



**Records
of the Diplomatic
Conference for the
Adoption of the
Patent Law Treaty
Geneva, 2000**

patent law treaty
diplomatic conference

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)**

**RECORDS
OF THE DIPLOMATIC CONFERENCE FOR THE ADOPTION OF
THE PATENT LAW TREATY**



Geneva, 2000

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EDITOR'S NOTE

The *Records* of the Diplomatic Conference for the Adoption of the Patent Law Treaty held in Geneva, from May 11 to June 2, 2000, contain the documents described below relating to that Conference which were issued before, during and after the Conference, as well as indexes to those documents.

The Patent Law Treaty and the Regulations Under the Patent Law Treaty

- (a) Text of the Treaty and the Regulations as adopted by the Diplomatic Conference

This part of the *Records* contains the final text—that is the text as adopted and signed—of the Patent Law Treaty and the Regulations under the Patent Law Treaty (pages 8 to 41).

- (b) Text of the Basic Proposal as presented to the Diplomatic Conference

This part of the *Records* reproduces the draft of the Patent Law Treaty and the Regulations under the Patent Law Treaty as presented to the Diplomatic Conference (Basic Proposal) (pages 42 to 74).

- (c) Marked-up text showing the changes between the Basic Proposal and the text of the Treaty and the Regulations as adopted by the Diplomatic Conference

In order to facilitate the comparison of the final text with the basic proposal, this part of the *Records* (pages 75 to 110) contains the marked-up text showing the differences between the two, which are highlighted as follows:

- (i) words which did not appear in the basic proposal but appear in the final text are underlined, and

- (ii) words which appeared in the basic proposal but which are omitted from the final text are shown as struck through.

- (d) Agreed Statements

This part of the *Records* (page 111) contains the text of the Agreed Statements which were adopted by the Diplomatic Conference.

- (e) Signatories of the Patent Law Treaty

In this part of the *Records* (page 112), a list of the signatories of the Treaty is reproduced.

- (f) Final Act of the Diplomatic Conference

Page 113 of *the Records* contains the text of the Final Act of the Diplomatic Conference and a list of signatories of the Final Act.

Conference Documents

This part (pages 115 to 259) contains a list of two series of documents distributed before and during the Diplomatic Conference: "PLT/DC" (47 documents) and "PLT/DC/INF" (4 documents).

Summary Minutes

This part (pages 261 to 568) contains the summary minutes of the sessions of the Plenary of the Diplomatic Conference (pages 262 to 293) and the Main Committee I and II of the Diplomatic Conference (pages 294 to 568).

Participants

This part lists the individuals who, in the Diplomatic Conference, represented ordinary member delegations (pages 570 to 601), special member delegations (page 601), intergovernmental organizations (page 602), non-governmental organizations (pages 602 to 604) and the World Intellectual Property Organization (pages 604 and 605). This part lists also the officers of the Diplomatic Conference and the Committees as well as the compositions of certain Committees (pages 606 to 608).

Indexes

The *Records* contain five different indexes (pages 609 to 633).

The first index (pages 611 to 616) lists by number each Article of the Treaty and Rule of the Regulations under the Treaty, and indicates, under each of them, the pages where the text of the Article or Rule appears in these *Records* and the pages of those paragraphs of the summary minutes which reflect the discussion on the Article or Rule. It also indicates the pages where the text of the Agreed Statements appears in these *Records* and the pages of the summary minutes which reflect the discussion on the Agreed Statements,

The second index (pages 617 to 628) is the alphabetical lists of the "ordinary member delegations" on which the interventions made on their behalf can be found.

The third index (page 629) is the alphabetical lists of the "special member delegations" on which the interventions made on their behalf can be found.

The fourth index (pages 629 to 631) is the alphabetical lists of the "observer delegations" on which the interventions made on their behalf can be found.

The fifth index (pages 631 to 633) concerns the presidents of the Conference and of the Main Committees and the list of the International Bureau of WIPO participants on which the interventions made on their behalf can be found.

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Text of the Treaty and the Regulations as Adopted by the Diplomatic Conference

Patent Law Treaty

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Article 1
Abbreviated Expressions

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

- (i) "Office" means the authority of a Contracting Party entrusted with the granting of patents or with other matters covered by this Treaty;
- (ii) "application" means an application for the grant of a patent, as referred to in Article 3;
- (iii) "patent" means a patent as referred to in Article 3;
- (iv) references to a "person" shall be construed as including, in particular, a natural person and a legal entity;
- (v) "communication" means any application, or any request, declaration, document, correspondence or other information relating to an application or patent, whether relating to a procedure under this Treaty or not, which is filed with the Office;
- (vi) "records of the Office" means the collection of information maintained by the Office, relating to and including the applications filed with, and the patents granted by, that Office or another authority with effect for the Contracting Party concerned, irrespective of the medium in which such information is maintained;
- (vii) "recordation" means any act of including information in the records of the Office;
- (viii) "applicant" means the person whom the records of the Office show, pursuant to the applicable law, as the person who is applying for the patent, or as another person who is filing or prosecuting the application;
- (ix) "owner" means the person whom the records of the Office show as the owner of the patent;
- (x) "representative" means a representative under the applicable law;
- (xi) "signature" means any means of self-identification;
- (xii) "a language accepted by the Office" means any one language accepted by the Office for the relevant procedure before the Office;
- (xiii) "translation" means a translation into a language or, where appropriate, a transliteration into an alphabet or character set, accepted by the Office;
- (xiv) "procedure before the Office" means any procedure in proceedings before the Office with respect to an application or patent;
- (xv) except where the context indicates otherwise, words in the singular include the plural, and *vice versa*, and masculine personal pronouns include the feminine;
- (xvi) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, signed on March 20, 1883, as revised and amended;
- (xvii) "Patent Cooperation Treaty" means the Patent Cooperation Treaty, signed on June 19, 1970, together with the Regulations and the Administrative Instructions under that Treaty, as revised, amended and modified;
- (xviii) "Contracting Party" means any State or intergovernmental organization that is party to this Treaty;

(xix) "applicable law" means, where the Contracting Party is a State, the law of that State and, where the Contracting Party is an intergovernmental organization, the legal enactments under which that intergovernmental organization operates;

(xx) "instrument of ratification" shall be construed as including instruments of acceptance or approval;

(xxi) "Organization" means the World Intellectual Property Organization;

(xxii) "International Bureau" means the International Bureau of the Organization;

(xxiii) "Director General" means the Director General of the Organization.

Article 2

General Principles

(1) [*More Favorable Requirements*] A Contracting Party shall be free to provide for requirements which, from the viewpoint of applicants and owners, are more favorable than the requirements referred to in this Treaty and the Regulations, other than Article 5.

(2) [*No Regulation of Substantive Patent Law*] Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of the applicable substantive law relating to patents as it desires.

Article 3

Applications and Patents to Which the Treaty Applies

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

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

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

(b) Subject to the provisions of the Patent Cooperation Treaty, the provisions of this Treaty and the Regulations shall apply to international applications, for patents for invention and for patents of addition, under the Patent Cooperation Treaty:

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

(ii) in respect of any procedure commenced on or after the date on which processing or examination of the international application may start under Article 23 or 40 of that Treaty.

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

Article 4 **Security Exception**

Nothing in this Treaty and the Regulations shall limit the freedom of a Contracting Party to take any action it deems necessary for the preservation of essential security interests.

Article 5 **Filing Date**

(1) [*Elements of Application*] (a) Except as otherwise prescribed in the Regulations, and subject to paragraphs (2) to (8), a Contracting Party shall provide that the filing date of an application shall be the date on which its Office has received all of the following elements, filed, at the option of the applicant, on paper or as otherwise permitted by the Office for the purposes of the filing date:

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

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

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

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

(c) For the purposes of the filing date, a Contracting Party may require both information allowing the identity of the applicant to be established and information allowing the applicant to be contacted by the Office, or it may accept evidence allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Office, as the element referred to in subparagraph (a)(ii).

(2) [*Language*] (a) A Contracting Party may require that the indications referred to in paragraph (1)(a)(i) and (ii) be in a language accepted by the Office.

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

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

(4) [*Subsequent Compliance with Requirements*] (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) and (2) are not complied with in the application as initially filed, the filing date shall, subject to subparagraph (b) and paragraph (6), be the date on which all of the requirements applied by the Contracting Party under paragraphs (1) and (2) are subsequently complied with.

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

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

(6) [*Filing Date Where Missing Part of Description or Drawing Is Filed*] (a) Where a missing part of the description or a missing drawing is filed with the Office within the time limit prescribed in the

Regulations, that part of the description or drawing shall be included in the application, and, subject to subparagraphs (b) and (c), the filing date shall be the date on which the Office has received that part of the description or that drawing, or the date on which all of the requirements applied by the Contracting Party under paragraphs (1) and (2) are complied with, whichever is later.

(b) Where the missing part of the description or the missing drawing is filed under subparagraph (a) to rectify its omission from an application which, at the date on which one or more elements referred to in paragraph (1)(a) were first received by the Office, claims the priority of an earlier application, the filing date shall, upon the request of the applicant filed within a time limit prescribed in the Regulations, and subject to the requirements prescribed in the Regulations, be the date on which all the requirements applied by the Contracting Party under paragraphs (1) and (2) are complied with.

(c) Where the missing part of the description or the missing drawing filed under subparagraph (a) is withdrawn within a time limit fixed by the Contracting Party, the filing date shall be the date on which the requirements applied by the Contracting Party under paragraphs (1) and (2) are complied with.

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

(b) Where the requirements referred to in subparagraph (a) are not complied with, the application may be deemed not to have been filed. Where the application is deemed not to have been filed, the Office shall notify the applicant accordingly, indicating the reasons therefor.

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

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

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

Article 6 ***Application***

(1) [*Form or Contents of Application*] Except where otherwise provided for by this Treaty, no Contracting Party shall require compliance with any requirement relating to the form or contents of an application different from or additional to:

(i) the requirements relating to form or contents which are provided for in respect of international applications under the Patent Cooperation Treaty;

(ii) the requirements relating to form or contents compliance with which, under the Patent Cooperation Treaty, may be required by the Office of, or acting for, any State party to that Treaty once the processing or examination of an international application, as referred to in Article 23 or 40 of the said Treaty, has started;

(iii) any further requirements prescribed in the Regulations.

(2) [*Request Form*] (a) A Contracting Party may require that the contents of an application which correspond to the contents of the request of an international application under the Patent Cooperation Treaty be presented on a request Form prescribed by that Contracting Party. A Contracting Party may also require that any further contents allowed under paragraph (1)(ii) or prescribed in the Regulations pursuant to paragraph (1)(iii) be contained in that request Form.

(b) Notwithstanding subparagraph (a), and subject to Article 8(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) on a request Form provided for in the Regulations.

(3) [*Translation*] A Contracting Party may require a translation of any part of the application that is not in a language accepted by its Office. A Contracting Party may also require a translation of the parts of the application, as prescribed in the Regulations, that are in a language accepted by the Office, into any other languages accepted by that Office.

(4) [*Fees*] A Contracting Party may require that fees be paid in respect of the application. A Contracting Party may apply the provisions of the Patent Cooperation Treaty relating to payment of application fees.

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

(6) [*Evidence*] A Contracting Party may require that evidence in respect of any matter referred to in paragraph (1) or (2) or in a declaration of priority, or any translation referred to in paragraph (3) or (5), be filed with its Office in the course of the processing of the application only where that Office may reasonably doubt the veracity of that matter or the accuracy of that translation.

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

(8) [*Non-Compliance with Requirements*] (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to subparagraph (b) and Articles 5 and 10, apply such sanction as is provided for in its law.

(b) Where any requirement applied by the Contracting Party under paragraph (1), (5) or (6) in respect of a priority claim is not complied with within the time limit prescribed in the Regulations, the priority claim may, subject to Article 13, be deemed non-existent. Subject to Article 5(7)(b), no other sanctions may be applied.

Article 7 **Representation**

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

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

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

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

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

(2) [*Mandatory Representation*] (a) A Contracting Party may require that an applicant, owner or other interested person appoint a representative for the purposes of any procedure before the Office, except that an assignee of an application, an applicant, owner or other interested person may act himself before the Office for the following procedures:

- (i) the filing of an application for the purposes of the filing date;
- (ii) the mere payment of a fee;
- (iii) any other procedure as prescribed in the Regulations;
- (iv) the issue of a receipt or notification by the Office in respect of any procedure referred to in items (i) to (iii).

(b) A maintenance fee may be paid by any person.

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

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

(5) [*Notification*] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (3) are not complied with, the Office shall notify the assignee of the application, applicant, owner or other interested person, giving the opportunity to comply with any such requirement, and to make observations, within the time limit prescribed in the Regulations.

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

Article 8

Communications; Addresses

(1) [*Form and Means of Transmittal of Communications*] (a) Except for the establishment of a filing date under Article 5(1), and subject to Article 6(1), the Regulations shall, subject to subparagraphs (b) to (d), set out the requirements which a Contracting Party shall be permitted to apply as regards the form and means of transmittal of communications.

(b) No Contracting Party shall be obliged to accept the filing of communications other than on paper.

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

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

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

(3) [*Model International Forms*] Notwithstanding paragraph (1)(a), and subject to paragraph (1)(b) and Article 6(2)(b), a Contracting Party shall accept the presentation of the contents of a communication on a Form which corresponds to a Model International Form in respect of such a communication provided for in the Regulations, if any.

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

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

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

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

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

- (i) an address for correspondence;
- (ii) an address for legal service;
- (iii) any other address provided for in the Regulations.

(7) [*Notification*] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with in respect of communications, the Office shall notify the applicant, owner or other interested person, giving the opportunity to comply with any such requirement, and to make observations, within the time limit prescribed in the Regulations.

(8) [*Non-Compliance with Requirements*] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to Articles 5 and 10 and to any exceptions prescribed in the Regulations, apply such sanction as is provided for in its law.

Article 9

Notifications

(1) [*Sufficient Notification*] Any notification under this Treaty or the Regulations which is sent by the Office to an address for correspondence or address for legal service indicated under Article 8(6), or any other address provided for in the Regulations for the purpose of this provision, and which complies with the provisions with respect to that notification, shall constitute a sufficient notification for the purposes of this Treaty and the Regulations.

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

(3) [*Failure to Notify*] Subject to Article 10(1), where an Office does not notify an applicant, owner or other interested person of a failure to comply with any requirement under this Treaty or the Regulations, that absence of notification does not relieve that applicant, owner or other interested person of the obligation to comply with that requirement.

Article 10

Validity of Patent; Revocation

(1) [*Validity of Patent Not Affected by Non-Compliance with Certain Formal Requirements*] Non-compliance with one or more of the formal requirements referred to in Articles 6(1), (2), (4) and (5)

and 8(1) to (4) with respect to an application may not be a ground for revocation or invalidation of a patent, either totally or in part, except where the non-compliance with the formal requirement occurred as a result of a fraudulent intention.

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

(3) [*No Obligation for Special Procedures*] Paragraphs (1) and (2) do not create any obligation to put in place judicial procedures for the enforcement of patent rights distinct from those for the enforcement of law in general.

Article 11

Relief in Respect of Time Limits

(1) [*Extension of Time Limits*] A Contracting Party may provide for the extension, for the period prescribed in the Regulations, of a time limit fixed by the Office for an action in a procedure before the Office in respect of an application or a patent, if a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations, and the request is filed, at the option of the Contracting Party:

- (i) prior to the expiration of the time limit; or
- (ii) after the expiration of the time limit, and within the time limit prescribed in the Regulations.

(2) [*Continued Processing*] Where an applicant or owner has failed to comply with a time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office in respect of an application or a patent, and that Contracting Party does not provide for extension of a time limit under paragraph (1)(ii), the Contracting Party shall provide for continued processing with respect to the application or patent and, if necessary, reinstatement of the rights of the applicant or owner with respect to that application or patent, if:

- (i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;
- (ii) the request is filed, and all of the requirements in respect of which the time limit for the action concerned applied are complied with, within the time limit prescribed in the Regulations.

(3) [*Exceptions*] No Contracting Party shall be required to provide for the relief referred to in paragraph (1) or (2) with respect to the exceptions prescribed in the Regulations.

(4) [*Fees*] A Contracting Party may require that a fee be paid in respect of a request under paragraph (1) or (2).

(5) [*Prohibition of Other Requirements*] No Contracting Party may require that requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the relief provided for under paragraph (1) or (2), except where otherwise provided for by this Treaty or prescribed in the Regulations.

(6) [*Opportunity to Make Observations in Case of Intended Refusal*] A request under paragraph (1) or (2) may not be refused without the applicant or owner being given the opportunity to make observations on the intended refusal within a reasonable time limit.

Article 12
Reinstatement of Rights After a Finding of Due Care
or Unintentionality by the Office

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

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

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

(iii) the request states the reasons for the failure to comply with the time limit; and

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

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

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

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

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

Article 13
Correction or Addition of Priority Claim; Restoration of Priority Right

(1) *[Correction or Addition of Priority Claim]* Except where otherwise prescribed in the Regulations, a Contracting Party shall provide for the correction or addition of a priority claim with respect to an application ("the subsequent application"), if:

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

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

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

(2) *[Delayed Filing of the Subsequent Application]* Taking into consideration Article 15, a Contracting Party shall provide that, where an application ("the subsequent application") which claims or could have claimed the priority of an earlier application has a filing date which is later than the date on which the priority period expired, but within the time limit prescribed in the Regulations, the Office shall restore the right of priority, if:

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

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

(iii) the request states the reasons for the failure to comply with the priority period;

and

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

(3) [*Failure to File a Copy of Earlier Application*] A Contracting Party shall provide that, where a copy of an earlier application required under Article 6(5) is not filed with the Office within the time limit prescribed in the Regulations pursuant to Article 6, the Office shall restore the right of priority, if:

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

(ii) the request is filed within the time limit for filing the copy of the earlier application prescribed in the Regulations pursuant to Article 6(5);

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

(iv) a copy of the earlier application is filed within the time limit prescribed in the Regulations.

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

(5) [*Evidence*] A Contracting Party may require that a declaration or other evidence in support of the reasons referred to in paragraph (2)(iii) be filed with the Office within a time limit fixed by the Office.

(6) [*Opportunity to Make Observations in Case of Intended Refusal*] A request under paragraphs (1) to (3) may not be refused, totally or in part, without the requesting party being given the opportunity to make observations on the intended refusal within a reasonable time limit.

Article 14

Regulations

(1) [*Content*] (a) The Regulations annexed to this Treaty provide rules concerning:

(i) matters which this Treaty expressly provides are to be “prescribed in the Regulations”;

(ii) details useful in the implementation of the provisions of this Treaty;

(iii) administrative requirements, matters or procedures.

(b) The Regulations also provide rules concerning the formal requirements which a Contracting Party shall be permitted to apply in respect of requests for:

(i) recordation of change in name or address;

(ii) recordation of change in applicant or owner;

(iii) recordation of a license or a security interest;

(iv) correction of a mistake.

(c) The Regulations also provide for the establishment of Model International Forms, and for the establishment of a request Form for the purposes of Article 6(2)(b), by the Assembly, with the assistance of the International Bureau.

(2) [*Amending the Regulations*] Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.

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

(b) Any amendment of the Regulations resulting in the addition of provisions to, or the deletion of provisions from, the provisions specified in the Regulations pursuant to subparagraph (a) shall require unanimity.

(c) In determining whether unanimity is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

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

Article 15 ***Relation to the Paris Convention***

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

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

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

Article 16 ***Effect of Revisions, Amendments and Modifications of the Patent Cooperation Treaty***

(1) [*Applicability of Revisions, Amendments and Modifications of the Patent Cooperation Treaty*] Subject to paragraph (2), any revision, amendment or modification of the Patent Cooperation Treaty made after June 2, 2000, which is consistent with the Articles of this Treaty, shall apply for the purposes of this Treaty and the Regulations if the Assembly so decides, in the particular case, by three-fourths of the votes cast.

(2) [*Non-Applicability of Transitional Provisions of the Patent Cooperation Treaty*] Any provision of the Patent Cooperation Treaty, by virtue of which a revised, amended or modified provision of that Treaty does not apply to a State party to it, or to the Office of or acting for such a State, for as long as the latter provision is incompatible with the law applied by that State or Office, shall not apply for the purposes of this Treaty and the Regulations.

Article 17 ***Assembly***

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

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

(2) [Tasks] The Assembly shall:

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

(ii) establish Model International Forms, and the request Form, referred to in Article 14(1)(c), with the assistance of the International Bureau;

(iii) amend the Regulations;

(iv) determine the conditions for the date of application of each Model International Form, and the request Form, referred to in item (ii), and each amendment referred to in item (iii);

(v) decide, pursuant to Article 16(1), whether any revision, amendment or modification of the Patent Cooperation Treaty shall apply for the purposes of this Treaty and the Regulations;

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

(3) [Quorum] (a) One-half of the members of the Assembly which are States shall constitute a quorum.

(b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.

(4) [Taking Decisions in the Assembly] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case:

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

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

(5) [Majorities] (a) Subject to Articles 14(2) and (3), 16(1) and 19(3), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

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

(7) [Rules of Procedure] The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

Article 18

International Bureau

(1) [Administrative Tasks] (a) The International Bureau shall perform the administrative tasks concerning this Treaty.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) [Meetings Other than Sessions of the Assembly] The Director General shall convene any committee and working group established by the Assembly.

(3) [Role of the International Bureau in the Assembly and Other Meetings] (a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly.

(b) The Director General or a staff member designated by the Director General shall be *ex officio* secretary of the Assembly, and of the committees and working groups referred to in subparagraph (a).

(4) [Conferences] (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with member States of the Organization, intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(5) [Other Tasks] The International Bureau shall carry out any other tasks assigned to it in relation to this Treaty.

Article 19

Revisions

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

(2) [Revision or Amendment of Certain Provisions of the Treaty] Article 17(2) and (6) may be amended either by a revision conference, or by the Assembly according to the provisions of paragraph (3).

(3) [Amendment by the Assembly of Certain Provisions of the Treaty] (a) Proposals for the amendment by the Assembly of Article 17(2) and (6) may be initiated by any Contracting Party or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(b) Adoption of any amendment to the provisions referred to in subparagraph (a) shall require three-fourths of the votes cast.

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

Article 20

Becoming Party to the Treaty

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

(2) [Intergovernmental Organizations] Any intergovernmental organization may become party to this Treaty if at least one member State of that intergovernmental organization is party to the Paris Convention or a member of the Organization, and the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty, and declares that:

- (i) it is competent to grant patents with effect for its member States; or
- (ii) it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by this Treaty, and it has, or has charged, a regional Office for the purpose of granting patents with effect in its territory in accordance with that legislation.

Subject to paragraph (3), any such declaration shall be made at the time of the deposit of the instrument of ratification or accession.

(3) [Regional Patent Organizations] The European Patent Organization, the Eurasian Patent Organization and the African Regional Industrial Property Organization, having made the declaration referred to in paragraph (2)(i) or (ii) in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty as an intergovernmental organization, if it declares, at the time of the deposit of the instrument of ratification or accession that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(4) [Ratification or Accession] Any State or intergovernmental organization satisfying the requirements in paragraph (1), (2) or (3) may deposit:

- (i) an instrument of ratification if it has signed this Treaty; or
- (ii) an instrument of accession if it has not signed this Treaty.

Article 21

Entry into Force; Effective Dates of Ratifications and Accessions

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

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

- (i) the ten States referred to in paragraph (1), from the date on which this Treaty has entered into force;
- (ii) each other State, from the expiration of three months after the date on which the State has deposited its instrument of ratification or accession with the Director General, or from any later date indicated in that instrument, but no later than six months after the date of such deposit;

(iii) each of the European Patent Organization, the Eurasian Patent Organization and the African Regional Industrial Property Organization, from the expiration of three months after the deposit of its instrument of ratification or accession, or from any later date indicated in that instrument, but no later than six months after the date of such deposit, if such instrument has been deposited after the entry into force of this Treaty according to paragraph (1), or three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) any other intergovernmental organization that is eligible to become party to this Treaty, from the expiration of three months after the deposit of its instrument of ratification or accession, or from any later date indicated in that instrument, but no later than six months after the date of such deposit.

Article 22

Application of the Treaty to Existing Applications and Patents

(1) [*Principle*] Subject to paragraph (2), a Contracting Party shall apply the provisions of this Treaty and the Regulations, other than Articles 5 and 6(1) and (2) and related Regulations, to applications which are pending, and to patents which are in force, on the date on which this Treaty binds that Contracting Party under Article 21.

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

Article 23

Reservations

(1) [*Reservation*] Any State or intergovernmental organization may declare through a reservation that the provisions of Article 6(1) shall not apply to any requirement relating to unity of invention applicable under the Patent Cooperation Treaty to an international application.

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

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

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

Article 24

Denunciation of the Treaty

(1) [*Notification*] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

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

Article 25
Languages of the Treaty

(1) *[Authentic Texts]* This Treaty is signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally and exclusively authentic.

(2) *[Official Texts]* An official text in any language other than those referred to in paragraph (1) shall be established by the Director General, after consultation with the interested parties. For the purposes of this paragraph, interested party means any State which is party to the Treaty, or is eligible to become party to the Treaty under Article 20(1), whose official language, or one of whose official languages, is involved, and the European Patent Organization, the Eurasian Patent Organization and the African Regional Industrial Property Organization and any other intergovernmental organization that is party to the Treaty, or may become party to the Treaty, if one of its official languages is involved.

(3) *[Authentic Texts to Prevail]* In case of differences of opinion on interpretation between authentic and official texts, the authentic texts shall prevail.

Article 26
Signature of the Treaty

The Treaty shall remain open for signature by any State that is eligible for becoming party to the Treaty under Article 20(1) and by the European Patent Organization, the Eurasian Patent Organization and the African Regional Industrial Property Organization at the headquarters of the Organization for one year after its adoption.

Article 27
Depositary; Registration

(1) *[Depositary]* The Director General is the depositary of this Treaty.

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

Regulations Under the Patent Law Treaty

List of the Rules of the Regulations Under the Patent Law Treaty

- Rule 1: Abbreviated Expressions
- Rule 2: Details Concerning Filing Date Under Article 5
- Rule 3: Details Concerning the Application Under Article 6(1), (2) and (3)
- Rule 4: Availability of Earlier Application Under Article 6(5) and Rule 2(4) or of Previously Filed Application Under Rule 2(5)(b)
- Rule 5: Evidence Under Articles 6(6) and 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6) and 18(4)
- Rule 6: Time Limits Concerning the Application Under Article 6(7) and (8)
- Rule 7: Details Concerning Representation Under Article 7
- Rule 8: Filing of Communications Under Article 8(1)
- Rule 9: Details Concerning the Signature Under Article 8(4)
- Rule 10: Details Concerning Indications Under Article 8(5), (6) and (8)
- Rule 11: Time Limits Concerning Communications Under Article 8(7) and (8)
- Rule 12: Details Concerning Relief in Respect of Time Limits Under Article 11
- Rule 13: Details Concerning Reinstatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12
- Rule 14: Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13
- Rule 15: Request for Recordation of Change in Name or Address
- Rule 16: Request for recordation of Change in Applicant or Owner
- Rule 17: Request for Recordation of a License or a Security Interest
- Rule 18: Request for Correction of a Mistake
- Rule 19: Manner of Identification of an Application without Its Application Number
- Rule 20: Establishment of Model International forms and Formats
- Rule 21: Requirement of Unanimity Under Article 14(3)

Rule 1
Abbreviated Expressions

(1) [*"Treaty"; "Article"*] (a) In these Regulations, the word "Treaty" means the Patent Law Treaty.

(b) In these Regulations, the word "Article" refers to the specified Article of the Treaty.

(2) [*Abbreviated Expressions Defined in the Treaty*] The abbreviated expressions defined in Article 1 for the purposes of the Treaty shall have the same meaning for the purposes of the Regulations.

Rule 2
Details Concerning Filing Date Under Article 5

(1) [*Time Limits Under Article 5(3) and (4)(b)*] Subject to paragraph (2), the time limits referred to in Article 5(3) and (4)(b) shall be not less than two months from the date of the notification referred to in Article 5(3).

(2) [*Exception to Time Limit Under Article 5(4)(b)*] Where a notification under Article 5(3) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, the time limit referred to in Article 5(4)(b) shall be not less than two months from the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office.

(3) [*Time Limits Under Article 5(6)(a) and (b)*] The time limits referred to in Article 5(6)(a) and (b) shall be:

(i) where a notification has been made under Article 5(5), not less than two months from the date of the notification;

(ii) where a notification has not been made, not less than two months from the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office.

(4) [*Requirements Under Article 5(6)(b)*] Any Contracting Party may, subject to Rule 4(3), require that, for the filing date to be determined under Article 5(6)(b):

(i) a copy of the earlier application be filed within the time limit applicable under paragraph (3);

(ii) a copy of the earlier application, and the date of filing of the earlier application, certified as correct by the Office with which the earlier application was filed, be filed upon invitation by the Office, within a time limit which shall be not less than four months from the date of that invitation, or the time limit applicable under Rule 4(1), whichever expires earlier;

(iii) where the earlier application is not in a language accepted by the Office, a translation of the earlier application be filed within the time limit applicable under paragraph (3);

(iv) the missing part of the description or missing drawing be completely contained in the earlier application;

(v) the application, at the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office, contained an indication that the contents of the earlier application were incorporated by reference in the application;

(vi) an indication be filed within the time limit applicable under paragraph (3) as to where, in the earlier application or in the translation referred to in item (iii), the missing part of the description or the missing drawing is contained.

