omitted from the present text of Rule 76.5 as contained in Annex I to document PCT/R/WG/7/3.

RECTIFICATION OF OBVIOUS MISTAKES

60. Discussions were based on document PCT/R/WG/7/6.

61. The Working Group approved the proposed amendments of the Regulations set out in Annex I to document PCT/R/WG/7/6 with a view to their submission to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, subject to the comments and clarifications appearing in the following paragraphs and to possible further drafting changes to be made by the International Bureau.

Rule 38

62. The Working Group agreed that mistakes in abstracts should not be rectifiable under Rule 91 as proposed to be amended. Instead, it was agreed that Rule 38 should be amended by changing the wording of present Rule 38.2(b) and renumbering it as Rule 38.3, along the lines of the following:

“38.3 Modification of Abstract

The applicant may, until the expiration of one month from the date of mailing of the international search report, submit to the International Searching Authority:

- (i) proposed modifications of the abstract; or
- (ii) where the abstract has been established by the Authority, proposed modifications of, or comments on, that abstract, or both modifications and comments;

and the Authority shall decide whether to modify the abstract accordingly. Where the Authority modifies the abstract, it shall notify the modification to the International Bureau.”

Rules 48.2 and 91.3

63. In connection with proposed Rules 48.2(a)(xi) and 91.3(b), second sentence, the Working Group agreed that a reference should appear in the international search report, the written opinion of the International Searching Authority and/or the international preliminary reports on patentability under both Chapters I and II, as the case may be, for the benefit of the applicant, third parties and designated Offices, where any rectifications of obvious mistakes were taken into account by the Authority for the purposes of establishing the written opinion or report, respectively. Where rectifications were authorized too late to be considered by the Authority, it should notify the International Bureau, which in turn would notify the applicant

and designated Offices accordingly. The Working Group invited the Secretariat to review those provisions and if necessary to include other appropriate provisions in the proposed amendments of the Regulations that were submitted to the Assembly for adoption.

Rule 82ter

64. Noting that it was suggested in document PCT/R/WG/7/6 not to proceed with an amendment of Rule 82*ter* (see paragraphs 25 and 26 in the main body of that document), one delegation suggested that the Working Group should consider, at a future session, proposals to further amend Rule 82*ter* to include provisions for the correction of errors made by the receiving Office or by the International Bureau, in addition to those covered by the present Rule. The Chair noted that the delegation was free to submit proposals to amend Rule 82*ter* accordingly.

Rule 91.1

65. The Working Group agreed that Rule 91.1 be amended to read as follows, subject to review by the Secretariat of the appropriateness in paragraph (e) of the words “any priority document”:

“91.1 *Rectification of Obvious Mistakes*

(a) An obvious mistake in the international application or another document submitted by the applicant may be rectified in accordance with this Rule if the applicant so requests.

(b) The rectification of a mistake shall be subject to authorization by the “competent authority”, that is to say:

(i) in the case of a mistake in the request part of the international application or in a correction thereof—by the receiving Office;

(ii) in the case of a mistake in the description, claims or drawings or in a correction thereof, unless the International Preliminary Examining Authority is competent under item (iii)—by the International Searching Authority;

(iii) in the case of a mistake in the description, claims or drawings or in a correction thereof, or in an amendment under Article 19 or 34, where a demand for international preliminary examination has been made and has not been withdrawn and the date on which international preliminary examination shall start in accordance with Rule 69.1 has passed—by the International Preliminary Examining Authority;

(iv) in the case of a mistake in a document not referred to in items (i) to (iii) submitted to the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau, other than a mistake in the abstract or in an amendment under Article 19—by that Office, Authority or Bureau, as the case may be.

(c) The competent authority shall authorize the rectification under this Rule of a mistake if, and only if, it is obvious to the competent authority that, as at the applicable date under paragraph (f), something else was intended than what appears in the document concerned and that nothing else could have been intended than the proposed rectification.

(d) In the case of a mistake in the description, claims or drawings or in a correction or amendment thereof, the competent authority shall, for the purposes of paragraph (c), only take into account the contents of the description, claims and drawings and, where applicable, the correction or amendment concerned.