(5) *[Requirements Under Article 5(7)(a)]* (a) The reference to the previously filed application referred to in Article 5(7)(a) shall indicate that, for the purposes of the filing date, the description and any drawings are replaced by the reference to the previously filed application; the reference shall also indicate the number of that application, and the Office with which that application was filed. A Contracting Party may require that the reference also indicate the filing date of the previously filed application.

(b) A Contracting Party may, subject to Rule 4(3), require that:

(i) a copy of the previously filed application and, where the previously filed application is not in a language accepted by the Office, a translation of that previously filed application, be filed with the Office within a time limit which shall be not less than two months from the date on which the application containing the reference referred to in Article 5(7)(a) was received by the Office;

(ii) a certified copy of the previously filed application be filed with the Office within a time limit which shall be not less than four months from the date of the receipt of the application containing the reference referred to in Article 5(7)(a).

(c) A Contracting Party may require that the reference referred to in Article 5(7)(a) be to a previously filed application that had been filed by the applicant or his predecessor or successor in title.

(6) *[Exceptions Under Article 5(8)(ii)]* The types of applications referred to in Article 5(8)(ii) shall be:

(i) divisional applications;

(ii) applications for continuation or continuation-in-part;

(iii) applications by new applicants determined to be entitled to an invention contained in an earlier application.

Rule 3

Details Concerning the Application Under Article 6(1), (2) and (3)

(1) *[Further Requirements Under Article 6(1)(iii)]* (a) A Contracting Party may require that an applicant who wishes an application to be treated as a divisional application under Rule 2(6)(i) indicate:

(i) that he wishes the application to be so treated;

(ii) the number and filing date of the application from which the application is divided.

(b) A Contracting Party may require that an applicant who wishes an application to be treated as an application under Rule 2(6)(iii) indicate:

(i) that he wishes the application to be so treated;

(ii) the number and filing date of the earlier application.

(2) *[Request Form Under Article 6(2)(b)]* A Contracting Party shall accept the presentation of the contents referred to in Article 6(2)(a):

(i) on a request Form, if that request Form corresponds to the Patent Cooperation Treaty request Form with any modifications under Rule 20(2);

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

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

(3) [*Requirement Under Article 6(3)*] A Contracting Party may require, under Article 6(3), a translation of the title, claims and abstract of an application that is in a language accepted by the Office, into any other languages accepted by that Office.

Rule 4
Availability of Earlier Application Under Article 6(5) and Rule 2(4)
or of Previously Filed Application Under Rule 2(5)(b)

(1) [*Copy of Earlier Application Under Article 6(5)*] Subject to paragraph (3), a Contracting Party may require that a copy of the earlier application referred to in Article 6(5) be filed with the Office within a time limit which shall be not less than 16 months from the filing date of that earlier application or, where there is more than one such earlier application, from the earliest filing date of those earlier applications.

(2) [*Certification*] Subject to paragraph (3), a Contracting Party may require that the copy referred to in paragraph (1) and the date of filing of the earlier application be certified as correct by the Office with which the earlier application was filed.

(3) [*Availability of Earlier Application or of Previously Filed Application*] No Contracting Party shall require the filing of a copy or a certified copy of the earlier application or a certification of the filing date, as referred to in paragraphs (1) and (2), and Rule 2(4), or a copy or a certified copy of the previously filed application as referred to in Rule 2(5)(b), where the earlier application or the previously filed application was filed with its Office, or is available to that Office from a digital library which is accepted by the Office for that purpose.

(4) [*Translation*] Where the earlier application is not in a language accepted by the Office and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable, the Contracting Party may require that a translation of the earlier application referred to in paragraph (1) be filed by the applicant, upon invitation by the Office or other competent authority, within a time limit which shall be not less than two months from the date of that invitation, and not less than the time limit, if any, applied under that paragraph.

Rule 5
Evidence Under Articles 6(6) and 8(4)(c) and
Rules 7(4), 15(4), 16(6), 17(6) and 18(4)

Where the Office notifies the applicant, owner or other person that evidence is required under Article 6(6) or 8(4)(c), or Rule 7(4), 15(4), 16(6), 17(6) or 18(4), the notification shall state the reason of the Office for doubting the veracity of the matter, indication or signature, or the accuracy of the translation, as the case may be.

Rule 6
Time Limits Concerning the Application Under Article 6(7) and (8)

(1) [*Time Limits Under Article 6(7) and (8)*] Subject to paragraphs (2) and (3), the time limits referred to in Article 6(7) and (8) shall be not less than two months from the date of the notification referred to in Article 6(7).

(2) [*Exception to Time Limit Under Article 6(8)*] Subject to paragraph (3), where a notification under Article 6(7) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, the time limit referred to in Article 6(8) shall be not less than three months

from the date on which one or more of the elements referred to in Article 5(1)(a) were first received by the Office.

(3) [*Time Limits Under Article 6(7) and (8) Relating to Payment of Application Fee in Accordance with the Patent Cooperation Treaty*] Where any fees required to be paid under Article 6(4) in respect of the filing of the application are not paid, a Contracting Party may, under Article 6(7) and (8), apply time limits for payment, including late payment, which are the same as those applicable under the Patent Cooperation Treaty in relation to the basic fee component of the international fee.

Rule 7

Details Concerning Representation Under Article 7

(1) [*Other Procedures Under Article 7(2)(a)(iii)*] The other procedures referred to in Article 7(2)(a)(iii) for which a Contracting Party may not require appointment of a representative are:

- (i) the filing of a copy of an earlier application under Rule 2(4);
- (ii) the filing of a copy of a previously filed application under Rule 2(5)(b).

(2) [*Appointment of Representative Under Article 7(3)*] (a) A Contracting Party shall accept that the appointment of a representative be filed with the Office in:

(i) a separate communication (hereinafter referred to as a "power of attorney") signed by the applicant, owner or other interested person and indicating the name and address of the representative; or, at the applicant's option,

- (ii) the request Form referred to in Article 6(2), signed by the applicant.

(b) A single power of attorney shall be sufficient even where it relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that all applications and patents concerned are identified in the single power of attorney. A single power of attorney shall also be sufficient even where it relates, subject to any exception indicated by the appointing person, to all existing and future applications or patents of that person. The Office may require that, where that single power of attorney is filed on paper or as otherwise permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(3) [*Translation of Power of Attorney*] A Contracting Party may require that, if a power of attorney is not in a language accepted by the Office, it be accompanied by a translation.

(4) [*Evidence*] A Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraph (2)(a).

(5) [*Time Limits Under Article 7(5) and (6)*] Subject to paragraph (6), the time limits referred to in Article 7(5) and (6) shall be not less than two months from the date of the notification referred to in Article 7(5).

(6) [*Exception to Time Limit Under Article 7(6)*] Where a notification referred to in Article 7(5) has not been made because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been filed, the time limit referred to in Article 7(6) shall be not less than three months from the date on which the procedure referred to in Article 7(5) was commenced.

Rule 8
Filing of Communications Under Article 8(1)

(1) [*Communications Filed on Paper*] (a) After June 2, 2005, any Contracting Party may, subject to Articles 5(1) and 8(1)(d), exclude the filing of communications on paper or may continue to permit the filing of communications on paper. Until that date, all Contracting Parties shall permit the filing of communications on paper.

(b) Subject to Article 8(3) and subparagraph (c), a Contracting Party may prescribe the requirements relating to the form of communications on paper.

(c) Where a Contracting Party permits the filing of communications on paper, the Office shall permit the filing of communications on paper in accordance with the requirements under the Patent Cooperation Treaty relating to the form of communications on paper.

(d) Notwithstanding subparagraph (a), where the receiving or processing of a communication on paper, due to its character or its size, is deemed not practicable, a Contracting Party may require the filing of that communication in another form or by other means of transmittal.

(2) [*Communications Filed in Electronic Form or by Electronic Means of Transmittal*] (a) Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal with its Office in a particular language, including the filing of communications by telegraph, teleprinter, telefacsimile or other like means of transmittal, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to communications filed in electronic form or by electronic means of transmittal in that language, the Office shall permit the filing of communications in electronic form or by electronic means of transmittal in the said language in accordance with those requirements.

(b) A Contracting Party which permits the filing of communications in electronic form or by electronic means of transmittal with its Office shall notify the International Bureau of the requirements under its applicable law relating to such filing. Any such notification shall be published by the International Bureau in the language in which it is notified and in the languages in which authentic and official texts of the Treaty are established under Article 25.

(c) Where, under subparagraph (a), a Contracting Party permits the filing of communications by telegraph, teleprinter, telefacsimile or other like means of transmittal, it may require that the original of any document which was transmitted by such means of transmittal, accompanied by a letter identifying that earlier transmission, be filed on paper with the Office within a time limit which shall be not less than one month from the date of the transmission.

(3) [*Copies, Filed in Electronic Form or by Electronic Means of Transmittal, of Communications Filed on Paper*] (a) Where a Contracting Party permits the filing of a copy, in electronic form or by electronic means of transmittal, of a communication filed on paper in a language accepted by the Office, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to the filing of such copies of communications, the Office shall permit the filing of copies of communications in electronic form or by electronic means of transmittal, in accordance with those requirements.

(b) Paragraph (2)(b) shall apply, *mutatis mutandis*, to copies, in electronic form or by electronic means of transmittal, of communications filed on paper.

Rule 9
Details Concerning the Signature Under Article 8(4)

(1) [*Indications Accompanying Signature*] A Contracting Party may require that the signature of the natural person who signs be accompanied by:

(i) an indication in letters of the family or principal name and the given or secondary name or names of that person or, at the option of that person, of the name or names customarily used by the said person;

(ii) an indication of the capacity in which that person signed, where such capacity is not obvious from reading the communication.

(2) [*Date of Signing*] A Contracting Party may require that a signature be accompanied by an indication of the date on which the signing was effected. Where that indication is required but is not supplied, the date on which the signing is deemed to have been effected shall be the date on which the communication bearing the signature was received by the Office or, if the Contracting Party so permits, a date earlier than the latter date.

(3) [*Signature of Communication on Paper*] Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party:

(i) shall, subject to item (iii), accept a handwritten signature;

(ii) may permit, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal or of a bar-coded label;

(iii) may, where the natural person who signs the communication is a national of the Contracting Party and such person's address is on its territory, or where the legal entity on behalf of which the communication is signed is organized under its law and has either a domicile or a real and effective industrial or commercial establishment on its territory, require that a seal be used instead of a handwritten signature.

(4) [*Signature of Communications Filed in Electronic Form or by Electronic Means of Transmittal Resulting in Graphic Representation*] Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal, it shall consider such a communication signed if a graphic representation of a signature accepted by that Contracting Party under paragraph (3) appears on that communication as received by the Office of that Contracting Party.

(5) [*Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature*] (a) Where a Contracting Party permits the filing of communications in electronic form, and a graphic representation of a signature accepted by that Contracting Party under paragraph (3) does not appear on such a communication as received by the Office of that Contracting Party, the Contracting Party may require that the communication be signed using a signature in electronic form as prescribed by that Contracting Party.

(b) Notwithstanding subparagraph (a), where a Contracting Party permits the filing of communications in electronic form in a particular language, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to signatures in electronic form of communications filed in electronic form in that language which do not result in a graphic representation of the signature, the Office of that Contracting Party shall accept a signature in electronic form in accordance with those requirements.

(c) Rule 8(2)(b) shall apply *mutatis mutandis*.

(6) [*Exception to Certification of Signature Under Article 8(4)(b)*] A Contracting Party may require that any signature referred to in paragraph (5) be confirmed by a process for certifying signatures in electronic form specified by that Contracting Party.

Rule 10

Details Concerning Indications Under Article 8(5), (6) and (8)

(1) [*Indications Under Article 8(5)*] (a) A Contracting Party may require that any communication:

(i) indicate the name and address of the applicant, owner or other interested person;

- (ii) indicate the number of the application or patent to which it relates;
- (iii) contain, where the applicant, owner or other interested person is registered with the Office, the number or other indication under which he is so registered.

(b) A Contracting Party may require that any communication by a representative for the purposes of a procedure before the Office contain:

- (i) the name and address of the representative;
- (ii) a reference to the power of attorney, or other communication in which the appointment of that representative is or was effected, on the basis of which the said representative acts;
- (iii) where the representative is registered with the Office, the number or other indication under which he is registered.

(2) [*Address for Correspondence and Address for Legal Service*] A Contracting Party may require that the address for correspondence referred to in Article 8(6)(i) and the address for legal service referred to in Article 8(6)(ii) be on a territory prescribed by that Contracting Party.

(3) [*Address Where No Representative Is Appointed*] Where no representative is appointed and an applicant, owner or other interested person has provided, as his address, an address on a territory prescribed by the Contracting Party under paragraph (2), that Contracting Party shall consider that address to be the address for correspondence referred to in Article 8(6)(i) or the address for legal service referred to in Article 8(6)(ii), as required by the Contracting Party, unless that applicant, owner or other interested person expressly indicates another such address under Article 8(6).

(4) [*Address Where Representative Is Appointed*] Where a representative is appointed, a Contracting Party shall consider the address of that representative to be the address for correspondence referred to in Article 8(6)(i) or the address for legal service referred to in Article 8(6)(ii), as required by the Contracting Party, unless that applicant, owner or other interested person expressly indicates another such address under Article 8(6).

(5) [*Sanctions for Non-Compliance with Requirements Under Article 8(8)*] No Contracting Party may provide for the refusal of an application for failure to comply with any requirement to file a registration number or other indication under paragraph (1)(a)(iii) and (b)(iii).

Rule 11

Time Limits Concerning Communications Under Article 8(7) and (8)

(1) [*Time Limits Under Article 8(7) and (8)*] Subject to paragraph (2), the time limits referred to in Article 8(7) and (8) shall be not less than two months from the date of the notification referred to in Article 8(7).

(2) [*Exception to Time Limit Under Article 8(8)*] Where a notification under Article 8(7) has not been made because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been filed, the time limit referred to in Article 8(8) shall be not less than three months from the date on which the communication referred to in Article 8(7) was received by the Office.

Rule 12
Details Concerning Relief in Respect of Time Limits Under Article 11

(1) [Requirements Under Article 11(1)] (a) A Contracting Party may require that a request referred to in Article 11(1):

- (i) be signed by the applicant or owner;
- (ii) contain an indication to the effect that extension of a time limit is requested, and an identification of the time limit in question.

(b) Where a request for extension of a time limit is filed after the expiration of the time limit, a Contracting Party may require that all of the requirements in respect of which the time limit for the action concerned applied be complied with at the same time as the request is filed.

(2) [Period and Time Limit Under Article 11(1)] (a) The period of extension of a time limit referred to in Article 11(1) shall be not less than two months from the date of the expiration of the unextended time limit.

(b) The time limit referred to in Article 11(1)(ii) shall expire not earlier than two months from the date of the expiration of the unextended time limit.

(3) [Requirements Under Article 11(2)(i)] A Contracting Party may require that a request referred to in Article 11(2):

- (i) be signed by the applicant or owner;
- (ii) contain an indication to the effect that relief in respect of non-compliance with a time limit is requested, and an identification of the time limit in question.

(4) [Time Limit for Filing a Request Under Article 11(2)(ii)] The time limit referred to in Article 11(2)(ii) shall expire not earlier than two months after a notification by the Office that the applicant or owner did not comply with the time limit fixed by the Office.

(5) [Exceptions Under Article 11(3)] (a) No Contracting Party shall be required under Article 11(1) or (2) to grant:

- (i) a second, or any subsequent, relief in respect of a time limit for which relief has already been granted under Article 11(1) or (2);
- (ii) relief for filing a request for relief under Article 11(1) or (2) or a request for reinstatement under Article 12(1);
- (iii) relief in respect of a time limit for the payment of maintenance fees;
- (iv) relief in respect of a time limit referred to in Article 13(1), (2) or (3);
- (v) relief in respect of a time limit for an action before a board of appeal or other review body constituted in the framework of the Office;
- (vi) relief in respect of a time limit for an action in *inter partes* proceedings.

(b) No Contracting Party which provides a maximum time limit for compliance with all of the requirements of a procedure before the Office shall be required under Article 11(1) or (2) to grant relief in respect of a time limit for an action in that procedure in respect of any of those requirements beyond that maximum time limit.

Rule 13

Details Concerning Reinstatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12

(1) [*Requirements Under Article 12(1)(i)*] A Contracting Party may require that a request referred to in Article 12(1)(i) be signed by the applicant or owner.

(2) [*Time Limit Under Article 12(1)(ii)*] The time limit for making a request, and for complying with the requirements, under Article 12(1)(ii), shall be the earlier to expire of the following:

(i) not less than two months from the date of the removal of the cause of failure to comply with the time limit for the action in question;

(ii) not less than 12 months from the date of expiration of the time limit for the action in question, or, where a request relates to non-payment of a maintenance fee, not less than 12 months from the date of expiration of the period of grace provided under Article 5*bis* of the Paris Convention.

(3) [*Exceptions Under Article 12(2)*] The exceptions referred to in Article 12(2) are failure to comply with a time limit:

(i) for an action before a board of appeal or other review body constituted in the framework of the Office;

(ii) for making a request for relief under Article 11(1) or (2) or a request for reinstatement under Article 12(1);

(iii) referred to in Article 13(1), (2) or (3);

(iv) for an action in *inter partes* proceedings.

Rule 14

Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13

(1) [*Exception Under Article 13(1)*] No Contracting Party shall be obliged to provide for the correction or addition of a priority claim under Article 13(1), where the request referred to in Article 13(1)(i) is received after the applicant has made a request for early publication or for expedited or accelerated processing, unless that request for early publication or for expedited or accelerated processing is withdrawn before the technical preparations for publication of the application have been completed.

(2) [*Requirements Under Article 13(1)(i)*] A Contracting Party may require that a request referred to in Article 13(1)(i) be signed by the applicant.

(3) [*Time Limit Under Article 13(1)(ii)*] The time limit referred to in Article 13(1)(ii) shall be not less than the time limit applicable under the Patent Cooperation Treaty to an international application for the submission of a priority claim after the filing of an international application.

(4) [*Time Limits Under Article 13(2)*] (a) The time limit referred to in Article 13(2), introductory part, shall expire not less than two months from the date on which the priority period expired.

(b) The time limit referred to in Article 13(2)(ii) shall be the time limit applied under subparagraph (a), or the time that any technical preparations for publication of the subsequent application have been completed, whichever expires earlier.

(5) [*Requirements Under Article 13(2)(i)*] A Contracting Party may require that a request referred to in Article 13(2)(i):

- (i) be signed by the applicant; and
- (ii) be accompanied, where the application did not claim the priority of the earlier application, by the priority claim.

(6) [Requirements Under Article 13(3)] (a) A Contracting Party may require that a request referred to in Article 13(3)(i):

- (i) be signed by the applicant; and
- (ii) indicate the Office to which the request for a copy of the earlier application had been made and the date of that request.

(b) A Contracting Party may require that:

(i) a declaration or other evidence in support of the request referred to in Article 13(3) be filed with the Office within a time limit fixed by the Office;

(ii) the copy of the earlier application referred to in Article 13(3)(iv) be filed with the Office within a time limit which shall be not less than one month from the date on which the applicant is provided with that copy by the Office with which the earlier application was filed.

(7) [Time Limit Under Article 13(3)(iii)] The time limit referred to in Article 13(3)(iii) shall expire two months before the expiration of the time limit prescribed in Rule 4(1).

Rule 15

Request for Recordation of Change in Name or Address

(1) [Request] Where there is no change in the person of the applicant or owner but there is a change in his name or address, a Contracting Party shall accept that a request for recordation of the change be made in a communication signed by the applicant or owner and containing the following indications:

- (i) an indication to the effect that recordation of a change in name or address is requested;
- (ii) the number of the application or patent concerned;
- (iii) the change to be recorded;
- (iv) the name and address of the applicant or the owner prior to the change.

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

(3) [Single Request] (a) A single request shall be sufficient even where the change relates to both the name and address of the applicant or the owner.

(b) A single request shall be sufficient even where the change relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that the numbers of all applications and patents concerned are indicated in the request. A Contracting Party may require that, where that single request is filed on paper or as otherwise permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(4) [Evidence] A Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the veracity of any indication contained in the request.

(5) [Prohibition of Other Requirements] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the

request referred to in paragraph (1), except where otherwise provided for by the Treaty or prescribed in these Regulations. In particular, the filing of any certificate concerning the change may not be required.

(6) [Notification] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (4) are not complied with, the Office shall notify the applicant or owner, giving the opportunity to comply with any such requirement, and to make observations, within not less than two months from the date of the notification.

(7) [Non-Compliance with Requirements] (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (4) are not complied with within the time limit under subparagraph (b), the Contracting Party may provide that the request shall be refused, but no more severe sanction may be applied.

(b) The time limit referred to in subparagraph (a) shall be:

(i) subject to item (ii), not less than two months from the date of the notification;

(ii) where indications allowing the Office to contact the person who made the request referred to in paragraph (1) have not been filed, not less than three months from the date on which that request was received by the Office.

(8) [Change in the Name or Address of the Representative, or in the Address for Correspondence or Address for Legal Service] Paragraphs (1) to (7) shall apply, *mutatis mutandis*, to any change in the name or address of the representative, and to any change relating to the address for correspondence or address for legal service.

Rule 16

Request for Recordation of Change in Applicant or Owner

(1) [Request for Recordation of a Change in Applicant or Owner] (a) Where there is a change in the person of the applicant or owner, a Contracting Party shall accept that a request for recordation of the change be made in a communication signed by the applicant or owner, or by the new applicant or new owner, and containing the following indications:

(i) an indication to the effect that a recordation of change in applicant or owner is requested;

(ii) the number of the application or patent concerned;

(iii) the name and address of the applicant or owner;

(iv) the name and address of the new applicant or new owner;

(v) the date of the change in the person of the applicant or owner;

(vi) the name of a State of which the new applicant or new owner is a national if he is the national of any State, the name of a State in which the new applicant or new owner has his domicile, if any, and the name of a State in which the new applicant or new owner has a real and effective industrial or commercial establishment, if any;

(vii) the basis for the change requested.

(b) A Contracting Party may require that the request contain:

(i) a statement that the information contained in the request is true and correct;

(ii) information relating to any government interest by that Contracting Party.

(2) [Documentation of the Basis of the Change in Applicant or Owner] (a) Where the change in applicant or owner results from a contract, a Contracting Party may require that the request include

information relating to the registration of the contract, where registration is compulsory under the applicable law, and that it be accompanied, at the option of the requesting party, by one of the following:

(i) a copy of the contract, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original contract;

(ii) an extract of the contract showing the change, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the contract;

(iii) an uncertified certificate of transfer of ownership by contract drawn up with the content as prescribed in the Model International Form in respect of a certificate of transfer and signed by both the applicant and the new applicant, or by both the owner and the new owner.

(b) Where the change in applicant or owner results from a merger, or from the reorganization or division of a legal entity, a Contracting Party may require that the request be accompanied by a copy of a document, which document originates from a competent authority and evidences the merger, or the reorganization or division of the legal entity, and any attribution of rights involved, such as a copy of an extract from a register of commerce. A Contracting Party may also require that the copy be certified, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original document.

(c) Where the change in applicant or owner does not result from a contract, a merger, or the reorganization or division of a legal entity, but results from another ground, for example, by operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the change. A Contracting Party may also require that the copy be certified as being in conformity with the original document, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office.

(d) Where the change is in the person of one or more but not all of several co-applicants or co-owners, a Contracting Party may require that evidence of the consent to the change of any co-applicant or co-owner in respect of whom there is no change be provided to the Office.

(3) [*Translation*] A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office.

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

(5) [*Single Request*] A single request shall be sufficient even where the change relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that the change in applicant or owner is the same for all applications and patents concerned, and the numbers of all applications and patents concerned are indicated in the request. A Contracting Party may require that, where that single request is filed on paper or as otherwise permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(6) [*Evidence*] A Contracting Party may require that evidence, or further evidence in the case of paragraph (2), be filed with the Office only where that Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the present Rule, or the accuracy of any translation referred to in paragraph (3).

(7) [*Prohibition of Other Requirements*] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (6) be complied with in respect of the request referred to in this Rule, except where otherwise provided for by the Treaty or prescribed in these Regulations.

(8) [Notification; Non-Compliance with Requirements] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (5) are not complied with, or where evidence, or further evidence, is required under paragraph (6).

(9) [Exclusion with Respect to Inventorship] A Contracting Party may exclude the application of this Rule in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law.

Rule 17

Request for Recordation of a License or a Security Interest

(1) [Request for Recordation of a License] (a) Where a license in respect of an application or patent may be recorded under the applicable law, the Contracting Party shall accept that a request for recordation of that license be made in a communication signed by the licensor or the licensee and containing the following indications:

- (i) an indication to the effect that a recordation of a license is requested;
- (ii) the number of the application or patent concerned;
- (iii) the name and address of the licensor;
- (iv) the name and address of the licensee;
- (v) an indication of whether the license is an exclusive license or a non-exclusive license;
- (vi) the name of a State of which the licensee is a national if he is the national of any State, the name of a State in which the licensee has his domicile, if any, and the name of a State in which the licensee has a real and effective industrial or commercial establishment, if any.

(b) A Contracting Party may require that the request contain:

- (i) a statement that the information contained in the request is true and correct;
- (ii) information relating to any government interest by that Contracting Party;
- (iii) information relating to the registration of the license, where registration is compulsory under the applicable law;
- (iv) the date of the license and its duration.

(2) [Documentation of the Basis of the License] (a) Where the license is a freely concluded agreement, a Contracting Party may require that the request be accompanied, at the option of the requesting party, by one of the following:

- (i) a copy of the agreement, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original agreement;
- (ii) an extract of the agreement consisting of those portions of that agreement which show the rights licensed and their extent, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the agreement.

(b) A Contracting Party may require, where the license is a freely concluded agreement, that any applicant, owner, exclusive licensee, co-applicant, co-owner or co-exclusive licensee who is not

party to that agreement give his consent to the recordation of the agreement in a communication to the Office.

(c) Where the license is not a freely concluded agreement, for example, it results from operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the license. A Contracting Party may also require that the copy be certified as being in conformity with the original document, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office.

(3) [Translation] A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office.

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

(5) [Single Request] Rule 16(5) shall apply, *mutatis mutandis*, to requests for recordation of a license.

(6) [Evidence] Rule 16(6) shall apply, *mutatis mutandis*, to requests for recordation of a license.

(7) [Prohibition of Other Requirements] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (6) be complied with in respect of the request referred to in paragraph (1), except where otherwise provided for by the Treaty or prescribed in these Regulations.

(8) [Notification; Non-Compliance with Requirements] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (5) are not complied with, or where evidence, or further evidence, is required under paragraph (6).

(9) [Request for Recordation of a Security Interest or Cancellation of the Recordation of a License or a Security Interest] Paragraphs (1) to (8) shall apply, *mutatis mutandis*, to requests for:

- (i) recordation of a security interest in respect of an application or patent;
- (ii) cancellation of the recordation of a license or a security interest in respect of an application or patent.

Rule 18

Request for Correction of a Mistake

(1) [Request] (a) Where an application, a patent or any request communicated to the Office in respect of an application or a patent contains a mistake, not related to search or substantive examination, which is correctable by the Office under the applicable law, the Office shall accept that a request for correction of that mistake in the records and publications of the Office be made in a communication to the Office signed by the applicant or owner and containing the following indications:

- (i) an indication to the effect that a correction of mistake is requested;
- (ii) the number of the application or patent concerned;
- (iii) the mistake to be corrected;
- (iv) the correction to be made;
- (v) the name and address of the requesting party.

(b) A Contracting Party may require that the request be accompanied by a replacement part or part incorporating the correction or, where paragraph (3) applies, by such a replacement part or part incorporating the correction for each application and patent to which the request relates.

(c) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the mistake was made in good faith.

(d) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the said request was made without undue delay or, at the option of the Contracting Party, that it was made without intentional delay, following the discovery of the mistake.

(2) [Fees] (a) Subject to subparagraph (b), a Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(b) The Office shall correct its own mistakes, *ex officio* or upon request, for no fee.

(3) [Single Request] Rule 16(5) shall apply, *mutatis mutandis*, to requests for correction of a mistake, provided that the mistake and the requested correction are the same for all applications and patents concerned.

(4) [Evidence] A Contracting Party may only require that evidence in support of the request be filed with the Office where the Office may reasonably doubt that the alleged mistake is in fact a mistake, or where it may reasonably doubt the veracity of any matter contained in, or of any document filed in connection with, the request for correction of a mistake.

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

(6) [Notification; Non-Compliance with Requirements] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (3) are not complied with, or where evidence is required under paragraph (4).

(7) [Exclusions] (a) A Contracting Party may exclude the application of this Rule in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law.