(e) In the case of a mistake in the request part of the international application or a correction thereof, or in a document referred to in paragraph (b)(iv), the competent authority shall, for the purposes of paragraph (c), only take into account the contents of the international application itself and, where applicable, the correction concerned, or the document referred to in paragraph (b)(iv), together with any other document submitted with the request, correction or document, as the case may be, any priority document available to the authority in accordance with the Administrative Instructions, and any other document contained in the authority's international application file at the applicable date under paragraph (f).

(f) The applicable date for the purposes of paragraphs (c) and (e) shall be:

(i) in the case of a mistake in a part of the international application as filed—the international filing date;

(ii) in the case of a mistake in a document other than the international application as filed, including a mistake in a correction or an amendment of the international application—the date on which the document was submitted.

(g) A mistake shall not be rectifiable under this Rule if:

(i) the mistake lies in the omission of one or more entire elements of the international application referred to in Article 3(2) or one or more entire sheets of the international application;

(ii) the mistake is in the abstract;

(iii) the mistake is in an amendment under Article 19, unless the International Preliminary Examining Authority is competent to authorize the rectification of such mistake under paragraph (b)(iii); or

(iv) the mistake is in a priority claim or in a notice correcting or adding a priority claim under Rule 26*bis*.1(a), where the rectification of the mistake would cause a change in the priority date;

provided that this paragraph shall not affect the operation of Rules 20.4, 20.5, 26*bis* and 38.3.

(h) Where the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau discovers what appears to be a rectifiable obvious mistake in the international application or another document, it may invite the applicant to request rectification under this Rule.”

66. Proposals by certain delegations that Rule 91.1(d) be amended so as to permit the contents of the abstract and of the request to be taken into account for the purposes of considering whether mistakes in the description, claims or drawings were obvious and thus rectifiable were opposed by several other delegations, and the Working Group agreed that they should not proceed. It was noted that Article 3(3) expressly provided that the abstract “merely serves the purpose of technical information and cannot be taken into account for any other purpose”.

67. A suggestion by one representative of users that Rule 91.1(d) be amended so as to provide that the contents of priority documents should also be taken into account for the purposes of considering whether mistakes in the description, claims or drawings were obvious and thus rectifiable did not find support.

68. The Working Group agreed that Rule 91.1(g)(ii) did not prevent the rectification of an obvious mistake that was repeated, for example, in the description, claims or drawings, merely because the same mistake also appeared in the abstract.

69. The Working Group agreed that, where a designated Office had made a reservation under Rule 20.8 in respect of the application of provisions relating to the incorporation by reference of missing elements or parts (see document PCT/R/WG/7/2), that Office would not be obliged, for the purposes of Rule 91.3(g), to take into account the contents of any description, claims or drawings incorporated by reference under Rule 20.6, and that the Assembly should be invited to adopt an understanding to that effect.

70. The Working Group agreed that new Rule 91.3(g) be added as follows:

“(g) A designated Office may disregard a rectification that was authorized under Rule 91.1 if it finds that it would not have authorized the rectification if it had been the competent authority.”

IMPROVING THE QUALITY OF INTERNATIONAL SEARCHES

71. Discussions were based on document PCT/R/WG/7/7.

72. There was widespread support from both delegations and representatives of users for the principle of allowing supplementary international searches to be conducted on international applications, noting that early identification of as much relevant prior art as possible was useful for applicants, designated and elected Offices and third parties alike. There was, however, a significant variation in views concerning the aims and the most appropriate procedures for such searches.

73. The Working Group strongly supported further development of the proposals relating to supplementary international searches and invited the Secretariat to prepare revised proposals for consideration at its next session, taking into account the comments and suggestions set out in the following paragraphs.

74. There was interest from users in the possibility of international searches being updated towards the end of the international phase, to take into account relevant prior art which had not been available to the International Searching Authority when the international search report was established. Furthermore, it was noted that some International Preliminary Examining Authorities sometimes conducted such searches as part of the international preliminary examination. However, a number of delegations saw difficulties in introducing such searches as a mandatory part of international preliminary examination, noting that the mandatory nature of the proposal might conflict with Article 33(6), and that it might be difficult to achieve reliable results where the International Searching Authority and the International Preliminary Examining Authority were not the same Office. Furthermore, if this service was offered only as part of international preliminary examination, applicants might be encouraged to file demands for international applications where the full examination was not in fact desired. In the light of these concerns, the Working Group agreed not to continue discussion of this aspect of the proposals.

General

75. Many delegations emphasized the need for the supplementary international search system to be as simple and flexible as possible, and this to be kept in mind for future revision of the proposals.

76. A number of delegations expressed concern that the introduction of supplementary international searches should not be permitted to adversely affect the delivery of existing services, including the main international search. The Delegation of Japan, for example, indicated that the Japan Patent Office would not be able to offer a supplementary international search service, at least at the outset, due to workload issues. Other delegations and representatives of users believed that a well-designed system need not increase the workloads of International Authorities and could, taking efficiencies in the national phase into account, reduce workload burdens overall. Some representatives of users pointed out that many applicants already filed national applications in parallel with international applications in order to gain the benefits of multiple searches, and that efficiencies could be gained for both Offices and applicants by allowing for multiple searches under the PCT. It was also emphasized that it was desirable to pursue measures for improving the quality of the main international search in addition to offering supplementary international searches.

77. Several delegations noted that it was essential that supplementary international searches be optional for the applicant and emphasized that International Authorities should be able to determine the extent, if any, to which they would offer such searches. One delegation stressed, however, that it would only make sense to pursue the proposal if a substantial number of Authorities would be prepared to participate.

78. One delegation suggested that it might be useful to allow third parties to request supplementary international searches to be performed on an international application. A representative of users indicated that such a feature would be of interest, but that it would be necessary to ensure that such requests could be filed anonymously.

Purpose of the Supplementary International Search

79. A majority of delegations considered that the primary purpose of a supplementary search should be to discover relevant prior art in languages which were a specialization of the Authority carrying out the supplementary international search (“supplementary Authority”)

but not of the Authority that carried out the international search proper (“main Authority”), though some delegations felt that this was not appropriately reflected in the language of Rule 45*bis*.7. It was suggested by one delegation that the specialized languages which the supplementary Authority offered should be defined in the agreements between the Authorities and the International Bureau. The representative of the EPO expressed the view that supplementary Authorities should be free to determine the scope of the supplementary international search themselves.

80. One delegation indicated that it was necessary to be clear as to why it was desired to offer a supplementary international search system, noting that it was impossible to guarantee that all relevant prior art could be found and that any search was necessarily a compromise between completeness and cost. The delegation considered that the PCT should not offer the type of commercial search which might be conducted by defendants in infringement actions. Such broad searches could not be justified routinely. Rather, the supplementary search should aim to address the needs of applicants wishing not to be surprised by new citations found by designated Offices in the national phase and of Offices which did not presently recognize the international search as being sufficient for national phase processing.

81. A considerable number of delegations noted the importance of minimizing unnecessary duplication of work, but many felt that the appropriate extent of a supplementary international search beyond what was essential to achieve the primary purpose should be determined by the supplementary Authority itself.

82. Some delegations and representatives of users considered that the purpose of the supplementary international search should not be defined by the Regulations at all. Instead, each supplementary Authority could indicate the service which it was prepared to offer and allow applicants to decide whether this service was of interest to them. This would allow Authorities to offer different services, for example, specializing in certain technical areas where their search collections extended significantly beyond the PCT minimum documentation, rather than in particular languages. One delegation suggested that it might also be desirable to consider matters of competence of Authorities more generally so as to give the applicant the maximum choice in determining the extent of the international search appropriate to the international application concerned. One representative of users suggested that the scope of the supplementary international search should be determined by the supplementary Authority according to what further search it would normally perform on the international application if it had received it in its role as a designated Office in the national phase.

Body to Which Request for Supplementary International Search Is Submitted

83. The Working Group reaffirmed that requests for supplementary international searches should not be submitted to the receiving Office. A majority of delegations considered that the International Bureau seemed the most appropriate body to receive the request for supplementary international search, though it was noted that there were some advantages in making the request directly to the supplementary Authority, particularly if only a single supplementary international search was sought.

84. One delegation suggested that, if the requests were not to be submitted only to the supplementary Authority, they should be able to be submitted to either the supplementary Authority or the International Bureau, at the choice of the applicant. A majority of delegations were opposed to such an idea, noting that it would add complexity and confusion to the system.

Contents of the Supplementary International Search Report

85. The Working Group agreed that the supplementary international search report should not include a written opinion but should list citations in a manner similar to an international search report, also including comments sufficient to make their relevance clear. One delegation suggested that it should not be necessary to list family members of the cited documents.