(b) A Contracting Party may exclude the application of this Rule in respect of any mistake which must be corrected in that Contracting Party under a procedure for reissue of the patent.

Rule 19

Manner of Identification of an Application Without Its Application Number

(1) [Manner of Identification] Where it is required that an application be identified by its application number, but such a number has not yet been issued or is not known to the person concerned or his representative, the application shall be considered identified if one of the following is supplied, at that person's option:

- (i) a provisional number for the application, if any, given by the Office;
- (ii) a copy of the request part of the application along with the date on which the application was sent to the Office;
- (iii) a reference number given to the application by the applicant or his representative and indicated in the application, along with the name and address of the applicant, the title of the invention and the date on which the application was sent to the Office.

(2) [Prohibition of Other Requirements] No Contracting Party may require that identification means other than those referred to in paragraph (1) be supplied in order for an application to be identified where its application number has not yet been issued or is not known to the person concerned or his representative.

Rule 20
Establishment of Model International Forms

(1) [*Model International Forms*] The Assembly shall, under Article 14(1)(c), establish Model International Forms, in each of the languages referred to in Article 25(1), in respect of:

- (i) a power of attorney;
- (ii) a request for recordation of change in name or address;
- (iii) a request for recordation of change in applicant or owner;
- (iv) a certificate of transfer;
- (v) a request for recordation, or cancellation of recordation, of a license;
- (vi) a request for recordation, or cancellation of recordation, of a security interest;
- (vii) a request for correction of a mistake.

(2) [*Modifications Referred to in Rule 3(2)(i)*] The Assembly shall establish the modifications of the Patent Cooperation Treaty request Form referred to in Rule 3(2)(i).

(3) [*Proposals by the International Bureau*] The International Bureau shall present proposals to the Assembly concerning:

- (i) the establishment of Model International Forms referred to in paragraph (1);
- (ii) the modifications of the Patent Cooperation Treaty request Form referred to in paragraph (2).

Rule 21
Requirement of Unanimity Under Article 14(3)

Establishment or amendment of the following Rules shall require unanimity:

- (i) any Rules under Article 5(1)(a);
- (ii) any Rules under Article 6(1)(iii);
- (iii) any Rules under Article 6(3);
- (iv) any Rules under Article 7(2)(a)(iii);
- (v) Rule 8(1)(a);
- (vi) the present Rule.

Text of the Basic Proposal as Presented to the Diplomatic Conference

Draft Patent Law Treaty

List of the Articles of the Draft Treaty

- Article 1: Abbreviated Expressions
- Article 2: General Principles
- Article 3: Applications and Patents to Which the Treaty Applies
- Article 4: National Security
- Article 5: Filing Date
- Article 6: Application
- Article 7: Representation
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- Article 15: Relation to the Paris Convention
- Article 16: Effect of Revisions, Amendments and Modifications of the Patent Cooperation Treaty
- Article 17: International Bureau
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- Article 21: Application of the Treaty to Existing and Future Applications and Patents
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- Article 23: Denunciation of the Treaty
- Article 24: Languages of the Treaty
- Article 25: Signature of the Treaty
- Article 26: Depositary; Registration

Article 1
Abbreviated Expressions

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

- (i) "Office" means the authority of a Contracting Party entrusted with the granting of patents or with other matters covered by this Treaty;
- (ii) "application" means an application for the grant of a patent, as referred to in Article 3;
- (iii) "patent" means a patent as referred to in Article 3;
- (iv) references to a "person" shall be construed as references to both a natural person and a legal entity;
- (v) "communication" means any application, or any request, declaration, document, correspondence or other information relating to an application or patent, whether relating to a procedure under this Treaty or not, which is filed with the Office by means permitted by the Office;
- (vi) "records of the Office" means the collection of information maintained by the Office, relating to and including the applications filed with, and the patents granted by, that Office or another authority with effect for the Contracting Party concerned, irrespective of the medium in which such information is maintained;
- (vii) "recordation" means any act of including information in the records of the Office;
- (viii) "applicant" means the person whom the records of the Office show as the person who is applying for the patent, or whom the records of the Office show as another person who, pursuant to the applicable law, is filing or prosecuting the application;
- (ix) "owner" means the person whom the records of the Office show as the owner of the patent;
- (x) "representative" means any person, firm or partnership that can be a representative under the applicable law;
- (xi) "signature" means any means of self-identification;
- (xii) "a language accepted by the Office" means any one language accepted by the Office for the relevant procedure before the Office;
- (xiii) "translation" means a translation into a language or, where appropriate, a transliteration into an alphabet or character set, accepted by the Office;
- (xiv) "procedure before the Office" means any procedure in proceedings before the Office with respect to an application or patent;
- (xv) except where the context indicates otherwise, words in the singular include the plural, and vice versa, and masculine personal pronouns include the feminine;
- (xvi) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, signed on March 20, 1883, as revised and amended;
- (xvii) "Patent Cooperation Treaty" means the Patent Cooperation Treaty ("PCT"), signed on June 19, 1970, as amended and modified;
- (xviii) "Contracting Party" means any State or intergovernmental organization party to this Treaty;

- (xix) "Organization" means the World Intellectual Property Organization;
- (xx) "International Bureau" means the International Bureau of the Organization;
- (xxi) "Director General" means the Director General of the Organization.

Article 2

General Principles

(1) *[More Favorable Requirements]* A Contracting Party shall be free to provide for requirements which, from the viewpoint of applicants and owners, are more favorable than the requirements referred to in this Treaty and the Regulations, other than Article 5.

(2) *[No Regulation of Substantive Patent Law]* Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of the applicable substantive law relating to patents as it desires.

Article 3

Applications and Patents to Which the Treaty Applies

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

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

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

(b) Subject to the provisions of the Patent Cooperation Treaty, the provisions of this Treaty and the Regulations shall apply to international applications for patents for invention and for patents of addition, under the Patent Cooperation Treaty:

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

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

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

Article 4

National Security

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

Article 5

Filing Date

(1) *[Elements of Application]* (a) Subject to paragraphs (2) to (8), a Contracting Party shall provide that the filing date of an application shall be [no later than] the date on which its Office has

received all of the following elements, filed, at the option of the applicant, on paper or by other means permitted by the Office:

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

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

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

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

(2) *[Language]* (a) A Contracting Party may require that the indications referred to in paragraph (1)(a)(i) and (ii) be in a language accepted by the Office.

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 6 **Application**

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

(i) the requirements relating to form or contents which are provided for in respect of international applications under the Patent Cooperation Treaty;

(ii) the requirements relating to form or contents compliance with which, under the Patent Cooperation Treaty, may be required by the Office of, or acting for, any Contracting State of that Treaty once the processing or examination of an international application, as referred to in Article 23 or Article 40 of the said Treaty, has started;

(iii) any further requirements prescribed in the Regulations.

(2) [Request Form or Format] (a) A Contracting Party may require that the contents of an application which correspond to the contents of the request of an international application under the Patent Cooperation Treaty be presented on a request Form, or in a format, prescribed by that Contracting Party. A Contracting Party may also require that any further contents prescribed in the Regulations pursuant to paragraph (1)(iii) be contained in that request Form or format.

(b) Notwithstanding subparagraph (a), and subject to Article 8(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) on a request Form, or in a format, provided for in the Regulations.

(3) [Translation] A Contracting Party may require a translation of any part of the application that is not in a language accepted by its Office.

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

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

(6) [Evidence] A Contracting Party may require that evidence be filed with its Office in the course of the processing of the application only where that Office may reasonably doubt the veracity of any matter referred to in paragraphs (1) and (2) or in a declaration of priority, or the accuracy of any translation referred to in paragraph (3) or (5).

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

(8) *[Non-Compliance with Requirements]* (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to subparagraph (b) and Article 5, apply such sanction as is provided for in its law.

(b) Where any requirement applied by the Contracting Party under paragraph (1), (5) or (6) in respect of a priority claim is not complied with within the time limit prescribed in the Regulations, the priority claim may, subject to Article 13, be considered non-existent. Subject to Article 5(7)(b), no other sanctions may be applied.

Article 7 **Representation**

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

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

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

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

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

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

(i) the payment of maintenance fees;

[(ii) any procedure referred to in Article 5;]

[(iii) the payment of fees;]

[(iv) the filing of a translation;]

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

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

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

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

(5) *[Notification]* Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (3) are not complied with, or where evidence is required under the Regulations

pursuant to paragraph (3), the Office shall notify the applicant, owner or other interested person, giving an opportunity to comply with any such requirement, and to make observations, within the time limit prescribed in the Regulations.

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

Article 8

Communications; Addresses

(1) [*Form, Format and Means of Filing of Communications*] (a) Except for the establishment of a filing date under Article 5(1), the Regulations shall, subject to subparagraphs (b) to (d), set out the requirements which a Contracting Party shall be permitted to apply as regards the form, format and means of filing of communications.

(b) No Contracting Party shall be obliged to accept the filing of communications other than on paper.

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

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

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

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

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

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

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

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

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

- (i) an address for correspondence;
- (ii) an address for legal service;
- (iii) any other address provided for in the Regulations.

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

(8) *[Non-Compliance with Requirements]* Where one or more of the requirements applied under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to Article 5 and to any exceptions prescribed in the Regulations, apply such sanction as is provided for in its law.

Article 9

Notifications

(1) *[Sufficient Notification]* Any notification under this Treaty or the Regulations which is sent by the Office to an address for correspondence or address for legal service indicated under Article 8(6), or any other address provided for in the Regulations for the purpose of this provision, and which complies with the provisions with respect to that notification, shall constitute a sufficient notification for the purposes of this Treaty and the Regulations.

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

(3) *[Failure to Notify]* Subject to Article 10(1), where an Office does not notify an applicant, owner or other interested person of a failure to comply with any requirement under this Treaty or the Regulations, that absence of notification does not relieve that applicant, owner or other interested person of the obligation to comply with that requirement.

Article 10

Validity of Patent; Revocation

(1) *[Validity of Patent Not Affected by Non-Compliance with Certain Formal Requirements]* Once a patent has been granted, it may not be revoked or invalidated, either totally or in part, by the Office, or by a court, a board of appeal or any other competent authority of a Contracting Party, on the ground of non-compliance with one or more of the formal requirements with respect to an application referred to in Articles 6(1), (2), (4) and (5) and 8(1) to (4), except where the non-compliance with the formal requirement occurred as a result of a fraudulent intention.

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

Article 11

Relief in Respect of Time Limits

(1) *[Extension of Time Limits]* A Contracting Party may provide for the extension, for the period prescribed in the Regulations, of a time limit fixed by the Office for an action in a procedure before the Office in respect of an application or a patent, if a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations, and the request is made, at the option of the Contracting Party:

- (i) prior to the expiration of the time limit; or
- (ii) after the expiration of the time limit, and within the time limit prescribed in the Regulations.

(2) [*Continued Processing*] Where an applicant or owner has failed to comply with a time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office in respect of an application or a patent, and that Contracting Party does not provide for extension of a time limit under paragraph (1)(ii), the Contracting Party shall provide for continued processing with respect to the application or patent and, if necessary, re-instatement of the rights of the applicant or owner with respect to that application or patent, if:

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

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

(3) [*Exceptions*] No Contracting Party shall be required to provide for the relief referred to in paragraph (1) or (2) with respect to the exceptions prescribed in the Regulations.

(4) [*Fees*] A Contracting Party may require that a fee be paid in respect of a request under paragraph (1) or (2).

(5) [*Prohibition of Other Requirements*] No Contracting Party may require that requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the relief provided for under paragraph (1) or (2), except where otherwise provided for by this Treaty or prescribed in the Regulations.

(6) [*Opportunity to Make Observations in Case of Intended Refusal*] A request under paragraph (1) or (2) may not be refused without the applicant or owner being given at least one opportunity to make observations on the intended refusal within a reasonable time limit.

Article 12

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

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

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

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

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

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

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

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

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

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

Article 13 ***Correction or Addition of Priority Claim; Restoration of Priority Right***

(1) [*Correction or Addition of Priority Claim*] Except where otherwise prescribed in the Regulations, a Contracting Party shall provide for the correction or addition of a priority claim with respect to an application ("the subsequent application"), if:

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

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

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

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

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

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

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

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

(3) [*Failure to File a Copy of Earlier Application*] Where a copy of an earlier application required under Article 6(5) is not filed with the Office within the time limit prescribed in the Regulations pursuant to Article 6, the Office shall restore the right of priority, if:

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

(ii) the request is made within the time limit for filing the copy of the earlier application prescribed in the Regulations pursuant to Article 6(5);

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

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

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

Article 14

Regulations

- (1) [*Content*] (a) The Regulations annexed to this Treaty provide rules concerning:
- (i) matters which this Treaty expressly provides are to be “prescribed in the Regulations”;
 - (ii) details useful in the implementation of the provisions of this Treaty;
 - (iii) administrative requirements, matters or procedures.
- (b) The Regulations also provide rules concerning the formal requirements which a Contracting Party shall be permitted to apply in respect of requests for:
- (i) recordation of change in name or address;
 - (ii) recordation of change in applicant or owner;
 - (iii) recordation of a licensing agreement or security interest;
 - (iv) correction of a mistake.
- (c) The Regulations also provide for the establishment of Model International Forms and Model International Formats, and for the establishment of a request Form or format for the purposes of Article 6(2)(b), by the Assembly, with the assistance of the International Bureau.
- (2) [*Amending the Regulations*] Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.
- (3) [*Requirement of Unanimity*] (a) The Regulations may specify provisions of the Regulations which may be amended only by unanimity.
- (b) Any amendment of the Regulations resulting in the addition of provisions to, or the deletion of provisions from, the provisions specified in the Regulations pursuant to subparagraph (a) shall require unanimity.
- (c) In determining whether unanimity is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.
- (4) [*Conflict Between the Treaty and the Regulations*] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

Article 15

Relation to the Paris Convention

- (1) [*Obligation to Comply with the Paris Convention*] Any Contracting Party shall comply with the provisions of the Paris Convention which concern patents.
- (2) [*Obligations and Rights Under the Paris Convention*] (a) Nothing in this Treaty shall derogate from obligations that Contracting Parties have to each other under the Paris Convention.
- (b) Nothing in this Treaty shall derogate from rights that applicants and owners enjoy under the Paris Convention.

Article 16
Assembly

- (1) [Composition] (a) The Contracting Parties shall have an Assembly.
- (b) Each Contracting Party shall be represented in the Assembly by one delegate, who may be assisted by alternate delegates, advisors and experts. Each delegate may represent only one Contracting Party.
- (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation.
- (2) [Tasks] The Assembly shall:
- (i) deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty;
 - (ii) establish Model International Forms, Model International Formats, and the request Form or format, referred to in Article 14(1)(c), with the assistance of the International Bureau;
 - (iii) amend the Regulations;
 - (iv) determine the conditions for the date of application of each Model International Form, Model International Format, and the request Form or format, referred to in item (ii), and each amendment referred to in item (iii);
 - (v) perform the function allocated to it under Article 19(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty;
 - (vi) perform such other functions as are appropriate under this Treaty.
- (3) [Quorum] (a) One-half of the members of the Assembly which are States shall constitute a quorum.
- (b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.
- (4) [Taking Decisions in the Assembly] (a) The Assembly shall endeavor to take its decisions by consensus.
- (b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case:
- (i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and
 - (ii) any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this

Treaty is a Member State of another such intergovernmental organization and that other intergovernmental organization participates in that vote.

(5) [*Majorities*] (a) Subject to Articles 14(2) and (3) and 18(3), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

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

(7) [*Rules of Procedure*] The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

Article 17 ***International Bureau***

(1) [*Administrative Tasks*] (a) The International Bureau shall perform the administrative tasks concerning this Treaty.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) [*Meetings Other than Sessions of the Assembly*] The Director General shall convene any committee and working group established by the Assembly.

(3) [*Role of the International Bureau in the Assembly and Other Meetings*] (a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly.

(b) The Director General or a staff member designated by the Director General shall be *ex officio* secretary of the Assembly, and of the committees and working groups referred to in subparagraph (a).

(4) [*Conferences*] (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(5) [*Other Tasks*] The International Bureau shall carry out any other tasks assigned to it in relation to this Treaty.

Article 18 ***Revisions***

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

(2) [*Revision or Amendment of Certain Provisions of the Treaty*] Article 16(2) and (6) may be amended either by a revision conference, or by the Assembly according to the provisions of paragraph (3).

(3) *[Amendment by the Assembly of Certain Provisions of the Treaty]* (a) Proposals for the amendment by the Assembly of Article 16(2) and (6) may be initiated by any Contracting Party or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(b) Adoption of any amendment to the provisions referred to in subparagraph (a) shall require three-fourths of the votes cast.

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

Article 19 ***Becoming Party to the Treaty***

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

(2) *[Intergovernmental Organizations]* The Assembly may decide to admit any intergovernmental organization to become party to this Treaty if at least one member State of that intergovernmental organization is a party to the Paris Convention or a member of the Organization, and the intergovernmental organization declares that:

(i) it is competent to grant patents with effect for its member States; or

(ii) it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by this Treaty.

(3) *[Regional Patent Organizations]* [The European Patent Organization][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][and the African Intellectual Property Organization], having made the declaration referred to in paragraph (2) in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty as intergovernmental organizations.

(4) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraphs (1) to (3) may deposit:

(i) an instrument of ratification if it has signed this Treaty; or

(ii) an instrument of accession if it has not signed this Treaty.

Article 20 ***Entry into Force; Effective Dates of Ratifications and Accessions***

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

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

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

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

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

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

Article 21

Application of the Treaty to Existing Applications and Patents

(1) [*Principle*] (a) Subject to paragraph (2), a Contracting Party shall apply the provisions of this Treaty and the Regulations, other than Article 5 and Article 6(1) and (2), to applications which are pending, and to patents which are in force, on or after the date on which this Treaty binds that Contracting Party under Article 20.

[(b) A Contracting Party shall apply Article 12 and related Regulations, even where the failure to comply with a time limit occurred prior to the date on which this Treaty binds that Contracting Party under Article 20.]

(2) [*Procedures*] No Contracting Party shall be obliged to apply the provisions of this Treaty and the Regulations to any procedure in proceedings with respect to applications and patents referred to in paragraph (1), if such procedure commenced before the date on which this Treaty binds that Contracting Party under Article 20.

Article 22

Reservations

(1) [*Reservation*] Any State or intergovernmental organization may declare through a reservation that the provisions of Article 6(1) shall not apply to any requirement relating to unity of invention applicable under the Patent Cooperation Treaty to an international application.

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

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

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

Article 23

Denunciation of the Treaty

(1) [*Notification*] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

(2) [*Effective Date*] Any denunciation shall take effect one year from the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not

affect the application of this Treaty to any application pending or any patent in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 24 ***Languages of the Treaty***

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

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

Article 25 ***Signature of the Treaty***

The Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption by any State that is eligible for becoming party to the Treaty under Article 19(1) and by [the European Patent Organization][, the Eurasian Patent Organization] [, the African Regional Industrial Property Organization][and the African Intellectual Property Organization].

Article 26 ***Depositary; Registration***

(1) *[Depositary]* The Director General is the depositary of this Treaty.

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

Draft Regulations Under the Patent Law Treaty

List of the Rules of the Draft Regulations Under the Patent Law Treaty

- Rule 1: Abbreviated Expressions
- Rule 2: Details Concerning Filing Date Under Article 5
- Rule 3: Details Concerning the Application Under Article 6(1) and (2)
- Rule 4: Availability of Earlier Application Under Article 6(5) and Rule 2(4) or of Previously Filed Application Under Rule 2(5)(b)
- Rule 5: Evidence Under Articles 6(6) and 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6) and 18(4)
- Rule 6: Time Limits Concerning the Application Under Article 6(7) and (8)
- Rule 7: Details Concerning Representation Under Article 7
- Rule 8: Filing of Communications Under Article 8(1)
- Rule 9: Details Concerning the Signature Under Article 8(4)
- Rule 10: Details Concerning Indications Under Article 8(5), (6) and (8)
- Rule 11: Time Limits Concerning Communications Under Article 8(7) and (8)
- Rule 12: Details Concerning Relief in Respect of Time Limits Under Article 11
- Rule 13: Details Concerning Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12
- Rule 14: Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13
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- Rule 16: Request for Recordation of Change in Applicant or Owner
- Rule 17: Request for Recordation of a Licensing Agreement or Security Interest
- Rule 18: Request for Correction of a Mistake
- Rule 19: Manner of Identification of an Application Without Its Application Number
- Rule 20: Establishment of Model International Forms and Formats
- Rule 21: Requirement of Unanimity for Amending Certain Rules Under Article 14(3)

Rule 1
Abbreviated Expressions

(1) [*"Treaty"; "Article"*] (a) In these Regulations, the word "Treaty" means the Patent Law Treaty.

(b) In these Regulations, the word "Article" refers to the specified Article of the Treaty.

(2) [*Abbreviated Expressions Defined in the Treaty*] The abbreviated expressions defined in Article 1 for the purposes of the Treaty shall have the same meaning for the purposes of the Regulations.

Rule 2
Details Concerning Filing Date Under Article 5

(1) [*Time Limit Under Article 5(3)*] The time limit referred to in Article 5(3) shall be not less than two months from the date of the notification referred to in that Article.

(2) [*Time Limit Under Article 5(4)(b)*] The time limit referred to in Article 5(4)(b) shall be:

(i) subject to item (ii), the time limit applied under paragraph (1);

(ii) where a notification under Article 5(3) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, not less than two months from the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office.

(3) [*Time Limits Under Article 5(6)(a) and (b)*] The time limits referred to in Article 5(6)(a) and (b) shall be:

(i) where a notification has been made under Article 5(5), not less than two months from the date of the notification;

(ii) where a notification has not been made, not less than two months from the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office.

(4) [*Requirements Under Article 5(6)(b)*] Any Contracting Party may, subject to Rule 4, require that, for the filing date to be determined under Article 5(6)(b):

(i) a copy of the earlier application be filed within the time limit applicable under paragraph (3);

(ii) a copy of the earlier application, and the date of filing of the earlier application, certified as correct by the Office with which the earlier application was filed, be filed upon invitation by the Office, within a time limit which shall be not less than four months from the date of that invitation, or the time limit applicable under Rule 4(1), whichever expires earlier;

(iii) where the earlier application is not in a language accepted by the Office, a translation of the earlier application be filed within the time limit applicable under paragraph (3);

(iv) the missing part of the description or missing drawing be completely contained in the earlier application;

(v) the application, at the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office, contained an indication that the contents of the earlier application were incorporated by reference in the application;

(vi) an indication be filed within the time limit applicable under paragraph (3) as to where, in the earlier application or in the translation referred to in item (iii), the missing part of the description or the missing drawing is contained.

(5) [*Requirements Under Article 5(7)(a)*] (a) The reference to the previously filed application referred to in Article 5(7)(a) shall indicate that, for the purposes of the filing date, the description and any drawings are replaced by the reference to the previously filed application, the number of that application, and the Office with which that application was filed. A Contracting Party may require that the reference also indicate the filing date of the previously filed application.

(b) Any Contracting Party may, subject to Rule 4(3), require that:

(i) a copy of the previously filed application and, where the previously filed application is not in a language accepted by the Office, a translation of that previously filed application, be filed with the Office within a time limit which shall be not less than two months from the date on which the application containing the reference referred to in Article 5(7)(a) was received by the Office;

(ii) a certified copy of the previously filed application be filed with the Office within a time limit which shall be not less than four months from the date of the receipt of the application containing the reference referred to in Article 5(7)(a).

(6) [*Exceptions Under Article 5(8)(ii)*] The types of applications referred to in Article 5(8)(ii) shall be:

(i) divisional applications;

(ii) applications for continuation or continuation-in-part;

(iii) applications by new applicants determined to be entitled to an invention contained in an earlier application.

Rule 3

Details Concerning the Application Under Article 6(1) and (2)

(1) [*Further Requirements Under Article 6(1)(iii)*] (a) A Contracting Party may require that an applicant who wishes an application to be treated as a divisional application under Rule 2(6)(i) indicate:

(i) that he wishes the application to be so treated;

(ii) the number and filing date of the application from which the application is divided.

(b) A Contracting Party may require that an applicant who wishes an application to be treated as an application under Rule 2(6)(iii) indicate:

(i) that he wishes the application to be so treated;

(ii) the number and filing date of the earlier application.

(2) [*Request Form or Format Under Article 6(2)(b)*] A Contracting Party shall accept the presentation of the contents referred to in Article 6(2)(a):

(i) on a request Form, if that request Form corresponds to the Patent Cooperation Treaty request Form with any modifications under Rule 20(1)(b);

(ii) on a Patent Cooperation Treaty request Form, if that request Form is accompanied by an indication to the effect that the applicant wishes the application to be

treated as a national or regional application, in which case the request Form shall be deemed to incorporate the modifications referred to in item (i);

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

(iv) in a format, if that format corresponds to the Model International request Format under Rule 20(2).

Rule 4

Availability of Earlier Application Under Article 6(5) and Rule 2(4) or of Previously Filed Application Under Rule 2(5)(b)

(1) [*Copy of Earlier Application Under Article 6(5)*] Subject to paragraph (3), a Contracting Party may require that a copy of the earlier application referred to in Article 6(5) be filed with the Office within a time limit which shall be not less than 16 months from the filing date of that earlier application or, where there is more than one such earlier application, from the earliest filing date of those earlier applications.

(2) [*Certification*] Subject to paragraph (3), a Contracting Party may require that the copy referred to in paragraph (1) and the date of filing of the earlier application be certified as correct by the Office with which the earlier application was filed.

(3) [*Availability of Earlier Application or of Previously Filed Application*] No Contracting Party shall require the filing of a copy or a certified copy of the earlier application or a certification of the filing date, as referred to in paragraphs (1) and (2), and Rule 2(4), or a copy or a certified copy of the previously filed application as referred to in Rule 2(5)(b), where the earlier application or the previously filed application was filed with its Office, or is available to that Office in a legally accepted electronic format from a digital library which is accepted by that Office.

(4) [*Translation*] Where the earlier application is not in a language accepted by the Office and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable, the Contracting Party may require that a translation of the earlier application referred to in paragraph (1) be filed by the applicant, upon invitation by the Office, within a time limit which shall be not less than two months from the date of that invitation, and not less than the time limit, if any, applied under that paragraph.

Rule 5

Evidence Under Articles 6(6) and 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6) and 18(4)

Where the Office notifies the applicant, owner or other person that evidence is required under Article 6(6) or 8(4)(c), or Rule 7(4), 15(4), 16(6), 17(6) or 18(4), the notification shall state the reason of the Office for doubting the veracity of the matter, indication or signature or other means of self-identification, or the accuracy of the translation, as the case may be.

Rule 6

Time Limits Concerning the Application Under Article 6(7) and (8)

(1) [*Time Limit Under Article 6(7)*] The time limit referred to in Article 6(7) shall be not less than two months from the date of the notification referred to in Article 6(7).

(2) [*Time Limit Under Article 6(8)*] The time limit referred to in Article 6(8) shall be:

- (i) subject to item (ii), the time limit applied under paragraph (1);
- (ii) where a notification under Article 6(7) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, not less than three months from the date on which one or more of the elements referred to in Article 5(1)(a) were first received by the Office.

Rule 7

Details Concerning Representation Under Article 7

[(1) *[Other Procedures Under Article 7(2)(v)]* The other procedures referred to in Article 7(2)(v) for which a Contracting Party may not require appointment of a representative are:

- (i) the filing of a copy of an earlier application under Rule 2(4);
- (ii) the filing of a copy of a previously filed application under Rule 2(5)(b).]

(2) *[Appointment of Representative Under Article 7(3)]* (a) A Contracting Party shall accept that the appointment of a representative be filed with the Office in:

- (i) a separate communication (hereinafter referred to as a "power of attorney") signed by the applicant, owner or other interested person and indicating the name and address of the representative; or, at the applicant's option,

- (ii) the request Form or format referred to in Article 6(2), signed by the applicant.

(b) A single power of attorney shall be sufficient even where it relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that all applications and patents concerned are identified in the single power of attorney. A single power of attorney shall also be sufficient even where it relates, subject to any exception indicated by the appointing person, to all existing and future applications or patents of that person. The Office may require that, where that single power of attorney is filed on paper or by other means permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(3) *[Translation of Power of Attorney]* A Contracting Party may require that, if the power of attorney is not in a language accepted by the Office, it be accompanied by a translation.

(4) *[Evidence]* A Contracting Party may require that evidence be filed with the Office where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraph (2)(a)(i).

(5) *[Time Limit Under Article 7(5)]* The time limit referred to in Article 7(5) shall be not less than two months from the date of the notification under that Article.

(6) *[Time Limit Under Article 7(6)]* The time limit referred to in Article 7(6) shall be:

- (i) subject to item (ii), the time limit applied under paragraph (5);
- (ii) where a notification referred to in Article 7(5) has not been made because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been filed, not less than three months from the date on which the procedure referred to in that Article was commenced.

Rule 8
Filing of Communications Under Article 8(1)

(1) [Communications Filed on Paper] (a) During a period of 10 years from the date of the entry into force of the Treaty, a Contracting Party shall permit the filing of communications on paper. After that period has expired, any Contracting Party may, subject to Articles 5(1) and 8(1)(d), exclude the filing of communications on paper.