Time of Requesting and Performing the Supplementary International Search

86. Many delegations considered that supplementary international searches should only be able to be requested and performed after the transmittal of the main international search report, since otherwise there was a risk of duplication, inconsistency and unnecessary work, noting that there might be little value in a supplementary search where the main search showed that an invention was not new.

87. Other delegations considered that there should be an option for Authorities to offer supplementary international searches concurrently with the main search. While some delegations were concerned that different approaches among Authorities might cause complications to the system and confusion for applicants, other delegations considered that such difficulties would be limited and that a flexible system might allow participation in the system by some Authorities which otherwise would not be in a position to deliver searches within the very short deadlines inherent in a system providing for sequential searches. One representative of users stated that minor complications would be worthwhile if the result was a wider range of participating Authorities, since new prior art being found in the national phase was a much more significant problem for applicants. It was also pointed out that the availability of services in different ways from different Authorities might offer, as the preferences of users became clear through the choices they expressed, some practical insight into the needs of users.

88. The Working Group agreed that the Secretariat should, in revising the proposals, consider the issues involved in providing main and supplementary searches sequentially, concurrently or both.

89. The Working Group agreed that an outer time limit for requesting a supplementary international search was appropriate to avoid prolongation of the international phase, though it was noted that exactly what the limit should be would depend on when the supplementary international search was to be performed and whether it could be requested alone, in conjunction with international preliminary examination, or in either way.

Claims to Be Searched (Unity, Clarity, Subject Matter, etc.)

90. The Working Group agreed that consideration of the proposals, as regards claims to be searched, should continue as provided in document PCT/R/WG/7/7, at least in respect of the case where the main and supplementary international searches were performed sequentially.

Some representatives of users indicated that it would be desirable to allow supplementary international searches even on claims which had not been the subject of the main international search, provided that the applicant paid the appropriate fees.

Fees and Documents to Be Provided by the Applicant

91. One delegation suggested that, assuming that the International Bureau was the body to which fees relating to the supplementary international search were to be paid, it might be more efficient for the International Bureau to refund fees where the supplementary Authority did not conduct a supplementary international search because of a limitation on the subject matter on which it had agreed to conduct such searches.

Availability and Translations of the Supplementary International Search Report

92. One delegation suggested that it should be clarified that designated Offices and third parties should be able to obtain status information indicating whether a supplementary international search had been requested for a particular international application.

RECORDING OF CHANGES BY THE INTERNATIONAL BUREAU

93. Discussions were based on document PCT/R/WG/7/5.

94. While some delegations expressed sympathy for the idea of offering applicants the possibility for the single recording of a change under Rule 92*bis* to have effect for the purposes of the international phase and the national procedure before a number of designated and elected Offices, most delegations and representatives of users who took the floor on this matter expressed concern as to the legal basis in the Treaty for making Rules for procedures extending well into the national phase of processing of international applications, noting that the Treaty in general governed procedures only to the end of the international phase, whereas, after national phase entry, the application became subject solely to national law.

95. Several delegations expressed the view that the proposed amendments, under which both the International Bureau and national Offices would be responsible for the recording of changes after the expiration of 30 months from the priority date, would unnecessarily complicate procedures, lead to confusion among applicants and third parties, and create legal uncertainty. They felt that any benefits of such a new system for the recording of changes would be outweighed by negative aspects.

96. The Working Group decided not to consider further the proposals set out in document PCT/R/WG/7/5.

ADDITION OF ARABIC AS A LANGUAGE OF PUBLICATION

97. Discussions were based on document PCT/R/WG/7/10.

98. The Working Group approved the proposed amendments of the Regulations set out in the Annex to document PCT/R/WG/7/10 with a view to their submission to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, subject to the comments and clarifications appearing in the following paragraphs and to possible further drafting changes to be made by the International Bureau.

99. The Delegation of Egypt expressed its appreciation to the Secretariat for preparing the proposals, upon a request made by the Government of Egypt, to add Arabic to the list of languages referred to in Rule 48.3(a) in which international applications may be published. Noting that Arabic was one of the six official languages of the United Nations, the Delegation expressed the view that the addition of Arabic would promote innovation and creativity in the Arab world, facilitate the procedures for filing international applications in Arabic-speaking countries and encourage more Arabic-speaking countries to become party to the PCT. In this context, the Delegation also referred to the ongoing process of establishing an Arab regional International Searching and Preliminary Examining Authority, and noted that Egypt had been chosen by Arab countries to host such a future Authority.