(b) Subject to Article 8(3), a Contracting Party may require that a communication on paper be filed on a form, or in a format, prescribed by that Contracting Party.

(2) [Communications Filed in Electronic Form or by Electronic Means] (a) Where a Contracting Party permits the filing of communications in electronic form or by electronic means with its Office in a particular language, including the filing of communications by telegraph, teleprinter, telefacsimile or other like means, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to communications filed in electronic form or by electronic means in that language, the Office shall permit the filing of communications in electronic form or by electronic means in the said language in accordance with those requirements.

(b) Any Contracting Party which permits the filing of communications in electronic form or by electronic means with its Office shall notify the International Bureau of the requirements under its applicable law relating to such filing. Any such notification shall be published by the International Bureau in the language in which it is notified and in the languages in which authentic and official texts of the Treaty are established under Article 24.

(c) Where a Contracting Party permits the filing of communications by telegraph, teleprinter, telefacsimile or other like means under subparagraph (a), it may require that the original of any document which was transmitted by such means, accompanied by a letter identifying that earlier transmission, be filed on paper with the Office within a time limit which shall be not less than one month from the date of the transmission.

(3) [Copies, Filed in Electronic Form or by Electronic Means, of Communications Filed on Paper] (a) Where a Contracting Party permits the filing of a copy, in electronic form or by electronic means, of a communication filed on paper in a language accepted by the Office, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to the filing of such copies of communications, the Office shall permit the filing of copies of communications in electronic form or by electronic means, in accordance with those requirements.

(b) Paragraph (2)(b) shall apply, *mutatis mutandis*, to copies, in electronic form or by electronic means, of communications filed on paper.

Rule 9
Details Concerning the Signature Under Article 8(4)

(1) [Indications Accompanying Signature] A Contracting Party may require that the signature of the natural person who signs be accompanied by:

(i) an indication in letters of the family or principal name and the given or secondary name or names of that person or, at the option of that person, of the name or names customarily used by the said person;

(ii) an indication of the capacity in which that person signed, where such capacity is not obvious from reading the communication.

(2) [Date of Signing] A Contracting Party may require that a signature be accompanied by an indication of the date on which the signing was effected. Where that indication is required but is not supplied, the date on which the signing is deemed to have been effected shall be the date on which the communication bearing the signature was received by the Office or, if the Contracting Party so permits, a date earlier than the latter date.

(3) [*Signature of Communication on Paper*] Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party:

- (i) shall, subject to item (iii), accept a handwritten signature;
- (ii) may permit, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal or of a bar-coded label;
- (iii) may, where the natural person who signs the communication is a national of the Contracting Party and such person's address is on its territory, or where the legal entity on behalf of which the communication is signed is organized under its law and has either a domicile or a real and effective industrial or commercial establishment on its territory, require that a seal be used instead of a handwritten signature.

(4) [*Signature of Communications Filed in Electronic Form or by Electronic Means Resulting in Graphic Representation*] Where a Contracting Party permits the filing of communications in electronic form or by electronic means, it shall consider such a communication signed if a graphic representation of a signature accepted by that Contracting Party under paragraph (3) appears on that communication as received by the Office of that Contracting Party.

(5) [*Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature*] (a) Where a Contracting Party permits the filing of communications in electronic form, and a graphic representation of a signature accepted by that Contracting Party under paragraph (3) does not appear on such a communication as received by the Office of that Contracting Party, the Contracting Party may require that the communication be signed using a signature in electronic form as prescribed by that Contracting Party.

(b) Notwithstanding subparagraph (a), where a Contracting Party permits the filing of communications in electronic form in a particular language, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to signatures in electronic form of communications filed in electronic form in that language which do not result in a graphic representation of the signature, the Office of that Contracting Party shall accept a signature in electronic form in accordance with those requirements.

(c) Rule 8(2)(b) shall apply *mutatis mutandis*.

(6) [*Exception to Certification of Signature Under Article 8(4)(b)*] A Contracting Party may require that any signature referred to in paragraph (5) be confirmed by a process for certifying signatures in electronic form specified by that Contracting Party.

Rule 10 **Details Concerning Indications Under Article 8(5), (6) and (8)**

(1) [*Indications Under Article 8(5)*] (a) A Contracting Party may require that any communication:

- (i) indicate the name and address of the applicant, owner or other interested person;
- (ii) indicate the number of the application or patent to which it relates;
- (iii) contain, where the applicant, owner or other interested person is registered with the Office, the number or other indication under which he is so registered.

(b) A Contracting Party may require that any communication by a representative for the purposes of a procedure before the Office contain:

- (i) the name and address of the representative;
- (ii) a reference to the power of attorney, or other communication in which the appointment of that representative is or was effected, on the basis of which the said representative acts;
- (iii) where the representative is registered with the Office, the number or other indication under which he is registered.

(2) [*Address for Correspondence and Address for Legal Service*] A Contracting Party may require that the address for correspondence referred to in Article 8(6)(i) and the address for legal service referred to in Article 8(6)(ii) be on a territory prescribed by that Contracting Party.

(3) [*Address Where No Representative Is Appointed*] Where no representative is appointed and an applicant, owner or other interested person has provided, as his address, an address on a territory prescribed by the Contracting Party under paragraph (2), that Contracting Party shall consider that address to be the address for correspondence referred to in Article 8(6)(i) or the address for legal service referred to in Article 8(6)(ii), as required by the Contracting Party, unless that applicant, owner or other interested person expressly indicates another such address under Article 8(6).

(4) [*Address Where Representative Is Appointed*] Where a representative is appointed, a Contracting Party shall consider the address of that representative to be the address for correspondence referred to in Article 8(6)(i) or the address for legal service referred to in Article 8(6)(ii), as required by the Contracting Party, unless that applicant, owner or other interested person expressly indicates another such address under Article 8(6).

(5) [*Sanctions for Non-Compliance With Requirements Under Article 8(8)*] No Contracting Party may provide for the refusal of an application for failure to comply with any requirement to file a registration number or other indication under paragraph (1)(a)(iii) and (b)(iii).

Rule 11

Time Limits Concerning Communications Under Article 8(7) and (8)

(1) [*Time Limit Under Article 8(7)*] The time limit referred to in Article 8(7) shall be not less than two months from the date of the notification referred to in that Article.

(2) [*Time Limit Under Article 8(8)*] The time limit referred to in Article 8(8) shall be:

- (i) subject to item (ii), the time limit applied under paragraph (1);
- (ii) where a notification under Article 8(7) has not been made because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been filed, not less than three months from the date on which the communication referred to in that Article was received by the Office.

Rule 12

Details Concerning Relief in Respect of Time Limits Under Article 11

(1) [*Requirements Under Article 11(1)*] (a) A Contracting Party may require that a request referred to in Article 11(1):

- (i) be signed by the applicant or owner;
- (ii) contain an indication to the effect that extension of a time limit is requested, and an identification of the time limit in question.

(b) Where a request for extension of a time limit is filed after the expiration of the time limit, a Contracting Party may require that all of the requirements in respect of which the time limit for the action concerned applied be complied with at the same time as the request is filed.

(2) [*Period and Time Limit Under Article 11(1)*] (a) The period of extension of a time limit referred to in Article 11(1) shall be not less than two months from the date of the expiration of the unextended time limit.

(b) The time limit referred to in Article 11(1)(ii) shall expire not earlier than two months from the date of the expiration of the unextended time limit.

(3) [*Requirements Under Article 11(2)(i)*] A Contracting Party may require that a request referred to in Article 11(2):

(i) be signed by the applicant or owner;

(ii) contain an indication to the effect that relief in respect of non-compliance with a time limit is requested, and an identification of the time limit in question.

(4) [*Time Limit for Filing a Request Under Article 11(2)(ii)*] The time limit referred to in Article 11(2)(ii) shall expire not earlier than two months from the date of the expiration of the time limit that was not complied with.

(5) [*Exceptions Under Article 11(3)*] (a) No Contracting Party shall be required under Article 11(1) or (2) to grant:

[(i) a second, or any subsequent, relief in respect of a time limit for which relief has already been granted under Article 11(1) or (2);]

(ii) relief for filing a request for relief under Article 11(1) or (2) or a request for re-instatement under Article 12(1);

(iii) relief in respect of a time limit for the payment of maintenance fees;

(iv) relief in respect of a time limit referred to in Article 13(1), (2) or (3);

[(v) relief in respect of a time limit for an action before a board of appeal or other review body constituted in the framework of the Office;]

(vi) relief in respect of a time limit for an action in *inter partes* proceedings;

[(vii) relief in respect of a time limit for an action in a procedure before the Office in respect of which a request for expedited or accelerated processing has been granted.]

(b) No Contracting Party which provides a maximum time limit for compliance with all of the requirements of a procedure before the Office shall be required under Article 11(1) or (2) to grant relief in respect of a time limit for an action in that procedure in respect of any of those requirements beyond that maximum time limit.

Rule 13

Details Concerning Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12

(1) [*Requirements Under Article 12(1)(i)*] A Contracting Party may require that a request referred to in Article 12(1)(i) be signed by the applicant or owner.

(2) [*Time Limit Under Article 12(1)(ii)*] The time limit for making a request, and for complying with the requirements, under Article 12(1)(ii), shall be the shorter of the following:

(i) not less than two months from the date of the removal of the cause of failure to comply with the time limit for the action in question;

(ii) not less than 12 months from the date of expiration of the time limit for the action in question.

(3) [*Exceptions Under Article 12(2)*] The exceptions referred to in Article 12(2) are failure to comply with a time limit:

(i) for an action before a board of appeal or other review body constituted in the framework of the Office;

[(ii) for the payment of maintenance fees;]

(iii) for making a request for relief under Article 11(1) or (2) or a request for re-instatement under Article 12(1);

(iv) referred to in Article 13(1), (2) or (3);

[(v) for filing a request for search or examination;]

[(vi) for filing a translation of a regional patent;]

(vii) for an action in *inter partes* proceedings.

Rule 14

Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13

(1) [*Exception Under Article 13(1)*] No Contracting Party shall be obliged to provide for the correction or addition of a priority claim under Article 13(1), where the request referred to in Article 13(1)(i) is received after the applicant has made a request for early publication or for expedited or accelerated processing, unless that request for early publication or for expedited or accelerated processing is withdrawn before any technical preparations for publication of the application have been completed.

(2) [*Requirements Under Article 13(1)(i)*] A Contracting Party may require that a request referred to in Article 13(1)(i) be signed by the applicant.

(3) [*Time Limit Under Article 13(1)(ii)*] The time limit referred to in Article 13(1)(ii) shall be not less than the time limit applicable under the Patent Cooperation Treaty to an international application for the submission of a priority claim after the filing of an international application.

(4) [*Time Limits Under Article 13(2)*] (a) The time limit referred to in Article 13(2), introductory part, shall be not less than two months from the date on which the priority period expired.

(b) The time limit referred to in Article 13(2)(ii) shall be the time limit applied under subparagraph (a), or the time that any technical preparations for publication of the subsequent application have been completed, whichever expires earlier.

(5) [*Requirements Under Article 13(2)(i)*] A Contracting Party may require that a request referred to in Article 13(2)(i):

(i) be signed by the applicant; and

(ii) be accompanied, where the application did not claim the priority of the earlier application, by the priority claim.

(6) [*Requirements Under Article 13(3)*] (a) A Contracting Party may require that a request referred to in Article 13(3)(i):

- (i) be signed by the applicant; and
- (ii) indicate the Office to which the request for a copy of the earlier application had been made and the date of that request.

(b) A Contracting Party may require that:

(i) a declaration or other evidence in support of the request referred to in Article 13(3) be filed with the Office within a time limit fixed by the Office;

(ii) the copy of the earlier application referred to in Article 13(3) be filed with the Office within a time limit which shall be not less than one month from the date on which the applicant is provided with that copy by the Office with which the earlier application was filed.

(7) [*Time Limit Under Article 13(3)(iii)*] The time limit referred to in Article 13(3)(iii) shall be two months before the expiration of the time limit prescribed in Rule 4(1).

Rule 15

Request for Recordation of Change in Name or Address

(1) [*Request*] Where there is no change in the person of the applicant or owner but there is a change in his name or address, a Contracting Party shall accept that a request for recordation of the change be made in a communication signed by the applicant or owner and containing the following indications:

- (i) an indication to the effect that recordation of a change in name or address is requested;
- (ii) the number of the application or patent concerned;
- (iii) the change to be recorded;
- (iv) the name and address of the applicant or the owner prior to the change.

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

(3) [*Single Request*] (a) A single request shall be sufficient even where the change relates to both the name and address of the applicant or the owner.

(b) A single request shall be sufficient even where the change relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that the numbers of all applications and patents concerned are indicated in the request. A Contracting Party may require that, where that single request is filed on paper or by other means permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(4) [*Evidence*] A Contracting Party may require that evidence be filed with the Office where the Office may reasonably doubt the veracity of any indication contained in the request.

(5) [*Prohibition of Other Requirements*] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the request referred to in paragraph (1), except where otherwise provided for by the Treaty or prescribed in these Regulations. In particular, the filing of any certificate concerning the change may not be required.

(6) [*Notification*] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (3) are not complied with, or where evidence is required under paragraph (4), the Office shall notify the applicant or owner, giving an opportunity to comply with any such requirement, and to make observations, within not less than two months from the date of the notification.

(7) *[Non-Compliance with Requirements]* (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (4) are not complied with within the time limit under subparagraph (b), the Contracting Party may provide that the request shall be refused, but no more severe sanction may be applied.

(b) The time limit referred to in subparagraph (a) shall be:

(i) subject to item (ii), not less than two months from the date of the notification;

(ii) where indications allowing the Office to contact the person who made the request referred to in paragraph (1) have not been filed, not less than three months from the date on which that request was received by the Office.

(8) *[Change in the Name or Address of the Representative, or in the Address for Correspondence or Address for Legal Service]* Paragraphs (1) to (7) shall apply, *mutatis mutandis*, to any change in the name or address of the representative, and to any change relating to the address for correspondence or address for legal service.

Rule 16

Request for Recordation of Change in Applicant or Owner

(1) *[Request for Recordation of a Change in Applicant or Owner]* (a) Where there is a change in the person of the applicant or owner, a Contracting Party shall accept that a request for recordation of the change be made in a communication signed by the applicant or owner, or by the new applicant or new owner, and containing the following indications:

(i) an indication to the effect that a recordation of change in applicant or owner is requested;

(ii) the number of the application or patent concerned;

(iii) the name and address of the applicant or owner;

(iv) the name and address of the new applicant or new owner;

(v) the date of the change in the person of the applicant or owner;

(vi) the name of a State of which the new applicant or new owner is a national if he is the national of any State, the name of a State in which the new applicant or new owner has his domicile, if any, and the name of a State in which the new applicant or new owner has a real and effective industrial or commercial establishment, if any;

(vii) the basis for the change requested.

(b) A Contracting Party may require that the request contain:

(i) a statement that the information contained in the request is true and correct;

(ii) information relating to any government interest by that Contracting Party.

(2) *[Documentation of the Basis of the Change in Applicant or Owner]* (a) Where the change in applicant or owner results from a contract, a Contracting Party may require that the request include information relating to the registration of the contract, where registration is compulsory under the applicable law of the Contracting Party, and [, where the recordation is requested by the new applicant or the new owner, rather than by the applicant or owner,] that it be accompanied, at the option of the requesting party, by one of the following:

(i) a copy of the contract, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where

permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original contract;

(ii) an extract of the contract showing the change, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the contract;

(iii) an uncertified certificate of transfer of ownership by contract drawn up with the content as prescribed in the Model International Form or Model International Format in respect of a certificate of transfer and signed by both the applicant and the new applicant, or by both the owner and the new owner.

(b) Where the change in applicant or owner results from a merger, or from the reorganization or division of a legal entity, a Contracting Party may require that the request be accompanied by a copy of a document, which document originates from a competent authority and evidences the merger, or the reorganization or division of the legal entity, and any attribution of rights involved, such as a copy of an extract from a register of commerce. A Contracting Party may also require that the copy be certified, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original document.

(c) Where the change in applicant or owner does not result from a contract, a merger, or the reorganization or division of a legal entity, but results from another ground, for example, by operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the change. A Contracting Party may also require that the copy be certified as being in conformity with the original document, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office.

(d) Where the change is in the person of one or more but not all of several co-applicants or co-owners, a Contracting Party may require that evidence of the consent to the change of any co-applicant or co-owner in respect of whom there is no change be provided to the Office.

(3) [*Translation*] A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office.

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

(5) [*Single Request*] A single request shall be sufficient even where the change relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that the change in applicant or owner is the same for all applications and patents concerned, and the numbers of all applications and patents concerned are indicated in the request. A Contracting Party may require that, where that single request is filed on paper or by other means permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(6) [*Evidence*] A Contracting Party may require that evidence, or further evidence in the case of paragraph (2), be filed with the Office where that Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the present Rule, or the accuracy of any translation referred to in paragraph (3).

(7) [*Prohibition of Other Requirements*] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (6) be complied with in respect of the request referred to in this Rule, except where otherwise provided for by the Treaty or prescribed in these Regulations.

(8) [*Notification; Non-Compliance with Requirements*] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (5) are not complied with, or where evidence, or further evidence, is required under paragraph (6).

(9) [*Exclusion with Respect to Inventorship*] A Contracting Party may exclude the application of this Rule in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law of the Contracting Party.

Rule 17
Request for Recordation of a Licensing Agreement or Security Interest

(1) [*Request for Recordation of a Licensing Agreement*] (a) Where a licensing agreement in respect of an application or patent may be recorded under the applicable law, the Contracting Party shall accept that a request for recordation of that licensing agreement be made in a communication signed by the licensor or the licensee and containing the following indications:

(i) an indication to the effect that a recordation of a licensing agreement is requested;

(ii) the number of the application or patent concerned;

(iii) the name and address of the licensor;

(iv) the name and address of the licensee;

(v) an indication of whether the license is an exclusive license or a non-exclusive license;

(vi) the name of a State of which the licensee is a national if he is the national of any State, the name of a State in which the licensee has his domicile, if any, and the name of a State in which the licensee has a real and effective industrial or commercial establishment, if any.

(b) A Contracting Party may require that the request contain:

(i) a statement that the information contained in the request is true and correct;

(ii) information relating to any government interest by that Contracting Party;

(iii) information relating to the registration of the licensing agreement, where registration is compulsory under the applicable law of that Contracting Party.

(2) [*Documentation of the Basis of the Licensing Agreement*] (a) A Contracting Party may require that [, where the recordation is requested by the licensee, rather than by the licensor,] the request be accompanied, at the option of the requesting party, by one of the following:

(i) a copy of the licensing agreement, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original licensing agreement;

(ii) an extract of the licensing agreement consisting of those portions of that agreement which show the rights licensed and their extent, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the licensing agreement.

(b) A Contracting Party may require that any applicant, owner, exclusive licensee, co-applicant, co-owner or co-exclusive licensee who is not party to a licensing agreement give his consent to the recordation of that licensing agreement in a communication to the Office.

(3) [*Translation*] A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office.

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

(5) [Single Request] Rule 16(5) shall apply, *mutatis mutandis*, to requests for recordation of a licensing agreement.

(6) [Evidence] Rule 16(6) shall apply, *mutatis mutandis*, to requests for recordation of a licensing agreement.

(7) [Prohibition of Other Requirements] No Contracting Party may require that requirements other than those referred to in paragraphs (1) to (6) be complied with in respect of the request referred to in paragraph (1), except where otherwise provided for by the Treaty or prescribed in these Regulations.

(8) [Notification; Non-Compliance with Requirements] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (5) are not complied with, or where evidence, or further evidence, is required under paragraph (6).

(9) [Request for Recordation of a Security Interest or Cancellation of the Recordation of a Licensing Agreement or a Security Interest] Paragraphs (1) to (8) shall apply, *mutatis mutandis*, to requests for:

- (i) recordation of a security interest in respect of an application or patent;
- (ii) cancellation of the recordation of a licensing agreement or a security interest in respect of an application or patent.

Rule 18 **Request for Correction of a Mistake**

(1) [Request] (a) Where an application, a patent or any request communicated to the Office in respect of an application or a patent contains a mistake which is correctable under the applicable law, the Contracting Party shall accept that a request for correction of that mistake in the records and publications of the Office be made in a communication signed by the applicant or owner and containing the following indications:

- (i) an indication to the effect that a correction of mistake is requested;
- (ii) the number of the application or patent concerned;
- (iii) the mistake to be corrected;
- (iv) the correction to be made;
- (v) the name and address of the requesting party.

(b) A Contracting Party may require that the request be accompanied by a replacement part or part incorporating the correction or, where paragraph (3) applies, by such a replacement part or part incorporating the correction for each application and patent to which the request relates.

(c) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the mistake was made in good faith.

(d) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the said request was made without undue delay or, at the option of the Contracting Party, that it was made without intentional delay, following the discovery of the mistake.

(2) [Fees] (a) Subject to subparagraph (b), a Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(b) The Office shall correct its own mistakes, *ex officio* or upon request, for no fee.

(3) [*Single Request*] Rule 16(5) shall apply, *mutatis mutandis*, to requests for correction of a mistake, provided that the mistake and the requested correction are the same for all applications and patents concerned.

(4) [*Evidence*] A Contracting Party may, where the Office may reasonably doubt that the alleged mistake is in fact a mistake, or where it may reasonably doubt the veracity of any matter contained in, or of any document filed in connection with, the request for correction of a mistake, require that evidence in support of the request be filed with the Office.

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

(6) [*Notification; Non-Compliance with Requirements*] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (3) are not complied with, or where evidence is required under paragraph (4).

(7) [*Exclusions*] (a) A Contracting Party may exclude the application of this Rule in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law of the Contracting Party.

(b) A Contracting Party may exclude the application of this Rule in respect of any mistake which must be corrected in that Contracting Party under a procedure for reissue of the patent.

Rule 19 ***Manner of Identification of an Application*** ***Without Its Application Number***

(1) [*Manner of Identification*] Where it is required that an application be identified by its application number, but such a number has not yet been issued or is not known to the person concerned or his representative, the application shall be considered identified if one of the following is supplied, at that person's option:

- (i) the provisional application number, if any, given by the Office;
- (ii) a copy of the request part of the application along with the date on which the application was sent to the Office;
- (iii) a reference number given to the application by the applicant or his representative and indicated in the application, along with the name and address of the applicant, the title of the invention and the date on which the application was sent to the Office.

(2) [*Prohibition of Other Requirements*] No Contracting Party may demand that requirements other than those referred to in paragraph (1) be complied with in order for an application to be identified where its application number has not yet been issued or is not known to the person concerned or his representative.

Rule 20 ***Establishment of Model International Forms and Formats***

(1) [*Model International Forms*] (a) The Assembly shall, under Article 14(1)(c), establish Model International Forms in respect of:

- (i) a power of attorney;

- (ii) a request for recordation of change in name or address;
- (iii) a request for recordation of change in applicant or owner;
- (iv) a certificate of transfer;
- (v) a request for recordation, or cancellation of recordation, of a licensing agreement;
- (vi) a request for recordation, or cancellation of recordation, of a security interest;
- (vii) a request for correction of a mistake.

(b) The Assembly shall establish the modifications of the Patent Cooperation Treaty request Form referred to in Rule 3(2)(i).

- (c) The International Bureau shall present proposals to the Assembly concerning:
- (i) the establishment of Model International Forms referred to in subparagraph (a);
 - (ii) the modifications of the Patent Cooperation Treaty request Form referred to in subparagraph (b).

(2) *[Model International Formats]* (a) The Assembly shall, under Article 14(1)(c), establish any Model International Formats in respect of the request Format referred to in Rule 3(2)(iv) and the items referred to in paragraph (1)(a).

(b) The International Bureau shall present proposals to the Assembly concerning the establishment of Model International Formats referred to in subparagraph (a).

Rule 21

Requirement of Unanimity for Amending Certain Rules Under Article 14(3)

Amendment of the following Rules shall require unanimity:

- (i) Rule 3(1);
- (ii) Rule 8(1)(a);
- (iii) the present Rule.

Marked-up Text Showing the Changes Between the Basic Proposal and the Text of the Treaty and the Regulations as Adopted by the Diplomatic Conference

Patent Law Treaty

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Article 1 ***Abbreviated Expressions***

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

(i) "Office" means the authority of a Contracting Party entrusted with the granting of patents or with other matters covered by this Treaty;

(ii) "application" means an application for the grant of a patent, as referred to in Article 3;

(iii) "patent" means a patent as referred to in Article 3;

(iv) references to a "person" shall be construed as ~~references to both~~ including, in particular, a natural person and a legal entity;

(v) "communication" means any application, or any request, declaration, document, correspondence or other information relating to an application or patent, whether relating to a procedure under this Treaty or not, which is filed with the Office ~~by means permitted by the Office~~;

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

(vii) "recordation" means any act of including information in the records of the Office;

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

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

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

(xi) "signature" means any means of self-identification;

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

(xiii) "translation" means a translation into a language or, where appropriate, a transliteration into an alphabet or character set, accepted by the Office;

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

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

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

(xvii) "Patent Cooperation Treaty" means the Patent Cooperation Treaty (~~"PCT"~~), signed on June 19, 1970, together with the Regulations and the Administrative Instructions under that Treaty, as revised, amended and modified;

(xviii) "Contracting Party" means any State or intergovernmental organization that is party to this Treaty;

(xix) "applicable law" means, where the Contracting Party is a State, the law of that State and, where the Contracting Party is an intergovernmental organization, the legal enactments under which that intergovernmental organization operates;

(xx) "instrument of ratification" shall be construed as including instruments of acceptance or approval;

~~(xix)~~(xxi) "Organization" means the World Intellectual Property Organization;

~~(xx)~~(xxii) "International Bureau" means the International Bureau of the Organization;

(xxiii) "Director General" means the Director General of the Organization.

Article 2

General Principles

(1) [*More Favorable Requirements*] A Contracting Party shall be free to provide for requirements which, from the viewpoint of applicants and owners, are more favorable than the requirements referred to in this Treaty and the Regulations, other than Article 5.

(2) [*No Regulation of Substantive Patent Law*] Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of the applicable substantive law relating to patents as it desires.

Article 3

Applications and Patents to Which the Treaty Applies

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

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

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

(b) Subject to the provisions of the Patent Cooperation Treaty, the provisions of this Treaty and the Regulations shall apply to international applications, for patents for invention and for patents of addition, under the Patent Cooperation Treaty:

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

(ii) ~~from~~ in respect of any procedure commenced on or after the date on which processing or examination of the international application may start under Articles 23 or ~~Article~~ 40 of that Treaty.

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

Article 4 **National Security Security Exception**

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

Article 5 **Filing Date**

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

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

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

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

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

(c) For the purposes of the filing date, a Contracting Party may require both information allowing the identity of the applicant to be established and information allowing the applicant to be contacted by the Office, or it may accept evidence allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Office, as the element referred to in subparagraph (a)(ii).

(2) [*Language*] (a) A Contracting Party may require that the indications referred to in paragraph (1)(a)(i) and (ii) be in a language accepted by the Office.

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

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

(4) [*Subsequent Compliance with Requirements*] (a) Where one or more of the requirements ~~referred to in~~ applied by the Contracting Party under paragraphs (1) and (2) are not complied with in the application as initially filed, the filing date shall, subject to subparagraph (b) and paragraph ~~(5)~~ (6), be ~~no later than~~ the date on which all of the requirements ~~referred to in~~ applied by the Contracting Party under paragraphs (1) and (2) are subsequently complied with.

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

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

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

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

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

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

(b) Where the requirements referred to in subparagraph (a) are not complied with, the application may be ~~considered as not having been filed~~ deemed not to have been filed. Where the application is deemed not to have been filed, the Office shall notify the applicant accordingly, indicating the reasons therefor.

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

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

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

Article 6 ***Application***

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

(i) the requirements relating to form or contents which are provided for in respect of international applications under the Patent Cooperation Treaty;

(ii) the requirements relating to form or contents compliance with which, under the Patent Cooperation Treaty, may be required by the Office of, or acting for, any ~~Contracting State of~~ party to that Treaty once the processing or examination of an international application, as referred to in Article 23 or 40 of the said Treaty, has started;

(iii) any further requirements prescribed in the Regulations.

(2) [~~Request Form or Format~~] (a) A Contracting Party may require that the contents of an application which correspond to the contents of the request of an international application under the Patent Cooperation Treaty be presented on a request Form, ~~or in a format~~, prescribed by that Contracting Party. A Contracting Party may also require that any further contents allowed under paragraph (1)(ii) or prescribed in the Regulations pursuant to paragraph (1)(iii) be contained in that request Form ~~or format~~.

(b) Notwithstanding subparagraph (a), and subject to Article 8(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) on a request Form, ~~or in a format~~, provided for in the Regulations.

(3) [~~Translation~~] A Contracting Party may require a translation of any part of the application that is not in a language accepted by its Office. A Contracting Party may also require a translation of the parts of the application, as prescribed in the Regulations, that are in a language accepted by the Office, into any other languages accepted by that Office.

(4) [~~Fees~~] A Contracting Party may require that fees be paid in respect of the application. A Contracting Party may apply the provisions of the Patent Cooperation Treaty relating to payment of application fees.

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

(6) [~~Evidence~~] A Contracting Party may require that evidence in respect of any matter referred to in paragraph (1) or (2) or in a declaration of priority, or any translation referred to in paragraph (3) or (5), be filed with its Office in the course of the processing of the application only where that Office may reasonably doubt the veracity of any ~~that~~ matter referred to in paragraphs (1) and (2) or in a declaration of priority, or the accuracy of any ~~that~~ translation referred to in paragraph (3) or (5).

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

(8) [~~Non-Compliance with Requirements~~] (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to subparagraph (b) and Articles 5 and 10, apply such sanction as is provided for in its law.

(b) Where any requirement applied by the Contracting Party under paragraph (1), (5) or (6) in respect of a priority claim is not complied with within the time limit prescribed in the Regulations, the priority claim may, subject to Article 13, be ~~considered~~ deemed non-existent. Subject to Article 5(7)(b), no other sanctions may be applied.

Article 7

Representation

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

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

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

(b) Subject to subparagraph (c), an act, with respect to any procedure before the Office, by or in relation to a representative who complies with the requirements applied by the Contracting Party

under subparagraph (a), shall have the effect of an act by or in relation to the applicant, owner or other interested person who appointed that representative.

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

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

~~(i) the payment of maintenance fees;~~

(i) the filing of an application for the purposes of the filing date;

~~{(ii) any procedure referred to in Article 5;}~~

~~{(iii) (ii) the payment of fees;}~~

~~{(iv) the filing of a translation;}~~

~~{(v) (iii) any other procedure as prescribed in the Regulations;}~~

~~{(vi) (iv) the issue of a receipt or notification by the Office in respect of any procedure referred to in item[s] (i) [to (v)] (iii).}~~

(b) A maintenance fee may be paid by any person.

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

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

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

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

Article 8

Communications; Addresses

(1) [~~Form, Format and Means of Filing~~ Transmittal of Communications] (a) Except for the establishment of a filing date under Article 5(1), ~~and subject to Article 6(1),~~ the Regulations shall, subject to subparagraphs (b) to (d), set out the requirements which a Contracting Party shall be permitted to apply as regards the ~~form, format and means of filing~~ transmittal of communication.

(b) No Contracting Party shall be obliged to accept the filing of communications other than on paper.

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

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

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

(3) [*Model International Forms; ~~Model International Formats~~*] Notwithstanding paragraph (1)(a), and subject to paragraph (1)(b) and Article 6(2)(b), a Contracting Party shall accept the presentation of the contents of a communication on a Form ~~or in a format~~ which corresponds to a Model International Form ~~or a Model International Format~~ in respect of such a communication provided for in the Regulations, if any.

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

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

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

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

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

- (i) an address for correspondence;
- (ii) an address for legal service;
- (iii) any other address provided for in the Regulations.

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

(8) [*Non-Compliance with Requirements*] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to ~~Article 5~~ Articles 5 and 10 and to any exceptions prescribed in the Regulations, apply such sanction as is provided for in its law.

Article 9 **Notifications**

(1) [*Sufficient Notification*] Any notification under this Treaty or the Regulations which is sent by the Office to an address for correspondence or address for legal service indicated under Article 8(6), or any other address provided for in the Regulations for the purpose of this provision, and which complies with the provisions with respect to that notification, shall constitute a sufficient notification for the purposes of this Treaty and the Regulations.

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

(3) [*Failure to Notify*] Subject to Article 10(1), where an Office does not notify an applicant, owner or other interested person of a failure to comply with any requirement under this Treaty or the Regulations, that absence of notification does not relieve that applicant, owner or other interested person of the obligation to comply with that requirement.

Article 10

Validity of Patent; Revocation

(1) [*Validity of Patent Not Affected by Non-Compliance with Certain Formal Requirements*] ~~Once a patent has been granted, it may not be revoked or invalidated, either totally or in part, by the Office, or by a court, a board of appeal or any other competent authority of a Contracting Party, on the ground of non-compliance~~ Non-compliance with one or more of the formal requirements ~~with respect to an application referred to in Articles 6(1), (2), (4) and (5) and 8(1) to (4); with respect to an application may not be a ground for revocation or invalidation of a patent, either totally or in part,~~ except where the non-compliance with the formal requirement occurred as a result of a fraudulent intention.

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

(3) [*No Obligation for Special Procedures*] Paragraphs (1) and (2) do not create any obligation to put in place judicial procedures for the enforcement of patent rights distinct from those for the enforcement of law in general.

Article 11

Relief in Respect of Time Limits

(1) [*Extension of Time Limits*] A Contracting Party may provide for the extension, for the period prescribed in the Regulations, of a time limit fixed by the Office for an action in a procedure before the Office in respect of an application or a patent, if a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations, and the request is ~~made~~ filed, at the option of the Contracting Party:

- (i) prior to the expiration of the time limit; or
- (ii) after the expiration of the time limit, and within the time limit prescribed in the Regulations.

(2) [*Continued Processing*] Where an applicant or owner has failed to comply with a time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office in respect of an application or a patent, and that Contracting Party does not provide for extension of a time limit under paragraph (1)(ii), the Contracting Party shall provide for continued processing with respect to the application or patent and, if necessary, re-instatement of the rights of the applicant or owner with respect to that application or patent, if:

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

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

(3) [Exceptions] No Contracting Party shall be required to provide for the relief referred to in paragraph (1) or (2) with respect to the exceptions prescribed in the Regulations.

(4) [Fees] A Contracting Party may require that a fee be paid in respect of a request under paragraph (1) or (2).

(5) [Prohibition of Other Requirements] No Contracting Party may require that requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the relief provided for under paragraph (1) or (2), except where otherwise provided for by this Treaty or prescribed in the Regulations.

(6) [Opportunity to Make Observations in Case of Intended Refusal] A request under paragraph (1) or (2) may not be refused without the applicant or owner being given ~~at least one~~ the opportunity to make observations on the intended refusal within a reasonable time limit.

Article 12

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

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

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

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

(iii) the request states the ~~grounds on which it is based;~~ reasons for the failure to comply with the time limit; and

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

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

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

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

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

Article 13
Correction or Addition of Priority Claim; Restoration of Priority Right

(1) [*Correction or Addition of Priority Claim*] Except where otherwise prescribed in the Regulations, a Contracting Party shall provide for the correction or addition of a priority claim with respect to an application ("the subsequent application"), if:

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

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

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

(2) [*Delayed Filing of the Subsequent Application*] ~~Where~~ Taking into consideration Article 15, a Contracting Party shall provide that, ~~where~~ an application ("the subsequent application") which claims or could have claimed the priority of an earlier application has a filing date which is later than the date on which the priority period expired, but within the time limit prescribed in the Regulations, the Office shall restore the right of priority, if:

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

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

(iii) the request states the ~~grounds on which it is based;~~ reasons for the failure to comply with the priority period; and

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

(3) [*Failure to File a Copy of Earlier Application*] ~~Where~~ A Contracting Party shall provide that, ~~where~~ a copy of an earlier application required under Article 6(5) is not filed with the Office within the time limit prescribed in the Regulations pursuant to Article 6, the Office shall restore the right of priority, if:

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

(ii) the request is ~~made~~ filed within the time limit for filing the copy of the earlier application prescribed in the Regulations pursuant to Article 6(5);

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

(iv) a copy of the earlier application is filed within the time limit prescribed in the Regulations.

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

(5) [*Evidence*] A Contracting Party may require that a declaration or other evidence in support of the reasons referred to in paragraph (2)(iii) be filed with the Office within a time limit fixed by the Office.

~~(5)~~ (6) [*Opportunity to Make Observations in Case of Intended Refusal*] A request under paragraphs (1) to (3) may not be refused, totally or in part, without the requesting party being given at least ~~one~~ the opportunity to make observations on the intended refusal within a reasonable time limit.

Article 14 **Regulations**

- (1) [*Content*] (a) The Regulations annexed to this Treaty provide rules concerning:
- (i) matters which this Treaty expressly provides are to be “prescribed in the Regulations”;
 - (ii) details useful in the implementation of the provisions of this Treaty;
 - (iii) administrative requirements, matters or procedures.
- (b) The Regulations also provide rules concerning the formal requirements which a Contracting Party shall be permitted to apply in respect of requests for:
- (i) recordation of change in name or address;
 - (ii) recordation of change in applicant or owner;
 - (iii) recordation of a ~~licensing agreement or~~ license or a security interest;
 - (iv) correction of a mistake.
- (c) The Regulations also provide for the establishment of Model International Forms ~~and Model International Formats~~, and for the establishment of a request Form ~~or format~~ for the purposes of Article 6(2)(b), by the Assembly, with the assistance of the International Bureau.
- (2) [*Amending the Regulations*] Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.
- (3) [*Requirement of Unanimity*] (a) The Regulations may specify provisions of the Regulations which may be amended only by unanimity.
- (b) Any amendment of the Regulations resulting in the addition of provisions to, or the deletion of provisions from, the provisions specified in the Regulations pursuant to subparagraph (a) shall require unanimity.
- (c) In determining whether unanimity is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.
- (4) [*Conflict Between the Treaty and the Regulations*] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

Article 15 **Relation to the Paris Convention**

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

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

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

Article 16

Effect of Revisions, Amendments and Modifications of the Patent Cooperation Treaty

(1) *[Applicability of Revisions, Amendments and Modifications of the Patent Cooperation Treaty]* Subject to paragraph (2), any revision, amendment or modification of the Patent Cooperation Treaty made after June 2, 2000, which is consistent with the Articles of this Treaty, shall apply for the purposes of this Treaty and the Regulations if the Assembly so decides, in the particular case, by three-fourths of the votes cast.

(2) *[Non-Applicability of Transitional Provisions of the Patent Cooperation Treaty]* Any provision of the Patent Cooperation Treaty, by virtue of which a revised, amended or modified provision of that Treaty does not apply to a State party to it, or to the Office of or acting for such a State, for as long as the latter provision is incompatible with the law applied by that State or Office, shall not apply for the purposes of this Treaty and the Regulations.

Article 16 17 Assembly

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

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

~~(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation.~~

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

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

(ii) establish Model International Forms, ~~Model International Formats~~, and the request Form ~~or format~~, referred to in Article 14(1)(c), with the assistance of the International Bureau;

(iii) amend the Regulations;

(iv) determine the conditions for the date of application of each Model International Form, ~~Model International Format~~, and the request Form ~~or format~~, referred to in item (ii), and each amendment referred to in item (iii);

~~(v) perform the function allocated to it under Article 19(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty; decide, pursuant to Article 16(1), whether any revision, amendment or modification of the Patent Cooperation Treaty shall apply for the purposes of this Treaty and the Regulations;~~

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

(3) *[Quorum]* (a) One-half of the members of the Assembly which are States shall constitute a quorum.

(b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case:

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

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

(5) [*Majorities*] (a) Subject to Articles 14(2) and ~~(3) and 18(3)~~, (3), 16(1) and 19(3), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

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

(7) [*Rules of Procedure*] The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

Article 17 18

International Bureau

(1) [*Administrative Tasks*] (a) The International Bureau shall perform the administrative tasks concerning this Treaty.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) [*Meetings Other than Sessions of the Assembly*] The Director General shall convene any committee and working group established by the Assembly.

(3) [*Role of the International Bureau in the Assembly and Other Meetings*] (a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly.

(b) The Director General or a staff member designated by the Director General shall be *ex officio* secretary of the Assembly, and of the committees and working groups referred to in subparagraph (a).

(4) [Conferences] (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with member States of the Organization, intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(5) [Other Tasks] The International Bureau shall carry out any other tasks assigned to it in relation to this Treaty.

Article 18 19 **Revisions**

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

(2) [Revision or Amendment of Certain Provisions of the Treaty] ~~Article 16(2)~~ Article 17(2) and (6) may be amended either by a revision conference, or by the Assembly according to the provisions of paragraph (3).

(3) [Amendment by the Assembly of Certain Provisions of the Treaty] (a) Proposals for the amendment by the Assembly of ~~Article 16(2)~~ 17(2) and (6) may be initiated by any Contracting Party or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(b) Adoption of any amendment to the provisions referred to in subparagraph (a) shall require three-fourths of the votes cast.

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

Article 19 20 **Becoming Party to the Treaty**

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

(2) [Intergovernmental Organizations] ~~The Assembly may decide to admit any~~ Any intergovernmental organization ~~to~~ may become party to this Treaty if at least one member State of that intergovernmental organization is party to the Paris Convention or a member of the Organization, and the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty, and declares that:

(i) it is competent to grant patents with effect for its member States; or

(ii) it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by this Treaty, and it has, or has charged, a regional Office for the purpose of granting patents with effect in its territory in accordance with that legislation.

Subject to paragraph (3), any such declaration shall be made at the time of the deposit of the instrument of ratification or accession.

(3) [Regional Patent Organizations] {The European Patent Organisation}, the Eurasian Patent Organization, the African Regional Industrial Property Organization and the African Intellectual Property Organization, having made the declaration referred to in paragraph (2)(i) or (ii) in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty as an intergovernmental organization, if it declares, at the time of the deposit of the instrument of ratification or accession that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(4) [Ratification or Accession] Any State or intergovernmental organization referred to in paragraphs (1) to (3) satisfying the requirements in paragraph (1), (2) or (3) may deposit:

(i) an instrument of ratification if it has signed this Treaty; or

(ii) an instrument of accession if it has not signed this Treaty.

Article 20 21

Entry into Force; Effective Dates of Ratifications and Accessions

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

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

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

(ii) each other State, from the expiration of three months after the date on which the State has deposited its instrument of ratification or accession with the Director General, or from any later date indicated in that instrument, but no later than six months after the date of such deposit;

(iii) each of {the European Patent Organisation}, the Eurasian Patent Organization, the African Regional Industrial Property Organization and the African Intellectual Property Organization, from the expiration of three months after the deposit of its instrument of ratification or accession, or from any later date indicated in that instrument, but no later than six months after the date of such deposit, if such instrument has been deposited after the entry into force of this Treaty according to paragraph (1), or three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) any other intergovernmental organization that is admitted eligible to become party to this Treaty, from the expiration of three months after the deposit of its instrument of ratification or accession, or from any later date indicated in that instrument, but no later than six months after the date of such deposit.

Article 21-22

Application of the Treaty to Existing Applications and Patents

(1) [Principle] {a} Subject to paragraph (2), a Contracting Party shall apply the provisions of this Treaty and the Regulations, other than ~~Article 5 and Article 6(1) and (2)~~, Articles 5 and 6(1) and (2) and

related Regulations, to applications which are pending, and to patents which are in force, on the date on which this Treaty binds that Contracting Party under Article 20 21.

~~{(b) — A Contracting Party shall apply Article 12 and related Regulations, even where the failure to comply with a time limit occurred prior to the date on which this Treaty binds that Contracting Party under Article 20.}~~

(2) [Procedures] No Contracting Party shall be obliged to apply the provisions of this Treaty and the Regulations to any procedure in proceedings with respect to applications and patents referred to in paragraph (1), if such procedure commenced before the date on which this Treaty binds that Contracting Party under Article 20 21.

Article 22 23 **Reservations**

(1) [Reservation] Any State or intergovernmental organization may declare through a reservation that the provisions of Article 6(1) shall not apply to any requirement relating to unity of invention applicable under the Patent Cooperation Treaty to an international application.

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

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

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

Article 23 24 **Denunciation of the Treaty**

(1) [Notification] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

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

Article 24 25 **Languages of the Treaty**

(1) [~~Original~~ Authentic Texts] This Treaty is signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally and exclusively authentic.

(2) [Official Texts] An official text in any language other than those referred to in paragraph (1) shall be established by the Director General, after consultation with the interested parties. For the purposes of this paragraph, interested party means any State which is party to the Treaty, or is eligible ~~for becoming to become~~ party to the Treaty under Article ~~19(1)~~ 20(1), whose official language, or one of whose official languages, is involved, and ~~{the European Patent Organisation}, the Eurasian Patent Organization}, Organization and the African Regional Industrial Property Organization} and the African Intellectual Property organization}~~ and any other intergovernmental organization that is party to the Treaty, or may become party to the Treaty, if one of its official languages is involved.

(3) [Authentic Texts to Prevail] In case of differences of opinion on interpretation between authentic and official texts, the authentic texts shall prevail.

Article 25 26
Signature of the Treaty

The Treaty shall remain open for signature ~~at the headquarters of the Organization for one year after its adoption~~ by any State that is eligible for becoming party to the Treaty under Article ~~19(1)~~ 20(1) and by the European Patent Organisation~~[-], the Eurasian Patent Organization[-], Organization and the African Regional Industrial Property Organization~~ at the headquarters of the Organization for one year after its adoption.

Article 26 27
Depositary; Registration

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

Regulations under the Patent Law Treaty

List of the Rules of the Regulations Under the Patent Law Treaty

- Rule 1: Abbreviated Expressions
- Rule 2: Details Concerning Filing Date Under Article 5
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- Rule 4: Availability of Earlier Application Under Article 6(5) and Rule 2(4)
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- Rule 5: Evidence Under Articles 6(6) and 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6) and 18(4)
- Rule 6: Time Limits Concerning the Application Under Article 6(7) and (8)
- Rule 7: Details Concerning Representation Under Article 7
- Rule 8: Filing of Communications Under Article 8(1)
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- Rule 12: Details Concerning Relief in Respect of Time Limits Under Article 11
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- Rule 15: Request for Recordation of Change in Name or Address
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- Rule 19: Manner of Identification of an Application Without Its Application Number
- Rule 20: Establishment of Model International Forms
- Rule 21: Requirement of Unanimity ~~for Amending Certain Rules~~ Under Article 14(3)

Rule 1

Abbreviated Expressions

(1) ["Treaty"; "Article"] (a) In these Regulations, the word "Treaty" means the Patent Law Treaty.

(b) In these Regulations, the word "Article" refers to the specified Article of the Treaty.

(2) [*Abbreviated Expressions Defined in the Treaty*] The abbreviated expressions defined in Article 1 for the purposes of the Treaty shall have the same meaning for the purposes of the Regulations.

Rule 2

Details Concerning Filing Date Under Article 5

(1) [Time Limits Under Article 5(3) and (4)(b)] ~~Subject to paragraph (2), The~~ the time limits referred to in Article 5(3) and (4)(b) shall be not less than two months from the date of the notification referred to in ~~that~~ Article 5(3).

(2) [Exception to Time Limit Under Article 5(4)(b)] ~~The time limit referred to in Article 5(4)(b) shall be:~~

~~(i) subject to item (ii), the time limit applied under paragraph (1);~~

~~(ii) where~~ Where a notification under Article 5(3) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, the time limit referred to in Article 5(4)(b) shall be not less than two months from the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office.

(3) [*Time Limits Under Article 5(6)(a) and (b)*] The time limits referred to in Article 5(6)(a) and (b) shall be:

(i) where a notification has been made under Article 5(5), not less than two months from the date of the notification;

(ii) where a notification has not been made, not less than two months from the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office.

(4) [*Requirements Under Article 5(6)(b)*] Any Contracting Party may, subject to Rule 4(3), require that, for the filing date to be determined under Article 5(6)(b):

(i) a copy of the earlier application be filed within the time limit applicable under paragraph (3);

(ii) a copy of the earlier application, and the date of filing of the earlier application, certified as correct by the Office with which the earlier application was filed, be filed upon invitation by the Office, within a time limit which shall be not less than four months from the date of that invitation, or the time limit applicable under Rule 4(1), whichever expires earlier;

(iii) where the earlier application is not in a language accepted by the Office, a translation of the earlier application be filed within the time limit applicable under paragraph (3);

(iv) the missing part of the description or missing drawing be completely contained in the earlier application;

(v) the application, at the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office, contained an indication that the contents of the earlier application were incorporated by reference in the application;

(vi) an indication be filed within the time limit applicable under paragraph (3) as to where, in the earlier application or in the translation referred to in item (iii), the missing part of the description or the missing drawing is contained.

(5) *[Requirements Under Article 5(7)(a)]* (a) The reference to the previously filed application referred to in Article 5(7)(a) shall indicate that, for the purposes of the filing date, the description and any drawings are replaced by the reference to the previously filed application; the reference shall also indicate the number of that application, and the Office with which that application was filed. A Contracting Party may require that the reference also indicate the filing date of the previously filed application.

(b) ~~Any~~ A Contracting Party may, subject to Rule 4(3), require that:

(i) a copy of the previously filed application and, where the previously filed application is not in a language accepted by the Office, a translation of that previously filed application, be filed with the Office within a time limit which shall be not less than two months from the date on which the application containing the reference referred to in Article 5(7)(a) was received by the Office;

(ii) a certified copy of the previously filed application be filed with the Office within a time limit which shall be not less than four months from the date of the receipt of the application containing the reference referred to in Article 5(7)(a).

(c) A Contracting Party may require that the reference referred to in Article 5(7)(a) be to a previously filed application that had been filed by the applicant or his predecessor or successor in title.

(6) *[Exceptions Under Article 5(8)(ii)]* The types of applications referred to in Article 5(8)(ii) shall be:

(i) divisional applications;

(ii) applications for continuation or continuation-in-part;

(iii) applications by new applicants determined to be entitled to an invention contained in an earlier application.

Rule 3

Details Concerning the Application Under Article 6(1), (2) and (3)

(1) *[Further Requirements Under Article 6(1)(iii)]* (a) A Contracting Party may require that an applicant who wishes an application to be treated as a divisional application under Rule 2(6)(i) indicate:

(i) that he wishes the application to be so treated;

(ii) the number and filing date of the application from which the application is divided.

(b) A Contracting Party may require that an applicant who wishes an application to be treated as an application under Rule 2(6)(iii) indicate:

(i) that he wishes the application to be so treated;

(ii) the number and filing date of the earlier application.

(2) *[Request Form ~~or Format~~ Under Article 6(2)(b)]* A Contracting Party shall accept the presentation of the contents referred to in Article 6(2)(a):

(i) on a request Form, if that request Form corresponds to the Patent Cooperation Treaty request Form with any modifications under Rule ~~20(1)(b)~~ 20(2);

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

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

(iv) ~~in a format, if that format corresponds to the Model International request format under Rule 20(2).~~

(3) [Requirement Under Article 6(3)] A Contracting Party may require, under Article 6(3), a translation of the title, claims and abstract of an application that is in a language accepted by the Office, into any other languages accepted by that Office.

Rule 4

Availability of Earlier Application Under Article 6(5) and Rule 2(4) or of Previously Filed Application Under Rule 2(5)(b)

(1) [Copy of Earlier Application Under Article 6(5)] Subject to paragraph (3), a Contracting Party may require that a copy of the earlier application referred to in Article 6(5) be filed with the Office within a time limit which shall be not less than 16 months from the filing date of that earlier application or, where there is more than one such earlier application, from the earliest filing date of those earlier applications.

(2) [Certification] Subject to paragraph (3), a Contracting Party may require that the copy referred to in paragraph (1) and the date of filing of the earlier application be certified as correct by the Office with which the earlier application was filed.

(3) [Availability of Earlier Application or of Previously Filed Application] No Contracting Party shall require the filing of a copy or a certified copy of the earlier application or a certification of the filing date, as referred to in paragraphs (1) and (2), and Rule 2(4), or a copy or a certified copy of the previously filed application as referred to in Rule 2(5)(b), where the earlier application or the previously filed application was filed with its Office, or is available to that Office ~~in a legally accepted electronic format from a digital library which is accepted by that Office~~ the Office for that purpose.

(4) [Translation] Where the earlier application is not in a language accepted by the Office and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable, the Contracting Party may require that a translation of the earlier application referred to in paragraph (1) be filed by the applicant, upon invitation by the Office or other competent authority, within a time limit which shall be not less than two months from the date of that invitation, and not less than the time limit, if any, applied under that paragraph.

Rule 5

Evidence Under Articles 6(6) and 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6) and 18(4)

Where the Office notifies the applicant, owner or other person that evidence is required under Article 6(6) or 8(4)(c), or Rule 7(4), 15(4), 16(6), 17(6) or 18(4), the notification shall state the reason of the Office for doubting the veracity of the matter, indication or signature ~~or other means of self identification~~, or the accuracy of the translation, as the case may be.

Rule 6

Time Limits Concerning the Application Under Article 6(7) and (8)

(1) [Time Limits Under Article 6(7) and (8)] ~~Subject to paragraphs (2) and (3), the~~ The time limits referred to in Article 6(7) and (8) shall be not less than two months from the date of the notification referred to in Article 6(7).

(2) [Exception to Time Limit Under Article 6(8)] ~~The time limit referred to in Article 6(8) shall be:~~

~~(i) — subject to item (ii), the time limit applied under paragraph (1);~~

~~(ii) — Where~~ Subject to paragraph (3), where a notification under Article 6(7) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, ~~the time limit referred to in Article 6(8) shall be~~ not less than three months from the date on which one or more of the elements referred to in Article 5(1)(a) were first received by the Office.

(3) [Time Limits Under Article 6(7) and (8) Relating to Payment of Application Fee in Accordance with the Patent Cooperation Treaty] Where any fees required to be paid under Article 6(4) in respect of the filing of the application are not paid, a Contracting Party may, under Article 6(7) and (8), apply time limits for payment, including late payment, which are the same as those applicable under the Patent Cooperation Treaty in relation to the basic fee component of the international fee.

Rule 7

Details Concerning Representation Under Article 7

~~{ (1) [Other Procedures Under Article 2(4)(v) 7(2)(a)(iii)]~~ The other procedures referred to in Article 7(2)(v) Article 7(2)(a)(iii) for which a Contracting Party may not require appointment of a representative are:

~~(i) the filing of a copy of an earlier application under Rule 2(4);~~

~~(ii) the filing of a copy of a previously filed application under Rule 2(5)(b).}~~

(2) [Appointment of Representative Under Article 7(3)] (a) A Contracting Party shall accept that the appointment of a representative be filed with the Office in:

(i) a separate communication (hereinafter referred to as a “power of attorney”) signed by the applicant, owner or other interested person and indicating the name and address of the representative; or, at the applicant’s option,

(ii) the request Form ~~or format~~ referred to in Article 6(2), signed by the applicant.

(b) A single power of attorney shall be sufficient even where it relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that all applications and patents concerned are identified in the single power of attorney. A single power of attorney shall also be sufficient even where it relates, subject to any exception indicated by the appointing person, to all existing and future applications or patents of that person. The Office may require that, where that single power of attorney is filed on paper or ~~by other means as otherwise~~ permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(3) [Translation of Power of Attorney] A Contracting Party may require that, if ~~the a~~ a power of attorney is not in a language accepted by the Office, it be accompanied by a translation.

(4) [Evidence] A Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraph (2)(a)(i).

(5) ~~{Time Limits Under Article 7(5) and (6)}~~ Subject to paragraph (6), the time limits referred to in Article 7(5) and (6) shall be not less than two months from the date of the notification under that Article referred to in Article 7(5).

(6) ~~[Exception to Time Limit Under Article 7(6)]~~ The time limit referred to in Article 7(6) shall be:

~~(i) subject to item (ii), the time limit applied under paragraph (5);~~

~~(ii) where~~ Where a notification referred to in Article 7(5) has not been made because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been filed, the time limit referred to in Article 7(6) shall be not less than three months from the date on which the procedure referred to in that Article 7(5) was commenced.

Rule 8

Filing of Communications Under Article 8(1)

(1) ~~[Communications Filed on Paper] (a) During a period of 10 years from the date of the entry into force of the Treaty, a Contracting Party shall permit the filing of communications on paper. After that period has expired, After June 2, 2005, any Contracting Party may, subject to Articles 5(1) and 8(1)(d), exclude the filing of communications on paper or may continue to permit the filing of communications on paper. Until that date, all Contracting Parties shall permit the filing of communications on paper.~~

~~(b) Subject to Article 8(3) and subparagraph (c), a Contracting Party may require that a communication on paper be filed on a form, or in a format, prescribed by that Contracting Party. prescribe the requirements relating to the form of communications on paper.~~

~~(c) Where a Contracting Party permits the filing of communications on paper, the Office shall permit the filing of communications on paper in accordance with the requirements under the Patent Cooperation Treaty relating to the form of communications on paper.~~

~~(d) Notwithstanding subparagraph (a), where the receiving or processing of a communication on paper, due to its character or its size, is deemed not practicable, a Contracting Party may require the filing of that communication in another form or by other means of transmittal.~~

(2) ~~[Communications Filed in Electronic Form or by Electronic Means of Transmittal] (a) Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal with its Office in a particular language, including the filing of communications by telegraph, teleprinter, telefacsimile or other like means of transmittal, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to communications filed in electronic form or by electronic means of transmittal in that language, the Office shall permit the filing of communications in electronic form or by electronic means of transmittal in the said language in accordance with those requirements.~~

~~(b) A Any Contracting Party which permits the filing of communications in electronic form or by electronic means of transmittal with its Office shall notify the International Bureau of the requirements under its applicable law relating to such filing. Any such notification shall be published by the International Bureau in the language in which it is notified and in the languages in which authentic and official texts of the Treaty are established under Article 24 25.~~

~~(c) Where, under subparagraph (a), a Contracting Party permits the filing of communications by telegraph, teleprinter, telefacsimile or other like means of transmittal, it may require that the original of any document which was transmitted by such means of transmittal, accompanied by a letter identifying that earlier transmission, be filed on paper with the Office within a time limit which shall be not less than one month from the date of the transmission.~~

(3) ~~[Copies, Filed in Electronic Form or by Electronic Means of Transmittal, of Communications Filed on Paper] (a) Where a Contracting Party permits the filing of a copy, in electronic form or by electronic means of transmittal, of a communication filed on paper in a language accepted by the Office,~~

and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to the filing of such copies of communications, the Office shall permit the filing of copies of communications in electronic form or by electronic means of transmittal, in accordance with those requirements.