100. Most delegations and representatives of users taking the floor on this matter welcomed the proposal, echoing the expected positive impact on the Arab world referred to by the Delegation of Egypt.

101. In response to concerns expressed by the two delegations as to additional expense and resource implications of the proposal for the International Bureau, the Secretariat explained that, since it expected the number of international applications published in Arabic to be, at least initially, low, and noting that it already had the in-house capacity to translate abstracts, titles and text matter of drawings from Arabic into French and English (for the purposes of publication in the Gazette), no additional human resources would be required and that, overall, the cost of publication in Arabic would be negligible. One delegation suggested that certain criteria be established in deciding on the addition of further languages to the publication languages. One delegation requested the Secretariat to provide details of the forecast budgetary implications in writing before the meeting of the Assembly in September-October 2005, and stated that it reserved its position pending consideration of those implications.

PCT MINIMUM DOCUMENTATION: ADDITION OF PATENT DOCUMENTS OF THE REPUBLIC OF KOREA

102. Discussions were based on document PCT/R/WG/7/11.

103. The Working Group approved the proposed amendments of the Regulations set out in the Annex to document PCT/R/WG/7/11 with a view to their submission to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, subject to the comments and clarifications appearing in the following paragraphs and to possible further drafting changes to be made by the International Bureau.

104. A number of delegations and representatives of users welcomed the proposal of the Republic of Korea to include its patent documents in the PCT minimum documentation under Rule 34 used by International Searching Authorities to carry out international searches.

105. In response to queries by several delegations as to the practical implementation of the proposals, including timing, the Secretariat explained that the Meeting of International Authorities under the PCT, at its eleventh session held in Geneva in February 2005, had expressed its general support for the proposal that patent documents from the Republic of Korea be included in the PCT minimum documentation. Moreover, the Meeting had agreed that a task force be established by the Secretariat to undertake a comprehensive review of the PCT minimum documentation, and that this task force should be requested to consider, as a matter of priority, the actions which would be required by the Authorities to allow them to efficiently search the patent documentation from the Republic of Korea, and the time by which this could be achieved. Initial communications with regard to numbering systems, image formats and other details of the patent documentation had been exchanged, and arrangements were now in hand for the supply of sample files from the Korean Intellectual Property Office for testing by the other International Searching Authorities.

106. The Secretariat further explained that the task force was expected to report on this question in July 2005 (or at the latest in early August 2005), so that its recommendation on the effective date of use by International Searching Authorities of the Korean patent documentation could be submitted to the PCT Committee for Technical Cooperation (for its recommendation under PCT Article 56(3)) and subsequently to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, together with proposals for amendment of Rule 34.

107. In response to a comment by one delegation, the Secretariat explained that the issues to be considered by the task force, as part of the comprehensive review, would include the study of possible criteria for the future addition of further countries and languages in the minimum documentation under Rule 34.

PUBLICATION OF INTERNATIONAL APPLICATIONS IN MULTIPLE LANGUAGES

108. Discussions were based on document PCT/R/WG/7/4.

General Comments

109. One delegation noted that the proposed amendments were not compatible with its applicable national law under which, as was permitted by Article 29(2), provisional protection in respect of an international application published in a language different from the language in which publications under its national law were effected was only effective from the date of the publication by its Office of a translation of the international application into its national language of publication. The delegation suggested that international publication of an international application in an additional language, other than the “normal” language of publication, should not have to give rise to the same provisional protection as publication of the application in the “normal” language of publication, and that the proposed draft Regulations be further amended by adding a provision which would expressly allow a designated State to provide in its applicable national law that an international application published in an additional language would enjoy provisional protection in the designated State concerned only after performance of certain acts before the designated Office concerned, such as the furnishing of a (further) translation to the Office, similarly to the provisions of Article 29(2). See also paragraph 114, below, in the particular context of proposed amended Rule 49.2.