(b) Paragraph (2)(b) shall apply, *mutatis mutandis*, to copies, in electronic form or by electronic means of transmittal, of communications filed on paper.

Rule 9

Details Concerning the Signature Under Article 8(4)

(1) [*Indications Accompanying Signature*] A Contracting Party may require that the signature of the natural person who signs be accompanied by:

(i) an indication in letters of the family or principal name and the given or secondary name or names of that person or, at the option of that person, of the name or names customarily used by the said person;

(ii) an indication of the capacity in which that person signed, where such capacity is not obvious from reading the communication.

(2) [*Date of Signing*] A Contracting Party may require that a signature be accompanied by an indication of the date on which the signing was effected. Where that indication is required but is not supplied, the date on which the signing is deemed to have been effected shall be the date on which the communication bearing the signature was received by the Office or, if the Contracting Party so permits, a date earlier than the latter date.

(3) [*Signature of Communication on Paper*] Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party:

(i) shall, subject to item (iii), accept a handwritten signature;

(ii) may permit, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal or of a bar-coded label;

(iii) may, where the natural person who signs the communication is a national of the Contracting Party and such person's address is on its territory, or where the legal entity on behalf of which the communication is signed is organized under its law and has either a domicile or a real and effective industrial or commercial establishment on its territory, require that a seal be used instead of a handwritten signature.

(4) [*Signature of Communications Filed in Electronic Form or by Electronic Means of Transmittal Resulting in Graphic Representation*] Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal, it shall consider such a communication signed if a graphic representation of a signature accepted by that Contracting Party under paragraph (3) appears on that communication as received by the Office of that Contracting Party.

(5) [*Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature*] (a) Where a Contracting Party permits the filing of communications in electronic form, and a graphic representation of a signature accepted by that Contracting Party under paragraph (3) does not appear on such a communication as received by the Office of that Contracting Party, the Contracting Party may require that the communication be signed using a signature in electronic form as prescribed by that Contracting Party.

(b) Notwithstanding subparagraph (a), where a Contracting Party permits the filing of communications in electronic form in a particular language, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to signatures in electronic form of communications filed in electronic form in that language which do not result in a graphic representation

of the signature, the Office of that Contracting Party shall accept a signature in electronic form in accordance with those requirements.

(c) Rule 8(2)(b) shall apply *mutatis mutandis*.

(6) [Exception to Certification of Signature Under Article 8(4)(b)] A Contracting Party may require that any signature referred to in paragraph (5) be confirmed by a process for certifying signatures in electronic form specified by that Contracting Party.

Rule 10
Details Concerning Indications Under Article 8(5), (6) and (8)

(1) [Indications Under Article 8(5)] (a) A Contracting Party may require that any communication:

(i) indicate the name and address of the applicant, owner or other interested person;

(ii) indicate the number of the application or patent to which it relates;

(iii) contain, where the applicant, owner or other interested person is registered with the Office, the number or other indication under which he is so registered.

(b) A Contracting Party may require that any communication by a representative for the purposes of a procedure before the Office contain:

(i) the name and address of the representative;

(ii) a reference to the power of attorney, or other communication in which the appointment of that representative is or was effected, on the basis of which the said representative acts;

(iii) where the representative is registered with the Office, the number or other indication under which he is registered.

(2) [Address for Correspondence and Address for Legal Service] A Contracting Party may require that the address for correspondence referred to in Article 8(6)(i) and the address for legal service referred to in Article 8(6)(ii) be on a territory prescribed by that Contracting Party.

(3) [Address Where No Representative Is Appointed] Where no representative is appointed and an applicant, owner or other interested person has provided, as his address, an address on a territory prescribed by the Contracting Party under paragraph (2), that Contracting Party shall consider that address to be the address for correspondence referred to in Article 8(6)(i) or the address for legal service referred to in Article 8(6)(ii), as required by the Contracting Party, unless that applicant, owner or other interested person expressly indicates another such address under Article 8(6).

(4) [Address Where Representative Is Appointed] Where a representative is appointed, a Contracting Party shall consider the address of that representative to be the address for correspondence referred to in Article 8(6)(i) or the address for legal service referred to in Article 8(6)(ii), as required by the Contracting Party, unless that applicant, owner or other interested person expressly indicates another such address under Article 8(6).

(5) [Sanctions for Non-Compliance With Requirements Under Article 8(8)] No Contracting Party may provide for the refusal of an application for failure to comply with any requirement to file a registration number or other indication under paragraph (1)(a)(iii) and (b)(iii).

Rule 11
Time Limits Concerning Communications Under Article 8(7) and (8)

(1) *[Time Limits Under Article 8(7) and (8)]* Subject to paragraph (2), the time limits referred to in Article 8(7) and (8) shall be not less than two months from the date of the notification referred to in that Article 8(7).

(2) *[Exception to Time Limit Under Article 8(8)]* The time limit referred to in Article 8(8) shall be:

~~(i) — subject to item (ii), the time limit applied under paragraph (1);~~

~~(ii) — where~~ Where a notification under Article 8(7) has not been made because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been filed, the time limit referred to in Article 8(8) shall be not less than three months from the date on which the communication referred to in that Article 8(7) was received by the Office.

Rule 12
***Details Concerning Relief in Respect of
Time Limits Under Article 11***

(1) *[Requirements Under Article 11(1)]* (a) A Contracting Party may require that a request referred to in Article 11(1):

(i) be signed by the applicant or owner;

(ii) contain an indication to the effect that extension of a time limit is requested, and an identification of the time limit in question.

(b) Where a request for extension of a time limit is filed after the expiration of the time limit, a Contracting Party may require that all of the requirements in respect of which the time limit for the action concerned applied be complied with at the same time as the request is filed.

(2) *[Period and Time Limit Under Article 11(1)]* (a) The period of extension of a time limit referred to in Article 11(1) shall be not less than two months from the date of the expiration of the unextended time limit.

(b) The time limit referred to in Article 11(1)(ii) shall expire not earlier than two months from the date of the expiration of the unextended time limit.

(3) *[Requirements Under Article 11(2)(i)]* A Contracting Party may require that a request referred to in Article 11(2):

(i) be signed by the applicant or owner;

(ii) contain an indication to the effect that relief in respect of non-compliance with a time limit is requested, and an identification of the time limit in question.

(4) *[Time Limit for Filing a Request Under Article 11(2)(ii)]* The time limit referred to in Article 11(2)(ii) shall expire not earlier than two months ~~from the date of the expiration of the time limit that was not complied with:~~ after a notification by the Office that the applicant or owner did not comply with the time limit fixed by the Office.

(5) *[Exceptions Under Article 11(3)]* (a) No Contracting Party shall be required under Article 11(1) or (2) to grant:

{(i) a second, or any subsequent, relief in respect of a time limit for which relief has already been granted under Article 11(1) or (2);}

(ii) relief for filing a request for relief under Article 11(1) or (2) or a request for reinstatement under Article 12(1);

(iii) relief in respect of a time limit for the payment of maintenance fees;

(iv) relief in respect of a time limit referred to in Article 13(1), (2) or (3);

~~{(v) relief in respect of a time limit for an action before a board of appeal or other review body constituted in the framework of the Office;}~~

(vi) relief in respect of a time limit for an action in *inter partes* proceedings;

~~{(vii) relief in respect of a time limit for an action in a procedure before the Office in respect of which a request for expedited or accelerated processing has been granted.}~~

(b) No Contracting Party which provides a maximum time limit for compliance with all of the requirements of a procedure before the Office shall be required under Article 11(1) or (2) to grant relief in respect of a time limit for an action in that procedure in respect of any of those requirements beyond that maximum time limit.

Rule 13

Details Concerning Reinstatement of Rights

After a Finding of Due Care or Unintentionality by the Office Under Article 12

(1) [*Requirements Under Article 12(1)(i)*] A Contracting Party may require that a request referred to in Article 12(1)(i) be signed by the applicant or owner.

(2) [*Time Limit Under Article 12(1)(ii)*] The time limit for making a request, and for complying with the requirements, under Article 12(1)(ii), shall be the ~~shorter~~ earlier to expire of the following:

(i) not less than two months from the date of the removal of the cause of failure to comply with the time limit for the action in question;

(ii) not less than 12 months from the date of expiration of the time limit for the action in question, or, where a request relates to non-payment of a maintenance fee, not less than 12 months from the date of expiration of the period of grace provided under Article 5bis of the Paris Convention.

(3) [*Exceptions Under Article 12(2)*] The exceptions referred to in Article 12(2) are failure to comply with a time limit:

(i) for an action before a board of appeal or other review body constituted in the framework of the Office;

~~{(ii) for the payment of maintenance fees;}~~

(iii) for making a request for relief under Article 11(1) or (2) or a request for reinstatement under Article 12(1);

~~(iv)~~ (iii) referred to in Article 13(1), (2) or (3);

~~{(v) for filing a request for search or examination;}~~

~~{(vi) for filing a translation of a regional patent;}~~

(vii) (iv) for an action in *inter partes* proceedings.

Rule 14

Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13

(1) [*Exception Under Article 13(1)*] No Contracting Party shall be obliged to provide for the correction or addition of a priority claim under Article 13(1), where the request referred to in Article 13(1)(i) is received after the applicant has made a request for early publication or for expedited or accelerated processing, unless that request for early publication or for expedited or accelerated processing is withdrawn before ~~any~~ the technical preparations for publication of the application have been completed.

(2) [*Requirements Under Article 13(1)(i)*] A Contracting Party may require that a request referred to in Article 13(1)(i) be signed by the applicant.

(3) [*Time Limit Under Article 13(1)(ii)*] The time limit referred to in Article 13(1)(ii) shall be not less than the time limit applicable under the Patent Cooperation Treaty to an international application for the submission of a priority claim after the filing of an international application.

(4) [*Time Limits Under Article 13(2)*] (a) The time limit referred to in Article 13(2), introductory part, shall be expire not less than two months from the date on which the priority period expired.

(b) The time limit referred to in Article 13(2)(ii) shall be the time limit applied under subparagraph (a), or the time that any technical preparations for publication of the subsequent application have been completed, whichever expires earlier.

(5) [*Requirements Under Article 13(2)(i)*] A Contracting Party may require that a request referred to in Article 13(2)(i):

(i) be signed by the applicant; and

(ii) be accompanied, where the application did not claim the priority of the earlier application, by the priority claim.

(6) [*Requirements Under Article 13(3)*] (a) A Contracting Party may require that a request referred to in Article 13(3)(i):

(i) be signed by the applicant; and

(ii) indicate the Office to which the request for a copy of the earlier application had been made and the date of that request.

(b) A Contracting Party may require that:

(i) a declaration or other evidence in support of the request referred to in Article 13(3) be filed with the Office within a time limit fixed by the Office;

(ii) the copy of the earlier application referred to in Article 13(3)(iv) be filed with the Office within a time limit which shall be not less than one month from the date on which the applicant is provided with that copy by the Office with which the earlier application was filed.

(7) [*Time Limit Under Article 13(3)(iii)*] The time limit referred to in Article 13(3)(iii) shall be expire two months before the expiration of the time limit prescribed in Rule 4(1).

Rule 15

Request for Recordation of Change in Name or Address

(1) [*Request*] Where there is no change in the person of the applicant or owner but there is a change in his name or address, a Contracting Party shall accept that a request for recordation of the

change be made in a communication signed by the applicant or owner and containing the following indications:

(i) an indication to the effect that recordation of a change in name or address is requested;

(ii) the number of the application or patent concerned;

(iii) the change to be recorded;

(iv) the name and address of the applicant or the owner prior to the change.

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

(3) [Single Request] (a) A single request shall be sufficient even where the change relates to both the name and address of the applicant or the owner.

(b) A single request shall be sufficient even where the change relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that the numbers of all applications and patents concerned are indicated in the request. A Contracting Party may require that, where that single request is filed on paper or ~~by other means as otherwise~~ permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(4) [Evidence] A Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the veracity of any indication contained in the request.

(5) [Prohibition of Other Requirements] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the request referred to in paragraph (1), except where otherwise provided for by the Treaty or prescribed in these Regulations. In particular, the filing of any certificate concerning the change may not be required.

(6) [Notification] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to ~~(3)~~ (4) are not complied with, the Office shall notify the applicant or owner, giving ~~an~~ the opportunity to comply with, ~~or where evidence is required under paragraph (4),~~ any such requirement, and to make observations, within not less than two months from the date of the notification.

(7) [Non-Compliance with Requirements] (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (4) are not complied with within the time limit under subparagraph (b), the Contracting Party may provide that the request shall be refused, but no more severe sanction may be applied.

(b) The time limit referred to in subparagraph (a) shall be:

(i) subject to item (ii), not less than two months from the date of the notification;

(ii) where indications allowing the Office to contact the person who made the request referred to in paragraph (1) have not been filed, not less than three months from the date on which that request was received by the Office.

(8) [Change in the Name or Address of the Representative, or in the Address for Correspondence or Address for Legal Service] Paragraphs (1) to (7) shall apply, *mutatis mutandis*, to any change in the name or address of the representative, and to any change relating to the address for correspondence or address for legal service.

Rule 16
Request for Recordation of Change in Applicant or Owner

(1) [*Request for Recordation of a Change in Applicant or Owner*] (a) Where there is a change in the person of the applicant or owner, a Contracting Party shall accept that a request for recordation of the change be made in a communication signed by the applicant or owner, or by the new applicant or new owner, and containing the following indications:

(i) an indication to the effect that a recordation of change in applicant or owner is requested;

(ii) the number of the application or patent concerned;

(iii) the name and address of the applicant or owner;

(iv) the name and address of the new applicant or new owner;

(v) the date of the change in the person of the applicant or owner;

(vi) the name of a State of which the new applicant or new owner is a national if he is the national of any State, the name of a State in which the new applicant or new owner has his domicile, if any, and the name of a State in which the new applicant or new owner has a real and effective industrial or commercial establishment, if any;

(vii) the basis for the change requested.

(b) A Contracting Party may require that the request contain:

(i) a statement that the information contained in the request is true and correct;

(ii) information relating to any government interest by that Contracting Party.

(2) [*Documentation of the Basis of the Change in Applicant or Owner*] (a) Where the change in applicant or owner results from a contract, a Contracting Party may require that the request include information relating to the registration of the contract, where registration is compulsory under the applicable law of the Contracting Party, and [~~where the recordation is requested by the new applicant or the new owner, rather than by the applicant or owner,~~] that it be accompanied, at the option of the requesting party, by one of the following:

(i) a copy of the contract, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original contract;

(ii) an extract of the contract showing the change, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the contract;

(iii) an uncertified certificate of transfer of ownership by contract drawn up with the content as prescribed in the Model International Form or ~~Model International Format~~ in respect of a certificate of transfer and signed by both the applicant and the new applicant, or by both the owner and the new owner.

(b) Where the change in applicant or owner results from a merger, or from the reorganization or division of a legal entity, a Contracting Party may require that the request be accompanied by a copy of a document, which document originates from a competent authority and evidences the merger, or the reorganization or division of the legal entity, and any attribution of rights involved, such as a copy of an extract from a register of commerce. A Contracting Party may also require that the copy be certified, at the option of the requesting party, by the authority which issued the

document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original document.

(c) Where the change in applicant or owner does not result from a contract, a merger, or the reorganization or division of a legal entity, but results from another ground, for example, by operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the change. A Contracting Party may also require that the copy be certified as being in conformity with the original document, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office.

(d) Where the change is in the person of one or more but not all of several co-applicants or co-owners, a Contracting Party may require that evidence of the consent to the change of any co-applicant or co-owner in respect of whom there is no change be provided to the Office.

(3) [*Translation*] A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office.

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

(5) [*Single Request*] A single request shall be sufficient even where the change relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that the change in applicant or owner is the same for all applications and patents concerned, and the numbers of all applications and patents concerned are indicated in the request. A Contracting Party may require that, where that single request is filed on paper or ~~by other means~~ as otherwise permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(6) [*Evidence*] A Contracting Party may require that evidence, or further evidence in the case of paragraph (2), be filed with the Office only where that Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the present Rule, or the accuracy of any translation referred to in paragraph (3).

(7) [*Prohibition of Other Requirements*] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (6) be complied with in respect of the request referred to in this Rule, except where otherwise provided for by the Treaty or prescribed in these Regulations.

(8) [*Notification; Non-Compliance with Requirements*] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (5) are not complied with, or where evidence, or further evidence, is required under paragraph (6).

(9) [*Exclusion with Respect to Inventorship*] A Contracting Party may exclude the application of this Rule in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law ~~of the Contracting Party~~.

Rule 17

Request for Recordation of a Licensing Agreement or License or a Security Interest

(1) [*Request for Recordation of a Licensing Agreement License*] (a) Where a licensing ~~agreement~~ license in respect of an application or patent may be recorded under the applicable law, the Contracting Party shall accept that a request for recordation of that ~~licensing agreement~~ license be made in a communication signed by the licensor or the licensee and containing the following indications:

(i) an indication to the effect that a recordation of a ~~licensing agreement~~ license is requested;

- (ii) the number of the application or patent concerned;
- (iii) the name and address of the licensor;
- (iv) the name and address of the licensee;
- (v) an indication of whether the license is an exclusive license or a non-exclusive license;
- (vi) the name of a State of which the licensee is a national if he is the national of any State, the name of a State in which the licensee has his domicile, if any, and the name of a State in which the licensee has a real and effective industrial or commercial establishment, if any.

(b) A Contracting Party may require that the request contain:

- (i) a statement that the information contained in the request is true and correct;
- (ii) information relating to any government interest by that Contracting Party;
- (iii) information relating to the registration of the ~~licensing agreement~~ license, where registration is compulsory under the applicable law of that Contracting Party;
- (iv) the date of the license and its duration.

(2) [~~Documentation of the Basis of the Licensing Agreement~~ License] (a) Where the license is a freely concluded agreement, a Contracting Party may require that [where the recordation is requested by the licensee, rather than by the licensor,] the request be accompanied, at the option of the requesting party, by one of the following:

(i) a copy of the ~~licensing~~ agreement, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original ~~licensing~~ agreement;

(ii) an extract of the ~~licensing~~ agreement consisting of those portions of that agreement which show the rights licensed and their extent, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the ~~licensing~~ agreement.

(b) A Contracting Party may require, where the license is a freely concluded agreement, that any applicant, owner, exclusive licensee, co-applicant, co-owner or co-exclusive licensee who is not party to a licensing that agreement give his consent to the recordation of that licensing the agreement in a communication to the Office.

(c) Where the license is not a freely concluded agreement, for example, it results from operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the license. A Contracting Party may also require that the copy be certified as being in conformity with the original document, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office.

(3) [*Translation*] A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office.

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

(5) [*Single Request*] Rule 16(5) shall apply, *mutatis mutandis*, to requests for recordation of a ~~licensing agreement~~ license.

(6) [*Evidence*] Rule 16(6) shall apply, *mutatis mutandis*, to requests for recordation of a ~~licensing agreement~~ license.

(7) [*Prohibition of Other Requirements*] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (6) be complied with in respect of the request referred to in paragraph (1), except where otherwise provided for by the Treaty or prescribed in these Regulations.

(8) [*Notification; Non-Compliance with Requirements*] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (5) are not complied with, or where evidence, or further evidence, is required under paragraph (6).

(9) [*Request for Recordation of a Security Interest or Cancellation of the Recordation of a ~~Licensing Agreement~~ License or a Security Interest*] Paragraphs (1) to (8) shall apply, *mutatis mutandis*, to requests for:

- (i) recordation of a security interest in respect of an application or patent;
- (ii) cancellation of the recordation of a ~~licensing agreement~~ license or a security interest in respect of an application or patent.

Rule 18 ***Request for Correction of a Mistake***

(1) [*Request*] (a) Where an application, a patent or any request communicated to the Office in respect of an application or a patent contains a mistake, not related to search or substantive examination, which is correctable by the Office under the applicable law, the ~~Contracting Party~~ Office shall accept that a request for correction of that mistake in the records and publications of the Office be made in a communication to the Office signed by the applicant or owner and containing the following indications:

- (i) an indication to the effect that a correction of mistake is requested;
- (ii) the number of the application or patent concerned;
- (iii) the mistake to be corrected;
- (iv) the correction to be made;
- (v) the name and address of the requesting party.

(b) A Contracting Party may require that the request be accompanied by a replacement part or part incorporating the correction or, where paragraph (3) applies, by such a replacement part or part incorporating the correction for each application and patent to which the request relates.

(c) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the mistake was made in good faith.

(d) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the said request was made without undue delay or, at the option of the Contracting Party, that it was made without intentional delay, following the discovery of the mistake.

(2) [*Fees*] (a) Subject to subparagraph (b), a Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(b) The Office shall correct its own mistakes, *ex officio* or upon request, for no fee.

(3) [*Single Request*] Rule 16(5) shall apply, *mutatis mutandis*, to requests for correction of a mistake, provided that the mistake and the requested correction are the same for all applications and patents concerned.

(4) *[Evidence]* A Contracting Party ~~may, may only require that evidence in support of the request be filed with the Office where the Office may reasonably doubt that the alleged mistake is in fact a mistake, or where it may reasonably doubt the veracity of any matter contained in, or of any document filed in connection with, the request for correction of a mistake, require that evidence in support of the request be filed with the Office.~~

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

(6) *[Notification; Non-Compliance with Requirements]* Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (3) are not complied with, or where evidence is required under paragraph (4).

(7) *[Exclusions]* (a) A Contracting Party may exclude the application of this Rule in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law ~~of the Contracting Party.~~

(b) A Contracting Party may exclude the application of this Rule in respect of any mistake which must be corrected in that Contracting Party under a procedure for reissue of the patent.

Rule 19 ***Manner of Identification of an Application*** ***Without Its Application Number***

(1) *[Manner of Identification]* Where it is required that an application be identified by its application number, but such a number has not yet been issued or is not known to the person concerned or his representative, the application shall be considered identified if one of the following is supplied, at that person's option:

(i) ~~the a provisional application number, number for the application,~~ if any, given by the Office;

(ii) a copy of the request part of the application along with the date on which the application was sent to the Office;

(iii) a reference number given to the application by the applicant or his representative and indicated in the application, along with the name and address of the applicant, the title of the invention and the date on which the application was sent to the Office.

(2) *[Prohibition of Other Requirements]* No Contracting Party may ~~demand that requirements require that identification means~~ other than those referred to in paragraph (1) ~~be complied with~~ supplied in order for an application to be identified where its application number has not yet been issued or is not known to the person concerned or his representative.

Rule 20 ***Establishment of Model International Forms***

(1) *[Model International Forms]* ~~(a)~~ The Assembly shall, under Article 14(1)(c), establish Model International Forms, in each of the languages referred to in Article 25(1), in respect of:

- (i) a power of attorney;
- (ii) a request for recordation of change in name or address;
- (iii) a request for recordation of change in applicant or owner;

- (iv) a certificate of transfer;
- (v) a request for recordation, or cancellation of recordation, of a ~~licensing~~ ~~agreement~~ license;
- (vi) a request for recordation, or cancellation of recordation, of a security interest;
- (vii) a request for correction of a mistake.

~~(2) (b)~~ — ~~[Modifications referred to in Rule 3(2)(i)]~~ The Assembly shall establish the modifications of the Patent Cooperation Treaty request Form referred to in Rule 3(2)(i).

~~(3) (c)~~ — ~~[Proposals by the International Bureau]~~ The International Bureau shall present proposals to the Assembly concerning:

- (i) the establishment of Model International Forms referred to in ~~subparagraph (a)~~ paragraph (1);
- (ii) the modifications of the Patent Cooperation Treaty request Form referred to in ~~subparagraph (b)~~ paragraph (2).

~~(2) — [Model International formats] (a) The Assembly shall, under Article 14(1)(c), establish any Model International Formats in respect of the request Format referred to in Rule 3(2)(iv) and the items referred to in paragraph (1)(a).~~

~~(b) — The International Bureau shall present proposals to the Assembly concerning the establishment of Model International Formats referred to in subparagraph (a).~~

Rule 21

Requirement of Unanimity for Amending Certain Rules Under Article 14(3)

~~Amendment~~ Establishment or amendment of the following Rules shall require unanimity:

- (i) ~~Rule 3(4)~~ any Rules under Article 5(1)(a);
- (ii) any Rules under Article 6(1)(iii);
- (iii) any Rules under Article 6(3);
- (iv) any Rules under Article 7(2)(a)(iii);
- ~~(v)~~ (v) Rule 8(1)(a);
- ~~(vi)~~ (vi) the present Rule.

Agreed Statements as Adopted by the Diplomatic Conference

1. When adopting Article 1(xiv), the Diplomatic Conference understood that the words "procedure before the Office" would not cover judicial procedures under the applicable law.
2. When adopting Articles 1(xvii), 16 and 17(2)(v), the Diplomatic Conference understood that:
 - (1) The PLT Assembly would, when appropriate, be convened in conjunction with meetings of the PCT Assembly.
 - (2) Contracting Parties of the PLT would be consulted, when appropriate, in addition to States party to the PCT, in relation to proposed modifications of the PCT Administrative Instructions.
 - (3) The Director General shall propose, for the determination of the PCT Assembly, that Contracting Parties of the PLT which are not party to the PCT be invited as observers to PCT Assembly meetings and to meetings of other PCT bodies, when appropriate.
 - (4) When the PLT Assembly decides, under Article 16, that a revision, amendment or modification of the PCT shall apply for the purposes of the PLT, the Assembly may provide for transitional provisions under the PLT in the particular case.
3. When adopting Articles 6(5) and 13(3), and Rules 4 and 14, the Diplomatic Conference urged the World Intellectual Property Organization to expedite the creation of a digital library system for priority documents. Such a system would be of benefit to patent owners and others wanting access to priority documents.
4. With a view to facilitating the implementation of Rule 8(1)(a) of this Treaty, the Diplomatic Conference requests the General Assembly of the World Intellectual Property Organization (WIPO) and the Contracting Parties to provide the developing and least developed countries and countries in transition with additional technical assistance to meet their obligations under this Treaty, even before the entry into force of the Treaty.

The Diplomatic Conference further urges industrialized market economy countries to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least developed countries and countries in transition.

The Diplomatic Conference requests the WIPO General Assembly, once the Treaty has entered into force, to monitor and evaluate the progress of that cooperation every ordinary session.
5. When adopting Rules 12(5)(vi) and 13(3)(iv), the Diplomatic Conference understood that, while it was appropriate to exclude actions in relation to *inter partes* proceedings from the relief provided by Articles 11 and 12, it was desirable that the applicable law of Contracting Parties provide appropriate relief in those circumstances which takes into account the competing interests of third parties, as well as those interests of others who are not parties to the proceedings.
6. It was agreed that any dispute arising between two or more Contracting Parties concerning the interpretation or the application of this Treaty and its Regulations may be settled amicably through consultation or mediation under the auspices of the Director General.

Signatories of the Patent Law Treaty

<u>State</u>	<u>Date</u>	<u>State</u>	<u>Date</u>
Algeria	June 2, 2000	Liberia	June 2, 2000
Austria	June 2, 2000	Luxembourg	June 2, 2000
Belgium	June 2, 2000	Madagascar	June 2, 2000
Brazil	June 2, 2000	Malawi	June 2, 2000
Burundi	June 2, 2000	Monaco	June 28, 2000
Côte d'Ivoire	July 20, 2000	Nigeria	June 2, 2000
Croatia	June 2, 2000	Poland	June 2, 2000
Cuba	June 2, 2000	Portugal	June 2, 2000
Czech Republic	June 2, 2000	Republic of Moldova	June 2, 2000
Democratic People's Republic of Korea	June 2, 2000	Romania	June 2, 2000
Denmark	June 2, 2000	San Marino	October 10, 2000
Estonia	June 2, 2000	Sao Tome and Principe	June 2, 2000
France	September 14, 2000	Slovenia	June 2, 2000
Gambia	June 2, 2000	Spain	June 2, 2000
Ghana	June 2, 2000	Sudan	June 2, 2000
Greece	June 2, 2000	Swaziland	June 2, 2000
Haiti	June 2, 2000	Switzerland	June 2, 2000
Hungary	June 2, 2000	Togo	June 2, 2000
Israel	June 2, 2000	Turkey	June 2, 2000
Italy	June 2, 2000	Uganda	June 2, 2000
Kenya	June 2, 2000	United Kingdom	June 2, 2000
Kyrgyzstan	June 2, 2000	United States of America	June 2, 2000
Latvia	June 2, 2000	Zambia	June 2, 2000
Lebanon	June 2, 2000		

Final Act of the Diplomatic Conference

adopted by the Diplomatic Conference on June 1, 2000

In accordance with the decisions by the Assemblies of the World Intellectual Property Organization (WIPO) taken at their thirty-fourth series of meetings (September 1999) and following preparations carried out by WIPO, the Diplomatic Conference for the Adoption of the Patent Law Treaty was convened by WIPO and held in Geneva from May 11 to June 2, 2000.

The Diplomatic Conference adopted, on June 1, 2000, the Patent Law Treaty, which was opened for signature on June 2, 2000.

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List of the Conference Documents

<u>DOCUMENT NUMBER AND DATE</u>	<u>SUBJECT AND SOURCE</u>
PT/DC/1 November 11, 2000	DRAFT AGENDA <i>approved by the Preparatory Meeting for The Diplomatic Conference</i>
PT/DC/2 November 11, 2000	DRAFT RULES OF PROCEDURE <i>approved by the Preparatory Meeting for The Diplomatic Conference</i>
PT/DC/3 November 11, 2000	BASIC PROPOSAL FOR THE PATENT LAW TREATY <i>submitted by the Director General of WIPO</i>
PT/DC/4 November 11, 2000	BASIC PROPOSAL FOR THE REGULATIONS UNDER THE PATENT LAW TREATY <i>submitted by the Director General of WIPO</i>
PT/DC/5 January 20, 2000	EXPLANATORY NOTES ON THE BASIC PROPOSAL FOR THE PATENT LAW TREATY AND THE REGULATIONS UNDER THE PATENT LAW TREATY <i>prepared by the International Bureau</i>
PT/DC/6 April 28, 2000	RESULTS OF THE TWENTY-EIGHTH (16 TH EXTRAORDINARY) SESSION OF THE PCT ASSEMBLY, MARCH 13 TO 17, 2000; ISSUES FOR POSSIBLE DISCUSSION AT THE DIPLOMATIC CONFERENCE <i>prepared by the International Bureau</i>
PT/DC/7 May 11, 2000	ARTICLES 7, 9 AND 11, AND RULE 12 <i>proposal by the Delegation of Germany</i>
PT/DC/8 May 12, 2000	ARTICLES 1 TO 3, 5 TO 8, 11 TO 13, 17, 19, 21 AND 24 AND RULES 7, 8, 12, 13, 16 AND 18 <i>comment and proposal by the Delegation of the United States of America</i>
PT/DC/9 May 12, 2000	ARTICLE 19(2) <i>proposal by the Delegation of Portugal on behalf of the Member States of the European Union</i>
PT/DC/10 May 15, 2000	ARTICLES 5, 6 AND 13, AND RULES 2, 9, 12, 14, AND 16 <i>proposal by the Delegation of Japan</i>
PT/DC/11 May 15, 2000	AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE REGARDING ARTICLE 1 (xiv) OF THE PATENT LAW TREATY <i>proposal by the Delegation of Japan</i>
PT/DC/12 May 16, 2000	AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE ON THE AVAILABILITY OF PRIORITY DOCUMENTS <i>proposal by the Delegation of the United Kingdom</i>
PT/DC/13 May 17, 2000	RULES OF PROCEDURE <i>as adopted on May 11, 2000 by the Diplomatic Conference</i>

<u>DOCUMENT NUMBER AND DATE</u>	<u>SUBJECT AND SOURCE</u>
PT/DC/14 May 15, 2000	ARTICLE 1 (xviii) <i>proposal by the Delegation of the Russian Federation</i>
PT/DC/15 May 17, 2000	ARTICLES 5, 8 AND 12 AND RULES 4, 13 AND 17 <i>proposal by the Delegation of Israel</i>
PT/DC/16 May 16, 2000	ARTICLE 4 <i>proposal by the Delegation of the Russian Federation</i>
PT/DC/17 May 16, 2000	FIRST REPORT OF THE CREDENTIALS COMMITTEE <i>prepared by the Secretariat</i>
PT/DC/18 May 22, 2000	ARTICLE 4 <i>proposal by the Delegation of Sudan</i>
PT/DC/19 May 16, 2000	ARTICLE 6(3) <i>proposal by the Delegation of Finland</i>
PT/DC/20 May 16, 2000	RULE 4(4) <i>proposal by the Delegation of Portugal</i>
PT/DC/21 May 17, 2000	ARTICLE 5(1)(c) <i>proposal by the Latin American and Caribbean Group (GRULAC)</i>
PT/DC/22 May 17, 2000	RULE 9(4) AND (6) <i>proposal by the Delegations of Switzerland</i>
PT/DC/23 May 17, 2000	AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE CONCERNING ARTICLE 1 (ABBREVIATED EXPRESSIONS) <i>proposal by the Delegation of Switzerland</i>
PT/DC/24 May 18, 2000	RULE 4(4) <i>proposal by the Delegation of the Russian Federation</i>
PT/DC/25 May 18, 2000	RULE 12(5) <i>proposal by the Delegation of Israel</i>
PT/DC/26 May 18, 2000	ARTICLE 5(5) <i>proposal by Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela</i>
PT/DC/27 May 22, 2000	AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE CONCERNING RULES 12(5)(vi) AND 13(3)(vii) <i>proposal by the Delegation of Australia</i>
PT/DC/28 May 19, 2000	ARTICLE 5(1) AND RULE 21 <i>suggestion by the President of Main Committee I</i>
PT/DC/29 May 23, 2000	ARTICLE 16 <i>proposal by the Delegation of Sudan</i>
PT/DC/30 May 23, 2000	ARTICLES 5 AND 22 <i>proposal by the Latin American and Caribbean Group (GRULAC)</i>

<u>DOCUMENT NUMBER AND DATE</u>	<u>SUBJECT AND SOURCE</u>
PT/DC/31 May 24, 2000	ARTICLE 18 <i>proposal by the Delegation of the United States of America</i>
PT/DC/32 May 25, 2000	RULE 8 <i>proposal by the Delegation of the Russian Federation</i>
PT/DC/33 May 25, 2000	SECOND REPORT OF THE CREDENTIALS COMMITTEE <i>prepared by the Secretariat</i>
PT/DC/34 May 26, 2000	NEW PROVISION <i>proposal by the Delegation of Indonesia</i>
PT/DC/35 May 26, 2000	ARTICLE 5 <i>proposal by the Delegation of Burkina Faso</i>
PT/DC/36 May 26, 2000	NOTE FOR AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE ON THE AVAILABILITY OF PRIORITY DOCUMENTS <i>proposal by the Delegation of the United States of America</i>
PT/DC/37 May 26, 2000	RULES 4 AND 8 <i>proposal by the Delegation of the United States of America</i>
PT/DC/38 May 29, 2000	AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE <i>proposal by the Group of Latin America and Caribbean Countries (GRULAC)</i>
PT/DC/39 June 1, 2000	REPORT OF THE PRESIDENT OF THE CREDENTIALS COMMITTEE <i>prepared by the Secretariat</i>
PT/DC/40 June 1, 2000	DRAFT FINAL ACT <i>submitted by the Steering Committee to the Conference meeting in Plenary</i>
PT/DC/41 June 1, 2000	DRAFT OF THE PATENT LAW TREATY <i>submitted to Main Committees I and II by the Drafting Committee</i>
PT/DC/42 June 1, 2000	DRAFT OF THE REGULATIONS UNDER THE PATENT LAW TREATY <i>submitted to Main Committee I by the Drafting Committee</i>
PT/DC/43 June 1, 2000	DRAFT AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE REGARDING THE PATENT LAW TREATY AND THE REGULATIONS UNDER THE PATENT LAW TREATY <i>submitted to Main Committee I by the Drafting Committee</i>
PT/DC/44 June 1, 2000	AGREED STATEMENT

<u>DOCUMENT NUMBER AND DATE</u>	<u>SUBJECT AND SOURCE</u>
PT/DC/45 June 1, 2000	DRAFT TO THE PATENT LAW TREATY DRAFT OF THE REGULATIONS UNDER THE PATENT LAW TREATY <i>proposed to the Conference, meeting in Plenary, by Main Committees I and II</i>
PT/DC/46 June 1, 2000	FINAL ACT <i>adopted by the Diplomatic Conference on June 1, 2000</i>
PT/DC/47 June 2, 2000	PATENT LAW TREATY, REGULATIONS UNDER THE PATENT LAW TREATY AND AGREED STATEMENTS BY THE DIPLOMATIC CONFERENCE <i>adopted by the Diplomatic Conference on June 1, 2000</i>

INFORMATION SERIES (PT/DC/INF.)

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PT/DC/INF/2 May 10, 2000	GENERAL INFORMATION <i>document prepared by the International Bureau</i>
PT/DC/INF/3 May 15, 2000	OFFICERS AND COMMITTEES
PT/DC/INF/4 June 2, 2000	SIGNATURES <i>Memorandum by the Secretariat</i>

Text of the Conference Documents of the "PT/DC" Series

PT/DC/1

November 11, 1999 (Original: English)

DRAFT AGENDA

approved by the Preparatory Meeting for the Diplomatic Conference

1. Opening of the Conference by the Director General of WIPO
2. Consideration and adoption of the Rules of Procedure
3. Election of the President of the Conference
4. Consideration and adoption of the agenda
5. Election of the Vice-Presidents of the Conference
6. Election of the members of the Credentials Committee
7. Election of the members of the Drafting Committee
8. Election of the Officers of the Credentials Committee, the Main Committees and the Drafting Committee
9. Consideration of the first report of the Credentials Committee
10. Opening declarations by Delegations and by representatives of Observer Organizations
11. Consideration of the texts proposed by the Main Committees
12. Consideration of the second report of the Credentials Committee
13. Adoption of the Patent Law Treaty and the Regulations
14. Adoption of any recommendation, resolution, agreed statement or final act
15. Closing declarations by Delegations and by representatives of Observer Organizations
16. Closing of the Conference by the President*

* Immediately after the closing of the Conference, the Final Act, if any, and the Patent Law Treaty will be open for signature.

PT/DC/2

November 11, 1999 (Original: English)

DRAFT RULES OF PROCEDURE

approved by the Preparatory Meeting for the Diplomatic Conference

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CHAPTER I: OBJECTIVE, COMPETENCE, COMPOSITION AND SECRETARIAT OF THE CONFERENCE

Rule 1: Objective and Competence of the Conference

(1) The objective of the Diplomatic Conference for the Adoption of the Patent Law Treaty (hereinafter referred to as "the Conference") is to negotiate and adopt such a Treaty and Regulations under that Treaty (hereinafter referred to, respectively, as "the Treaty" and as "the Regulations").

(2) The Conference, meeting in Plenary, shall be competent to:

- (i) adopt the Rules of Procedure of the Conference (hereinafter referred to as "these Rules") and to make any amendments thereto;
- (ii) adopt the agenda of the Conference;
- (iii) decide on credentials, full powers, letters or other documents presented in accordance with Rules 6, 7 and 8 of these Rules;
- (iv) adopt the Treaty and the Regulations;
- (v) adopt any recommendation or resolution whose subject matter is germane to the Treaty and the Regulations;

- (vi) adopt any agreed statements to be included in the Records of the Conference;
- (vii) adopt any final act of the Conference;
- (viii) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition of the Conference

- (1) The Conference shall consist of:
 - (i) delegations of the States which are party to the Paris Convention for the Protection of Industrial Property or States members of the World Intellectual Property Organization (hereinafter referred to as "the Ordinary Member Delegations"),
 - (ii) the delegations of the African Intellectual Property Organization, the African Regional Industrial Property Organization, the European Patent Organization and the Eurasian Patent Organization (hereinafter referred to as the "Special Member Delegations"),
 - (iii) the delegations of States members of the United Nations other than the States which are party to the Paris Convention for the Protection of Industrial Property or States members of the World Intellectual Property Organization invited to the Conference as observers (hereinafter referred to as "the Observer Delegations"),
 - (iv) representatives of intergovernmental and non-governmental organizations invited to the Conference as observers (hereinafter referred to as "the Observer Organizations").
- (2) References in these Rules of Procedure to Member Delegations shall be considered as references to the Ordinary Member Delegations and the Special Member Delegations.
- (3) References in these Rules of Procedure to "Delegations" shall be considered as references to the three kinds (Ordinary Member, Special Member and Observer) of Delegations but not to Observer Organizations.

Rule 3: Secretariat of the Conference

- (1) The Conference shall have a Secretariat provided by the International Bureau of the World Intellectual Property Organization (hereinafter referred to as "the International Bureau" and "WIPO," respectively).
- (2) The Director General of WIPO and any official of the International Bureau designated by the Director General of WIPO may participate in the discussions of the Conference, meeting in Plenary, as well as in any committee or working group thereof and may, at any time, make oral or written statements, observations or suggestions to the Conference, meeting in Plenary, and any committee or working group thereof concerning any question under consideration.
- (3) The Director General of WIPO shall, from among the staff of the International Bureau, designate the Secretary of the Conference and a Secretary for each committee and for each working group.
- (4) The Secretary of the Conference shall direct the staff required by the Conference.
- (5) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents, for the interpretation of oral interventions and for the performance of all other secretarial work required for the Conference.
- (6) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference. The International Bureau shall distribute the final documents of the Conference after the closing of the Conference.

CHAPTER II: REPRESENTATION

Rule 4: Delegations

- (1) Each Delegation shall consist of one or more delegates and may include advisors.
- (2) Each Delegation shall have a Head of Delegation and may have a Deputy Head of Delegation.

Rule 5: Observer Organizations

An Observer Organization may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

- (1) Each Delegation shall present credentials. If a final act of the Conference (see Rule 1(2)(vii)) is adopted, it shall be open for signature by any Delegation whose credentials have been found in order under Rule 9(2).
- (2) Full powers shall be required for signing the Treaty. Such powers may be included in the credentials.

Rule 7: Letters of Appointment

The representatives of Observer Organizations shall present a letter or other document appointing them.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 shall be presented to the Secretary of the Conference, preferably not later than twenty-four hours after the opening of the Conference.

Rule 9: Examination of Credentials, etc.

- (1) The Credentials Committee referred to in Rule 11 shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7, respectively, and shall report to the Conference, meeting in Plenary.
- (2) The decision on whether a credential, full powers, letter or other document is in order shall be made by the Conference, meeting in Plenary. Such decision shall be made as soon as possible and in any case before the adoption of the Treaty.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and Observer Organizations shall be entitled to participate provisionally in the deliberations of the Conference as provided in these Rules.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

- (1) The Conference shall have a Credentials Committee.
- (2) The Credentials Committee shall consist of seven Ordinary Member Delegations elected by the Conference, meeting in Plenary.

Rule 12: Main Committees and Their Working Groups

- (1) The Conference shall have two Main Committees. Main Committee I shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the substantive provisions of the Treaty, the Regulations and any recommendation, resolution or agreed statement referred to in Rule 1(2)(v) and (vi). Main Committee II shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the other provisions of the Treaty.
- (2) Each Main Committee shall consist of all the Member Delegations.
- (3) Each Main Committee may create working groups. In creating a working group, the Main Committee creating it shall specify the tasks of the Working Group, decide on the number of the members of the Working Group and elect such members from among the Member Delegations.

Rule 13: Drafting Committee

- (1) The Conference shall have a Drafting Committee.
- (2) The Drafting Committee shall consist of 11 elected members and two *ex officio* members. The elected members shall be elected by the Conference, meeting in Plenary, from among the Member Delegations. The Presidents of the two Main Committees shall be the *ex officio* members.
- (3) The Drafting Committee shall prepare drafts and give advice on drafting as requested by either Main Committee. The Drafting Committee shall not alter the substance of the texts submitted to it. It shall coordinate and review the drafting of all texts submitted to it by the Main Committees, and it shall submit the texts so reviewed for final approval to the competent Main Committee.

Rule 14: Steering Committee

- (1) The Conference shall have a Steering Committee.
- (2) The Steering Committee shall consist of the President and Vice-Presidents of the Conference, the President of the Credentials Committee, the Presidents of the Main Committees and the President of the Drafting Committee. The meetings of the Steering Committee shall be presided over by the President of the Conference.
- (3) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress, including, in particular, decisions on the coordinating of the meetings of the Plenary, the committees and the working groups.
- (4) The Steering Committee shall propose the text of any final act of the Conference (see Rule 1(2)(vii)), for adoption by the Conference, meeting in Plenary.

CHAPTER IV: OFFICERS

Rule 15: Officers and their Election; Precedence Among Vice-Presidents

- (1) The Conference shall have a President and 10 Vice-Presidents.
- (2) The Credentials Committee, each of the two Main Committees and the Drafting Committee shall have a President and two Vice-Presidents.
- (3) Any Working Group shall have a President and two Vice-Presidents.
- (4) The Conference, meeting in Plenary, and presided over by the Director General of WIPO, shall elect its President and then, presided over by its President, shall elect its Vice-Presidents and the officers of the Credentials Committee, the Main Committees and the Drafting Committee.
- (5) The officers of a Working Group shall be elected by the Main Committee that establishes that Working Group.
- (6) Precedence among the Vice-Presidents of a given body (the Conference, the Credentials Committee, the two Main Committees, any Working Group, the Drafting Committee) shall be determined by the place occupied by the name of the State of each of them in the list of Member Delegations established in the alphabetical order of the names of the States in French, beginning with the Member Delegation whose name shall have been drawn by lot by the President of the Conference. The Vice-President of a given body who has precedence over all the other Vice-Presidents of that body shall be called "the ranking" Vice-President of that body.

Rule 16: Acting President

- (1) If the President is absent from a meeting, the meeting shall be presided over, as Acting President, by the ranking Vice-President of that body.
- (2) If all the officers of a body are absent from any meeting of the body concerned, that body shall elect an Acting President.

Rule 17: Replacement of the President

If a President becomes unable to perform his or her functions for the remainder of the duration of the Conference, a new President shall be elected.

Rule 18: Vote by the Presiding Officer

- (1) No President, whether elected as such or acting (hereinafter referred to as "the Presiding Officer"), shall take part in voting. Another member of his or her Delegation may vote for that Delegation.
- (2) Where the Presiding Officer is the only member of his or her Delegation, he or she may vote, but only in the last place.

CHAPTER V: CONDUCT OF BUSINESS

Rule 19: Quorum

- (1) A quorum shall be required in the Conference, meeting in Plenary; it shall, subject to paragraph (3), be constituted by one-half of the Member Delegations represented at the Conference.

(2) A quorum shall be required for the meetings of each Committee (the Credentials Committee, the two Main Committees, the Drafting Committee and the Steering Committee) and any working group; it shall be constituted by one-half of the members of the Committee or working group.

(3) The quorum at the time of the adoption of the Treaty and the Regulations by the Conference, meeting in Plenary, shall be constituted by one half of the Ordinary Member Delegations whose credentials were found in order by the Conference meeting in Plenary.

Rule 20: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon Presiding Officers elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. The Presiding Officer shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose to the body over which he or she presides the limitation of time to be allowed to each speaker, the limitation of the number of times each Delegation may speak on any question, the closure of the list of speakers or the closure of the debate. The Presiding Officer may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected.

Rule 21: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 22 and 23, the Presiding Officer shall call upon persons in the order in which they ask for the floor.

(2) The Presiding Officer may call a speaker to order if the remarks of the speaker are not relevant to the subject under discussion.

Rule 22: Precedence in Receiving the Floor

(1) Member Delegations asking for the floor are generally given precedence over Observer Delegations asking for the floor, and Member Delegations and Observer Delegations are generally given precedence over Observer Organizations.

(2) The President of a Committee or working group may be given precedence during discussions relating to the work of the Committee or working group concerned.

(3) The Director General of WIPO or his representative may be given precedence for making statements, observations or suggestions.

Rule 23: Points of Order

(1) During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless the appeal is approved.

(2) The Member Delegation that has risen to a point of order under paragraph (1) may not speak on the substance of the matter under discussion.

Rule 24: Limit on Speeches

In any meeting, the Presiding Officer may decide to limit the time allowed to each speaker and the number of times each Delegation and Observer Organization may speak on any question. When the debate is limited and a Delegation or Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 25: Closing of List of Speakers

(1) During the discussion of any given question, the Presiding Officer may announce the list of participants who have asked for the floor and decide to close the list as to that question. The Presiding Officer may nevertheless accord the right of reply to any speaker if a speech, delivered after the list of speakers has been closed, makes it desirable.

(2) Any decision made by the Presiding Officer under paragraph (1) may be the subject of an appeal under Rule 23.

Rule 26: Adjournment or Closure of Debate

Any Member Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has asked for the floor. In addition to the proposer of the motion to adjourn or close the debate, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing it, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time allowed to speakers under this Rule.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

Rule 28: Order of Procedural Motions; Content of Interventions on Such Motions

(1) Subject to Rule 23, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting,
- (ii) to adjourn the meeting,
- (iii) to adjourn the debate on the question under discussion,
- (iv) to close the debate on the question under discussion.

(2) Any Member Delegation that has been given the floor on a procedural motion may speak on that motion only, and may not speak on the substance of the matter under discussion.

Rule 29: Basic Proposal; Proposals for Amendment

(1) (a) Document PT/DC/3 shall constitute the basis of the discussions in the Conference, and the text of the draft Treaty and of the draft Regulations contained in this document shall constitute the "basic proposal."

(b) Where, for any given Article or Rule, there are two or three alternatives in the basic proposal, consisting of either two or three texts, or one or two texts and an alternative that there should be no such provision, the alternatives shall be designated with the letters A, B and, where applicable, C,

and shall have equal status. Discussions shall take place simultaneously on the alternatives and, if voting is necessary and there is no consensus on which alternative should be put to the vote first, each Ordinary Member Delegation shall be invited to indicate its preference among the two or three alternatives. The alternative supported by more Ordinary Member Delegations than the other one or two alternatives shall be put to the vote first.

(c) Wherever the basic proposal contains words within square brackets, only the text that is not within square brackets shall be regarded as part of the basic proposal, whereas words within square brackets shall be treated as a proposal for amendment if presented as provided in paragraph (2).

(2) Any Member Delegation may propose amendments to the basic proposal.

(3) Proposals for amendment shall, as a rule, be submitted in writing and handed to the Secretary of the body concerned. The Secretariat shall distribute copies to the Delegations and the Observer Organizations. As a general rule, a proposal for amendment cannot be taken into consideration and discussed or put to the vote at a meeting unless copies of it have been distributed not later than three hours before it is taken into consideration. The Presiding Officer may, however, permit the taking into consideration and discussion of a proposal for amendment even though copies of it have not been distributed or have been distributed less than three hours before it is taken into consideration.

Rule 30: Decisions on the Competence of the Conference

(1) If a Member Delegation moves that a duly seconded proposal should not be taken into consideration by the Conference because it is outside the latter's competence, that motion shall be decided upon by the Conference, meeting in Plenary, before the proposal is taken into consideration.

(2) If the motion referred to in paragraph (1), above, is made in a body other than the Conference, meeting in Plenary, it shall be referred to the Conference, meeting in Plenary, for a ruling.

Rule 31: Withdrawal of Procedural Motions and Proposals for Amendment

Any procedural motion and any proposal for amendment may be withdrawn by the Member Delegation that has made it, at any time before voting on it has commenced, provided that no amendment to it has been proposed by another Member Delegation. Any motion or proposal thus withdrawn may be reintroduced by any other Member Delegation.

Rule 32: Reconsideration of Matters Decided

When any matter has been decided by a body, it may not be reconsidered by that body unless so decided by the majority applicable under Rule 34(2)(ii). In addition to the proposer of the motion to reconsider, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote.

CHAPTER VI: VOTING

Rule 33: Right to Vote

Each Ordinary Member Delegation shall have the right to vote. An Ordinary Member Delegation shall have one vote, may represent itself only and may vote in its name only.

Rule 34: Required Majorities

(1) All decisions of all bodies shall be made as far as possible by consensus.

(2) If it is not possible to attain consensus, the following decisions shall require a majority of two-thirds of the Ordinary Member Delegations present and voting:

(i) adoption by the Conference, meeting in Plenary, of these Rules, and, once adopted, any amendment to them,

(ii) decision by any of the bodies to reconsider, under Rule 32, a matter decided,

(iii) adoption by the Conference, meeting in Plenary, of the Treaty and the Regulations,

whereas all other decisions of all bodies shall require a simple majority of the Ordinary Member Delegations present and voting.

(3) "Voting" means casting an affirmative or negative vote; express abstention or non-voting shall not be counted.

Rule 35: Requirement of Seconding; Method of Voting

(1) Any proposal for amendment made by a Member Delegation shall be put to a vote only if seconded by at least one other Member Delegation.

(2) Voting on any question shall be by show of hands unless an Ordinary Member Delegation, seconded by at least one other Ordinary Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the alphabetical order of the names in French of the States, beginning with the Ordinary Member Delegation whose name shall have been drawn by lot by the Presiding Officer.

Rule 36: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit an Ordinary Member Delegation to explain its vote or its abstention, either before or after the voting.

Rule 37: Division of Proposals

Any Member Delegation may move that parts of the basic proposal or of any proposal for amendment be voted upon separately. If the request for division is objected to, the motion for division shall be put to a vote. In addition to the proposer of the motion for division, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing it. If the motion for division is carried, all parts of the basic proposal or of the proposal for amendment that have been separately approved shall again be put to the vote, together, as a whole. If all operative parts of the basic proposal or of the proposal for amendment have been rejected, the basic proposal or the proposal for amendment shall be considered rejected as a whole.

Rule 38: Voting on Proposals for Amendment

(1) Any proposal for amendment shall be voted upon before the text to which it relates is voted upon.⁰

(2) Proposals for amendment relating to the same text shall be put to the vote in the order of their substantive remoteness from the said text, the most remote being put to the vote first and the least remote being put to the vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such other proposal or text shall not be put to the vote.

(3) If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to the vote.

(4) Any proposal the purpose of which is to add to or delete from a text shall be considered a proposal for amendment.

Rule 39: Voting on Proposals for Amendment on the Same Question

Subject to Rule 38, where two or more proposals relate to the same question, they shall be put to the vote in the order in which they have been submitted, unless the body concerned decides on a different order.

Rule 40: Equally Divided Votes

(1) Subject to paragraph (2), if a vote is equally divided on a matter that calls only for a simple majority, the proposal shall be considered rejected.

(2) If a vote is equally divided on a proposal for electing a given person to a given position as officer and the nomination is maintained, the vote shall be repeated, until either that nomination is adopted or rejected or another person is elected for the position in question.

CHAPTER VII: LANGUAGES AND MINUTES

Rule 41: Languages of Oral Interventions

(1) Subject to paragraph (2), oral interventions made in the meetings of any of the bodies shall be in Arabic, Chinese, English, French, Russian or Spanish, and interpretation shall be provided by the Secretariat into the other five languages.

(2) Any of the Committees and any working group may, if none of its members objects, decide to dispense with interpretation or to limit interpretation to some only of the languages that are referred to in paragraph (1).

Rule 42: Summary Minutes

(1) Provisional summary minutes of the meetings of the Conference, meeting in Plenary, and of the Main Committees shall be drawn up by the International Bureau and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the minutes have been made available, inform the International Bureau of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the International Bureau.

Rule 43: Languages of Documents and Summary Minutes

(1) Any written proposal shall be presented to the Secretariat in Arabic, Chinese, English, French, Russian or Spanish. Such proposal shall be distributed by the Secretariat in Arabic, Chinese, English, French, Russian and Spanish.

(2) Reports of the Committees and any working group shall be distributed in Arabic, Chinese, English, French, Russian and Spanish. Information documents of the Secretariat shall be distributed in English and French.

(3) (a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English, French or Spanish; if the speaker has used another language, the intervention shall be rendered in English or French at the choice of the International Bureau.

- (b) The final summary minutes shall be made available in English and French.

CHAPTER VIII: OPEN AND CLOSED MEETINGS

Rule 44: Meetings of the Conference and of the Main Committees

The meetings of the Conference, meeting in Plenary, and of the Main Committees shall be open to the public unless the Conference, meeting in Plenary, or the interested Main Committee, decides otherwise.

Rule 45: Meetings of Other Committees and of Working Groups

The meetings of the Credentials Committee, the Drafting Committee, the Steering Committee and any working group shall be open only to the members of the Committee or the working group concerned and to the Secretariat.

CHAPTER IX: OBSERVER DELEGATIONS AND OBSERVER ORGANIZATIONS

Rule 46: Status of Observers

(1) Observer Delegations may attend, and make oral statements in, the Plenary meetings of the Conference and the meetings of the Main Committees.

(2) Observer Organizations may attend the Plenary meetings of the Conference and the meetings of the Main Committees. Upon the invitation of the Presiding Officer, they may make oral statements in those meetings on questions within the scope of their activities.

(3) Written statements submitted by Observer Delegations or by Observer Organizations on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which the written statements were made available to it.

CHAPTER X: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 47: Possibility of Amending the Rules of Procedure

With the exception of the present Rule, these Rules may be amended by the Conference, meeting in Plenary.

PT/DC/3

November 11, 1999 (Original: English)

BASIC PROPOSAL FOR THE PATENT LAW TREATY

submitted by the Director General of WIPO

[The text of this document is reproduced from page 42 to 57.]