110. One delegation noted that Article 21(4) referred to “the language” (in the singular) of international publication.

111. The Secretariat explained that, in its view, under the proposed amendments, the publication of the international application in an additional language would constitute an integral part of the international publication of the international application under Article 21 and that, therefore, the effects of that publication would, under the proposals in document PCT/R/WG/7/4, be the same as the effects of international publication in the “normal” language of publication, namely, so far as Article 29(1) was concerned, the same as those which the national law of the designated State provided for the compulsory national publication of unexamined national applications. The Secretariat suggested that revised proposals could include a provision concerning the effects of international publication of an international application in an additional language as outlined in paragraph 109.

Rule 12.5

112. A representative of users suggested that the 17-month time limit for requesting publication in an additional language under proposed Rule 12.5(f) should be extended to allow sufficient time for applicants to consider the international search report before deciding whether or not to request international publication of the international application in an additional language.

Rule 48

113. In response to a suggestion by one delegation, the Secretariat noted that a revised draft would include a provision to the effect that the front page of the published international application would indicate all languages (the “normal” publication language as well as any other additional language of publication) in which the international application was published under Rule 48.3.

Rule 49.2

114. Several delegations opposed the proposed amendment of Rule 49.2(a) under which a designated Office would not be permitted, for the purposes of entry into the national phase under Article 22, to require a translation into an official language of that Office where the international application was published in an additional language under Rule 48.3(b-*bis*) which was the same as that official language. However, the proposed amendment was supported by several other delegations and representatives of users who considered that furnishing a further translation of the international application in the official language, in addition to the international application having been published in that language under Rule 48.3(b-*bis*), served no useful purpose and therefore imposed an unnecessary burden on applicants.

115. A suggestion by a representative of users that designated Offices should not be permitted to require a translation of the request (as provided for in Rules 49.5(a)(i) and 49.2(b) as proposed to be amended) was opposed by one delegation and did not find the support of the Working Group.

Further Consideration by the Working Group

116. The Working Group concluded that, in view of the comments and suggestions made, the proposals set out in the Annex to document PCT/R/WG/7/4 should not be submitted to the PCT Assembly in September-October 2005, and invited the Secretariat to prepare revised proposals, for consideration at its next session, taking into account the comments and suggestions set out above.

117. Several representatives of users expressed their disappointment about the ensuing delay in entry into force of provisions relating to publication of international applications in multiple languages, noting the importance of such provisions for the user community.

INTERNATIONAL PUBLICATION AND PCT GAZETTE IN ELECTRONIC FORM

118. Discussions were based on document PCT/R/WG/7/8.

119. The Working Group approved the proposed amendments of the Regulations set out in Annex I to document PCT/R/WG/7/8 with a view to their submission to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, subject to the comments and clarifications appearing in the following paragraphs and to possible further drafting changes to be made by the International Bureau.

120. One delegation noted the importance for international applications published wholly or partly in electronic form in accordance with Section 406 of the Administrative Instructions to have the same prior art effect under Article 29(1) as international applications published on paper.

121. Several delegations expressed their wish to continue to receive the PCT Gazette in electronic form on physical media (CD-R).

122. One delegation suggested that the International Bureau study the feasibility of making the Gazette available in all languages of publication and not just, as at present, in English and French.

123. The Delegation of ARIPO expressed concern that the publication of international applications and the Gazette in electronic form might cause practical difficulties for certain of ARIPO's Member States. The International Bureau confirmed that it would work with the Offices concerned to ensure that they would be able to fully access data on electronic media and thus share the benefits of international publication in electronic form.

124. A representative of users suggested that the term "front page" in Rule 48.2(a)(i) and elsewhere in the Regulations, connoting publication on paper, should be replaced by a term more appropriately reflecting the proposed electronic publication of international applications. The Working Group agreed that the Secretariat should further consider the issue.

125. In response to a query by one delegation, the Secretariat explained that the proposed amendment of Rule 48.2(f) would align that Rule with the existing practice of the International Bureau always to publish, if the claims have been amended under Article 19, the full text of the claims both as filed and as amended, rather than just the claims as filed and a “specification” of the amendments by the International Bureau.

ENTRY INTO FORCE; TRANSITIONAL ARRANGEMENTS

126. The Working Group agreed that proposals concerning entry into force and transitional arrangements in respect of those amendments of the Regulations which had been approved by the Working Group with a view to their submission to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005 should be posted by the Secretariat on the PCT reform electronic forum on WIPO’s website for comments and suggestions by delegations and representatives, with a view to submitting detailed proposals to the Assembly.

127. The Secretariat indicated its preliminary view that certain amendments to the Regulations (such as those contained in documents PCT/R/WG/7/8, 10 and 12) might be suitable for entry into force at the beginning of 2006, whereas it might be preferable to delay entry into force of the remainder of the amendments to the beginning of 2007.

INTERNATIONAL BUREAU PCT PERFORMANCE INDICATORS

128. The Working Group took note of a presentation by the International Bureau on the ongoing development of performance indicators to assess the performance of the PCT Operations Department.

FUTURE WORK

Processing of Priority Documents in Electronic Form

129. The Secretariat recalled that, during the discussions at the Assemblies of the Paris Union and the PCT Union in September-October 2004 relating to the common understanding concerning the application of Article 4D(3) of the Paris Convention, Article 8 of the PCT and Rule 17 of the PCT Regulations (see document A/40/6), Member States had stressed the need for certain operational issues relating to the processing and certification in electronic form of priority documents to be addressed subsequent to the adoption of the common understanding, and for technical details relating to the establishment of a standard to facilitate the electronic exchange of priority documents to be discussed in the Standing Committee for Information Technologies (SCIT).

130. For that purpose, the SCIT Standards and Documentation Working Group had formed a Task Force with the mandate to elaborate standards and procedures relating to the provision (including certification) and exchange of priority documents in electronic form, taking into account the experience gained with the E-PCT standard. In addition, the International Bureau was designated as the Task Leader and was requested to report to the Standards and Documentation Working Group at its next session, and also to the Working Group on Reform of the PCT at its next session, on the progress of the task.

131. The Secretariat informed the Working Group that the Task Force, which operated in a purely “virtual” way via e-mail and a dedicated webpage on WIPO’s website, had commenced its work in the second half of May 2005 by discussing, as a first step, a draft general framework for elaborating standards and procedures relating to the provision (including certification) and exchange of priority documents in electronic form. The Secretariat noted that the work of the Task Force may impact on the future work of the Working Group and stated that it would continue to report to the Working Group on progress.

132. The Working Group took note of the report by the Secretariat on the activities of the Task Force on standards and procedures relating to the provision (including certification) and exchange of priority documents in electronic form established by the Standing Committee on Information Technologies (SCIT) Standards and Documentation Working Group.

Work Program

133. One delegation expressed its concern that, while PCT reform had certainly improved the system overall, the pace of reform and the sheer number of changes to the system might have made the system more, rather than less, complex, and might have led to confusion among Offices and users. Recalling that simplification and streamlining of the system had been among the main objectives of PCT reform, the delegation suggested a re-focus on the original objectives and that the pace of reform be slowed down so as to give Offices and users a chance to “take a breath” and to catch up with the latest developments.

134. The Working Group agreed that the present report should be submitted to the PCT Assembly for consideration at its 34th (15th ordinary) session in September-October 2005, to inform the Assembly of the progress that had been made on the matters referred to the Working Group by the Assembly at its previous session in September-October 2004 (see document PCT/A/33/7, paragraph 8).

135. The Working Group agreed to recommend to the PCT Assembly that, subject to the availability of sufficient funds:

(i) one session or, if necessary, two sessions of the Working Group should be convened between the September 2005 and September 2006 sessions of the Assembly to consider proposals for reform of the PCT including, in particular, the outstanding matters mentioned above in paragraph 10 (proposals by Switzerland regarding the declaration of the source of genetic resources and traditional knowledge in patent applications), paragraphs 71 to 92 (improving the quality of international searches) and paragraphs 108 to 117 (publication of international applications in multiple languages), on the understanding that the Committee on Reform of the PCT could also be convened during that period if the Working Group felt it to be necessary; and

(ii) financial assistance allocated to enable certain delegations to attend sessions of the Committee should, exceptionally, also be made available, in the measure possible, in respect of participation in the Working Group.

Next Session

136. The International Bureau indicated that the eighth session of the Working Group was tentatively scheduled to be held in Geneva in the spring of 2006.

ADOPTION OF THE REPORT OF THE SESSION

137. The Working Group unanimously adopted this report on May 31, 2005.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/
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[Fin de l'annexe et du document/
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