PT/DC/4

November 11, 1999 (Original: English)

BASIC PROPOSAL FOR THE REGULATIONS UNDER THE PATENT LAW TREATY

submitted by the Director General of WIPO

[The text of this document is reproduced from page 58 to 74.]

PT/DC/5

January 20, 2000 (Original: English)

EXPLANATORY NOTES ON THE BASIC PROPOSAL FOR THE PATENT LAW TREATY AND THE REGULATIONS
UNDER THE PATENT LAW TREATY

prepared by the International Bureau

INTRODUCTION

1. The present document contains the Explanatory Notes on the basic proposal for the Patent Law Treaty and the Regulations under the Patent Law Treaty, which appears in documents PT/DC/3 and 4. Where a provision appears not to require explanation, no note has been provided.
2. The Explanatory Notes contained in this document are prepared by the International Bureau, but have not been adopted by the Standing Committee on the Law of Patents, nor are they intended to be adopted by the Diplomatic Conference. Therefore, where a conflict exists between the notes and the provisions of the Treaty and the Regulations, the latter shall prevail.
3. Text which appears in italics reflects the positions of certain delegations expressed in the Standing Committee on the Law of Patents, and will not appear in the final version of the explanatory notes which would be published with the adopted Treaty.

Explanatory Notes on the Basic Proposal for the Patent Law Treaty

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I. EXPLANATORY NOTES ON THE BASIC PROPOSAL FOR THE PATENT LAW TREATY

Notes on Article 1 *Abbreviated Expressions*

1.01 Item (i). The term "Office" includes both the national Office of any State which is a Contracting Party to the Treaty and the Office of any intergovernmental organization which is a Contracting Party. For example, the Treaty will apply to the European Patent Office if, and only if, the European Patent Organization is a Contracting Party. The reference to "other matters covered by this Treaty" covers the situation in which the Office of a Contracting Party administers procedures in respect of patents, for example, the recordation of change of owner, even if patents are granted on its behalf by another Office, for example, a regional Office.

1.02 Item (iv). The question of what constitutes a legal entity, for example, a German *Offene Handelsgesellschaft*, is not regulated by the Treaty and remains a matter for the applicable law of the Contracting Party where patent protection is sought. Thus, the Treaty applies to an entity that is assimilated to a legal entity under the applicable national law.

1.03 Item (v). The term "communication" is used in the Treaty and Regulations to refer only to matter which is filed with the Office. Accordingly, a notification or other correspondence sent by the Office to an applicant, owner or other interested person does not constitute a "communication" as defined under this item. The limitation of this item to filings by "means permitted by the Office" allows a Contracting Party to disregard any communication that is filed by means which that Office does not permit, except as otherwise prescribed in the Treaty (see, in particular, Articles 5(1)(a) and 8(1)(d)). Reference is also made to the provisions of Article 8(1) and Rule 8 (see Notes 8.02 to 8.04 and R8.01 to R8.05).

1.04 Item (vi). Information referred to under this item includes the contents of applications and patents, in particular the description, claims, abstract and drawings, as well as corrections of mistakes referred to in Rule 18(1). An example of information maintained by an Office in respect of applications filed with, and patents granted by, another authority with effect for the Contracting Party concerned would be information maintained by a Contracting State to the European Patent Convention in respect of European patents granted by the European Patent Office designating that Contracting State, irrespective of whether the European Patent Organization (EPO) is a Contracting Party.

1.05 Item (vii). The term "recordation" refers to any act of including information in the records of the Office, regardless of the means used for including such information or the medium in which the data are recorded or stored.

1.06 Items (viii) and (ix). The terms "applicant" and "owner" are used in the Treaty and Regulations to refer only to the person who is indicated as such in the records of the Office. Accordingly, any other

person who might have, or purports to have, a legal claim of ownership or other rights is not considered an applicant or owner for the purposes of the Treaty or the Regulations. In the case of a request for recordation of a change in the person of the applicant or owner (see Rule 16), during the period of time between the actual legal transfer and recordation of the change, the transferor continues to be referred to in the Treaty as the "applicant" or "owner" (that is, the person shown in the records of the Office as the applicant or owner), and the transferee is referred to as the "new applicant" or "new owner" (see Rule 16(1)). Once recordation of the change has taken place, the transferee becomes the "applicant" or "owner" (since that person is now the person shown in the records of the Office as the applicant or owner).

1.07 Where the applicable law of a Contracting Party provides that a patent must be applied for in the name of the actual inventor or inventors, the "person who is applying for the patent" would be the inventor or joint inventors. Where a person is permitted under the applicable law to apply for a patent in place of an inventor who, for example, is dead, or legally incapacitated, or who refuses to sign or cannot be reached, that person is the "person who is applying for the patent". "Another person who, pursuant to the applicable law, is filing the application" could, for example, under certain circumstances, be the inventor's employer in the United States of America. Where the applicable law provides that an application may be submitted by any natural or legal person, the applicant is the person submitting the application. Where the applicable law of a Contracting Party provides that several persons may jointly be applicants or owners, the words "applicant" and "owner" are to be construed as including "applicants" and "owners" (see item (xv)). "Another person who, pursuant to the applicable law, is prosecuting the application" could, in particular, be an assignee of record of the right, title and interest in an application, where the applicable law of a Contracting Party requires the patent to be applied for in the name of the actual inventor and also provides that such an assignee is entitled to conduct the prosecution of the application to the exclusion of the named inventor.

1.08 Item (x). The term "representative" refers to any attorney, agent or other person, or to any firm or partnership, that can be a representative under the applicable law. Under Article 7(1)(a), a Contracting Party may require that any representative who is appointed shall have the right to practice before the Office, and that any such representative shall provide, as his address, an address on a territory prescribed by that Contracting Party (see Notes 7.02 to 7.04).

1.09 Item (xi). A "signature" as defined under this item could be, for example, a form of signature expressly referred to under Rule 9(3) to (5), namely a hand-written, printed or stamped signature, a seal, a bar-coded label, or a signature filed in electronic form or by electronic means.

1.10 Item (xii). The expression "a language accepted by the Office" refers to a verbal language and not, for example, to a computer language. What constitutes "a language accepted by the Office" is a matter to be determined by the Contracting Party. The expression "for the relevant procedure before the Office" provides for the situation in which the Office has different language requirements for different procedures, as will normally be the case in view of the obligation on Contracting Parties under Article 5(2)(b) to accept a description in any language for the purposes of according a filing date. *This item is subject to reservations by the Delegations of Belgium and Finland.*

1.11 Item (xiv). The expression "procedure before the Office" covers any procedure in which an applicant, owner or other interested person communicates with the Office, either to initiate proceedings before the Office or in the course of such proceedings. It covers all procedures in proceedings before the Office and is therefore not restricted to those procedures which are referred to in express terms under Articles 5 to 14. Examples of such procedures are the filing of an application, the filing of a request for recordation of a licensing agreement, the payment of a fee, the filing of a response to a notification issued by the Office, or the filing of a translation of an application or patent. It also covers procedures in which the Office contacts an applicant, owner or other interested person in the course of proceedings relating to an application or patent, for example, the issuance of a notification that an application does not comply with certain requirements, or the issuance of a receipt for a document or a fee. It does not cover procedures which, for legal purposes, do not constitute a part of the proceedings before the Office with respect to an application or patent, for example, the purchase of a copy of a published application or the payment of a bill for information services to the public provided by the Office.

1.12 Item (xvii). References in the Treaty or Regulations to a requirement, procedure, etc., "under the Patent Cooperation Treaty" are to be construed as references to such a requirement, procedure, etc., under the provisions of the Patent Cooperation Treaty (PCT) itself, the Regulations under the PCT or the Administrative Instructions under the PCT.

1.13 Item (xviii). Provisions on eligibility for becoming party to the Treaty are contained in Article 19.

Notes on Article 2

General Principles

2.01 Paragraph (1). This paragraph is included for the avoidance of doubt. It states, in express terms, a principle which applies to all of the provisions of the Treaty other than Article 5. It recognizes that the Treaty does not establish a completely uniform procedure for all Contracting Parties, but provides assurance for applicants and owners that, for example, an application that complies with the maximum requirements permitted under the Treaty and Regulations will comply with formal requirements applied by any Contracting Party. A similar provision is contained in PCT Article 27(4).

2.02 Paragraph (2). This paragraph is included for the avoidance of doubt. A similar provision is contained in PCT Article 27(5), first sentence.

Notes on Article 3

Applications and Patents to Which the Treaty Applies

3.01 Paragraph (1)(a). Under this provision, the Treaty and Regulations apply to certain national and regional applications filed with or for the Office of any State which is a Contracting Party. Thus, in the case of a Contracting Party which is a State, the Treaty and Regulations apply to national applications filed with the national Office of that State, irrespective of the nationality of the applicant, owner or other interested person. In the case of a Contracting Party which is an intergovernmental organization, the Treaty and Regulations apply to applications filed with the Office of that intergovernmental organization, irrespective of any designation of States in those applications and of the nationality of the applicant, owner or other interested person.

3.02 The expression "applications ... which are filed ... for the Office of a Contracting Party" covers, in particular, applications for a regional patent that are filed with the Office of a State (X), which is a member State of a regional organization, for onward transmission to the Office of that organization. However, a regional application which designates State X is not an application filed for the Office of State X. Accordingly, where, for example, both the EPO and State X were party to the Treaty, the Treaty and Regulations would apply to European applications and to national applications filed with the Office of State X. However, if State X were party to the Treaty, but the EPO were not, the Treaty and Regulations would apply to national applications filed with the Office of State X, but not to European applications, even if State X were designated. Conversely, if the EPO were party to the Treaty, but State X were not, the Treaty and Regulations would apply to European applications, including those designating State X, but would not apply to national applications filed with the Office of State X.

3.03 The terms "applications for patents for invention" and "applications for patents of addition" are to be construed in the same sense as these terms in PCT Article 2(i). Accordingly, the Treaty and Regulations do not apply to the applications listed in that Article other than applications for patents for invention and applications for patents of addition, namely, applications for inventors' certificates, utility certificates, utility models, certificates of addition, inventors' certificates of addition, and utility certificates of addition. However, a Contracting Party is free to apply some or all of the provisions of the Treaty and Regulations to such other applications, even though it is not obliged to do so. Similarly, the Treaty and Regulations do not apply to applications for "plant patents" which are not patents for invention, although they do apply to applications for patents in respect of plants which are inventions, for example plants which are the result of genetic engineering.

3.04 Item (i). Under this item, the Treaty and Regulations apply to those types of applications for patents for invention and for patents of addition which can be filed as international applications under the PCT. In addition to "conventional applications," in respect of which no special treatment is requested, the Treaty and Regulations also apply to applications for continuation or continuation-in-part of an earlier application, in accordance with PCT Rule 4.14. Since it is possible to convert, in the "national phase," an international application in the name of a sole inventor to an application in the name of joint inventors, as in the case of a "conversion application" under the law of the United States of America, the Treaty and

Regulations also apply to such conversion applications, even though they do not regulate the substantive requirements for such conversion.

3.05 The Treaty and Regulations do not apply to types of applications for patents for invention which cannot be filed as international applications under the PCT, such as provisional applications and applications for re-issue patents. The Treaty and Regulations also do not apply to applications for patent term extension, for example, in respect of patents for pharmaceutical products under Japanese and European Community law, since these are not applications for the grant of a patent. In addition, they do not apply to an application for the conversion of an application for a European patent into a national application for one or more designated States since this is a request for a different type of treatment rather than an application for the grant of a patent. However, the Treaty shall apply to the application once it has been converted to a national application, if that country is party to the Treaty. However, a Contracting Party is free to apply some or all of the provisions of the Treaty and Regulations to any type of applications not covered by paragraph (1), although it is not obliged to do so. As regards divisional applications, reference is made to the explanation under item (ii) (see Note 3.06).

3.06 Item (ii). This item is included since a divisional application is not a type of application that can be filed under the PCT referred to in item (i). Reference is also made to the provisions relating to the filing date of divisional applications under Article 5(8) and Rule 2(6)(i).

3.07 Paragraph (1)(b). This paragraph would only apply with respect to Contracting Parties which are also party to the PCT. The phrase "Subject to the provisions of the Patent Cooperation Treaty" is included to ensure that the provisions of the PCT continue to apply to international applications in the "national phase." For example, a filing date accorded under PCT Article 11(2)(b) to an international application could not be challenged by the applicant, once that application has entered the national phase, on the grounds that the application is entitled to an earlier filing date under Article 5(1)(a) of the Patent Law Treaty.

3.08 Item (i). Under this item, the Treaty and Regulations, in particular, the provisions in respect of time limits under Articles 11 and 12 and Rules 12 and 13, apply in relation to the time limits under PCT Articles 22 and 39(1), namely the time limits for the furnishing of a copy of the international application and any required translation, and the payment of any required fee, to designated Offices and elected Offices, respectively. However, those provisions do not apply in respect of time limits in the "international phase" of an international application, which are governed by the PCT.

3.09 Item (ii). Under this item, the Treaty and Regulations apply to international applications for patents for invention and for patents of addition after such applications have entered the "national phase" in a national or regional Office under the PCT.

3.10 Paragraph (2). The Treaty and Regulations apply both to patents granted by the Office of a Contracting Party and to patents granted on behalf of that Contracting Party by another Office, in particular, the Office of an intergovernmental organization, irrespective of whether that intergovernmental organization is party to the Treaty. For example, if State X referred to in Note 3.02 were party to the Treaty, the Treaty would apply both to patents granted by the Office of State X and to patents granted by the European Patent Office having effect in State X, irrespective of whether the EPO were party to the Treaty. If the EPO were party to the Treaty, the Treaty and Regulations would apply to all European patents for the purposes of any procedures before the European Patent Office, for example, the revocation of patents in opposition proceedings, even if State X were not party to the Treaty.

3.11 The terms "patents for invention" and "patents of addition" are to be construed in the same sense as those expressions in PCT Article 2(ii). Accordingly, the Treaty and Regulations do not apply to patents which are listed in that Article as alternatives to patents for invention and patents of addition, namely, inventors' certificates, utility certificates, utility models, certificates of addition, inventors' certificates of addition, and utility certificates of addition (see also Note 3.03). However, a Contracting Party is free to apply some or all of the provisions of the Treaty and Regulations to such other patents, even though it is not obliged to do so. Also, in accordance with the definition in PCT Article 2(ix), the term "patent" applies to national and regional patents. In addition, it follows from both paragraphs (1)(b) and (2) that the Treaty and Regulations apply to patents for inventions and patents of addition granted on international applications.

3.12 Although they do not apply to those types of applications which cannot be filed as international applications under the PCT, such as provisional applications, applications for re-issue patents and

applications for conversion (see Note 3.05), the Treaty and Regulations do apply to patents granted in respect of such types of applications. For example, the Treaty and Regulations apply to granted re-issue patents, although they do not apply to applications for such patents.

Note on Article 4
National Security

4.01 A similar provision is contained in PCT Article 27(8).

Notes on Article 5
Filing Date

5.01 A Contracting Party is obliged to accord a filing date to an application which complies with the requirements applicable under this Article. Furthermore, a Contracting Party is not permitted to revoke the filing date accorded to an application which complies with those requirements. In particular, the filing date of an application may not be revoked for failure to comply with a requirement under Article 6, 7 or 8 within the applicable time limit, even if that application is subsequently refused on the grounds of such non-compliance (see also Note 5.02). *Article 5 is subject to a reservation by the Delegation of Portugal.*

5.02 Paragraph (1). This paragraph prescribes the elements of an application to be filed for the purpose of according a filing date. First, the Office needs to be satisfied that the elements that it has received are intended to be an application for a patent. Second, the Office must be provided with indications which identify the applicant, or at least allow the applicant to be contacted. Third, the Office must have received a disclosure of the invention, either in the form of a part which on the face of it appears to be a description or, where permitted by the Contracting Party under subparagraph (b), a drawing in place of that description. Since the list of elements under paragraph (1) is exhaustive, a Contracting Party is not permitted to require any additional elements for a filing date to be accorded, in particular, that the application contain one or more claims. Where an application as filed does not contain one or more claims which may be required under Article 6(1)(i) (with reference to PCT Article 3(2)), a Contracting Party may require that these be subsequently filed under Article 6(7), within the time limit prescribed in Rule 6(1). However, the failure to file such claims within that time limit would not result in the subsequent loss of the filing date, even if the application were refused under Article 6(8)(a). Another example may be that, in accordance with Article 6(1), with reference to PCT Rule 11.9, a Contracting Party could require that an application on paper be typed or printed. However, the filing date of an application which did not comply with that requirement, in particular a handwritten application, could not be revoked on that ground. The same considerations apply where an application does not comply with any other requirement under Article 6, 7 or 8, for example, it is not accompanied by a filing fee required under Article 6(4). *This paragraph is subject to a reservation by the Delegation of Spain.*

5.03 Paragraph (1)(a), introductory words. The wording "date on which its Office has received all of the following elements" covers both the case in which all of the required elements are received on the same day and the case in which they are received on different days as provided for under paragraph (4).

5.04 Each Contracting Party is free to decide for itself what constitutes the date on which its Office has received all of the elements. This would apply where, for example, an application is received after the Office has closed for the receipt of communications, or on a day when the Office is not open for the receipt of communications. In addition, a Contracting Party is free to deem, as receipt by the Office, receipt of an application by a specified branch or sub-office of an Office, by a national Office on behalf of an intergovernmental organization having the power to grant regional patents, by a postal service, or by a specified delivery service.

5.05 The introductory words also obliges a Contracting Party to accept, for the purposes of the filing date, the filing of items (i) to (iii) "on paper or by other means permitted by the Office." This obligation to accept filing on paper, for the purpose of the filing date, will continue to apply even where a Contracting Party is permitted to exclude the filing of communications on paper after the expiration of the 10 year period prescribed in Rule 8(1). The phrase "by other means permitted by the Office" relates, in particular, to the case where the required elements are filed in electronic form or by electronic means permitted by

the Contracting Party concerned under Rule 8(2). The restriction to “means permitted by the Office” is necessary since an Office may not have the technical capability to accept filings in all electronic forms or by all electronic means. Where an application that complies with the filing date requirements under paragraph (1) does not comply with the requirements in respect of the form, format and means of filing of communications applied by the Contracting Party concerned under Article 8(1) and Rule 8, that Contracting Party is permitted to require, under Article 8(7), that, for the application to proceed, the applicant comply with those requirements within the time limit prescribed in Rule 11(1). However, failure to do so would not result in the subsequent loss of the filing date, even if the application were refused under Article 8(8).

5.06 Without the text in square brackets, “no later than,” the filing date would, subject to the provisions of paragraphs (1)(b) and (2) to (8), be the date on which the Office has received all of the three elements under items (i) to (iii). If that text were included without surrounding square brackets, a Contracting Party would be free, but not obliged, to accord an earlier filing date. For example, in the case of a delay in the mail or other means of filing, the Office may be able to establish the contents of the application on the date on which that application would have been received if there had been no such delay. *Paragraph (1)(a) is subject to a reservation by the Delegation of Belgium.*

5.07 Item (i). It follows from the definition of the term “application” in Article 1(ii) and the provision of Article 3(1)(a), that this item requires an express or an implicit indication to the effect that the elements referred to are intended to be a national or regional application to which the Treaty and Regulations apply. Whether, in a particular case, the indications which have been given are sufficient to be considered as an implicit indication that the elements in question are intended to be such an application, is a matter to be determined by the Office in the circumstances of that case. In permitting “implicit” indications, item (i) is more liberal than the corresponding provision in respect of international applications under PCT Article 11(1)(iii)(a).

5.08 Item (ii). This provision is more liberal than the corresponding provision in respect of international applications under PCT Article 11(1)(iii)(c) which requires the name of the applicant to be indicated. Whether, in a particular case, indications which have been given are sufficient for “allowing the applicant to be contacted by the Office,” or for “allowing the identity of the applicant to be established,” is a matter to be determined by the Office in the circumstances of that case. Where an application complies with the requirements of paragraph (1), but does not indicate the name and address of the applicant required under Article 6(1)(i) (with reference to PCT Rule 4.4 and 4.5), a Contracting Party may require that these indications be subsequently filed under Article 6(7), within the time limit prescribed in Rule 6(1). However, the failure to file such indications within that time limit would not result in the subsequent loss of the filing date even if the application were refused under Article 6(8)(a).

5.09 Item (iii). This provision is the same as the requirement in respect of international applications under PCT Article 11(1)(iii)(d). For the purpose of determining whether a filing date should be accorded, the Office only needs to establish whether, in its opinion, the application contains a part that on the face of it appears to constitute a description. The questions whether that part satisfies requirements relating to the description allowed under Article 6(1), or the substantive requirements for the grant of a patent, are not relevant to this determination.

5.10 Paragraph (1)(b). This provision permits, but does not oblige, a Contracting Party to accord a filing date on the basis of one or more drawings in place of a written description. The question whether, for example, a photograph is considered a drawing for the purposes of this provision is a matter for the Contracting Party concerned. Where the Office of a Contracting Party which does not apply this provision receives an application in which the invention is disclosed only in one or more drawings that incorporate textual matter, it is for that Office to determine whether, in the circumstances of the case, such textual matter fulfils the requirement under paragraph (1)(a)(iii).

5.11 It is to be noted that a country of the Paris Union is, at present, free to accord a filing date to an application in which the invention is disclosed only in a drawing, and that such application, as a regular national filing under the domestic legislation of a country of the Paris Union, gives rise to a right of priority under Article 4A(2) of the Paris Convention.

5.12 Paragraph (2). *This paragraph is subject to a reservation by the Delegation of Spain.*

5.13 Paragraph (2)(b). This provision requires a Contracting Party to accept, for the purpose of establishing a filing date, a “part which on the face of it appears to be a description” which is filed in any

language. Where that part is filed in a language which is not a language accepted by the Office, the Contracting Party may require that a translation of the description referred to in Article 6(3) be filed, under Article 6(7), within the time limit prescribed in Rule 6(1) (see also Note 6.13). However, the failure to file such a translation within that time limit would not result in the subsequent loss of the filing date even if the application were refused under Article 6(8)(a).

5.14 The same considerations apply to any textual matter incorporated in a drawing which, under paragraph (1)(b), is accepted as "the part which on the face of it appears to be a description" under paragraph (1)(a)(iii).

5.15 Where the application as filed contains claims which are in a language not accepted by the Office, a Contracting Party could require that a translation referred to in Article 6(3) be filed, under Article 6(7), within the time limit prescribed in Rule 6(1) (see also Note 6.13). The failure to file such translation within that time limit would not result in the subsequent loss of the filing date even if the application were refused under Article 6(8)(a).

5.16 Paragraph (3). Reference is made to the general provisions concerning notifications under Article 9 (see Notes 9.01 to 9.05).

5.17 Paragraph (4)(a). This provision permits an applicant to subsequently remedy any non-compliance with the requirements under paragraphs (1) and (2). It applies whether or not the applicant has been notified of such non-compliance under paragraph (3). This provision gives the applicant the possibility of proceeding with the application on the basis of the elements which have been filed and any fees already paid, without the need to refile the application or pay additional filing fees. However, for the proper conduct of business before the Office, a Contracting Party may provide that this possibility be subject to the time limit applicable under paragraph (4)(b) (see Note 5.18). The text in square brackets, "no later than," is consequential to the same text in square brackets in paragraph (1) (see Note 5.06).

5.18 Paragraph (4)(b). This provision permits, but does not oblige, a Contracting Party to regard an application as not having been filed, where the requirements referred to in paragraphs (1) and (2) that were not complied with when the application was first received by the Office are not complied with within the time limit prescribed in Rule 2(2). An applicant who wishes to proceed with an application that has been regarded as not having been filed under this provision would have to re-file the application in its entirety and, if the Office does not permit the transfer of fees from the initially filed application, to pay new fees.

5.19 Paragraph (5). This provision, which is modeled after PCT Article 14(2), obliges the Office to notify the applicant where, in establishing the filing date, it finds that a part of the description or a drawing appears to be missing. As it is restricted to the situation where the determination is made in establishing the filing date, this provision does not apply where that determination is made in any other procedure, in particular, in the course of substantive examination, when the procedures under paragraph (6)(a) to (c) would not be appropriate. It is to be noted that this provision does not require the Office to check, in establishing the filing date, whether a part of the description or drawing is missing. Reference is also made to the general provisions concerning notifications under Article 9 (see Notes 9.01 to 9.05).

5.20 Paragraph (6)(a). This provision obliges a Contracting Party to include, in the application, a missing part of the description or a missing drawing that is filed within the time limit prescribed in Rule 2(3). It applies whether or not the applicant has been notified under paragraph (5). The text in square brackets, "no later than," would be included only if the same text in square brackets is adopted in paragraph (1). Without the text in square brackets, the filing date would, subject to subparagraphs (b) and (c), be the date of receipt of the missing part of the description or missing drawings, provided that all of the requirements for the accordal of a filing date under paragraphs (1) and (2) are complied with on that date. If that text were included without surrounding square brackets, a Contracting Party would be permitted, but not obliged, to accord a filing date which is earlier than the date of receipt of the missing part of the description or missing drawing, in particular, where it determines that the missing part or drawing does not contain new matter.

5.21 Paragraph (6)(b). This provision obliges a Contracting Party to include a missing part of the description or missing drawing in the application without loss of the filing date, where that missing part or missing drawing is contained in an earlier application and the requirements prescribed in Rule 2(4) are complied with (see Notes R2.03 and R2.04). The text in square brackets, "no later than," would be included only if that text is adopted in paragraph (1).

5.22 Paragraph (6)(c). This provision permits the applicant to withdraw a later filed missing part of the description or missing drawing in order to avoid the date of receipt of that part or that drawing being accorded as the filing date under subparagraph (a). The text in square brackets, "no later than," would be included consequently only if that text is adopted in paragraph (1).

5.23 Paragraph (7). *This paragraph is subject to a reservation by the Delegation of China.*

5.24 Paragraph (7)(a). This provision obliges a Contracting Party to accept, at the time of filing, the replacement of the description and any drawings in an application by a reference to a previously filed application, subject to compliance with the requirements of Rule 2(5) (see Notes R2.05 to R2.08). A Contracting Party may require, in accordance with Article 6(1)(i) (with reference to PCT Article 3(2)), that the replaced description and drawings be filed under Article 6(7) within the time limit prescribed in Rule 6(1). The failure to file that description or drawings within that time limit would not result in the subsequent loss of the filing date, even if the application were refused under Article 6(8)(a). *This provision is subject to a reservation by the Delegation of Japan.*

5.25 Paragraph (7)(b). Under this provision, an application may be considered as not having been filed where the applicant fails to comply with the requirements under Rule 2(5). In accordance with the phrase "a reference, made upon the filing of the application" in paragraph (7)(a), it is implicit that the requirements applied under Rule 2(5)(a) must be complied with on the filing date of the application. Any requirements applied under Rule 2(5)(b) must be complied with within the time limit applied under that Rule (see also Note 6.22).

5.26 Paragraph (8), item (ii). The types of application under this item are prescribed in Rule 2(6).

Notes on Article 6 *Application*

6.01 Paragraph (1). The purpose of this paragraph is to apply the requirements relating to the form or contents of international applications under the PCT, to the extent possible, to national and regional applications. The wording of this provision is modeled after the terminology in PCT Article 27(1).

6.02 It is implicit that the expression "form or contents of an application" is to be construed in the same way as the expression in PCT Article 27(1). The Notes to that Article in the Records of the Washington Diplomatic Conference on the Patent Cooperation Treaty, at page 35 of the Final Text of the Treaty and Notes, contain the following explanation:

"The words 'form or contents' are used merely to emphasize something that could go without saying, namely that requirements of substantive patent law (criteria of patentability, etc.) are not meant."

6.03 In accordance with the general principle contained in Article 2(2), paragraph (1) is similarly not intended to be construed as prescribing any requirements of substantive law (see Note 2.02). The requirement, allowed under Article 29.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), that an applicant for a patent provide information concerning the applicant's foreign applications and grants, is not a requirement as to the "form or contents of an application" under this provision. Similarly, requirements under the law of the United States of America in respect of duty of disclosure, indications relating to an invention that was, or is still being, produced under a United States of America government contract, indications as to whether an application was prepared with the assistance of an invention marketing company and, if so, indications of the name and address of that company, and requirements under the law of India in relation to the disclosure of search results on related applications and patents, are also not requirements as to the "form or contents of an application."

6.04 *The Delegation of the United States of America has reserved its position as regards the applicability of the requirements of PCT Rule 13 (Unity of Invention) under this paragraph, on the grounds that unity of invention is a matter of substantive law, not a formalities matter.* Provision for a reservation as regards the applicability of the requirements of PCT Rule 13 (Unity of Invention) under this paragraph is included in Article 22(1).

6.05 Paragraph (1), introductory words. The requirements referred to in these introductory words which are "otherwise provided for by this Treaty or prescribed in the Regulations" are, in particular, those under paragraphs (2) to (6), Articles 7 and 8 and Rules 7 to 10.

6.06 Item (i). This item prohibits a Contracting Party from imposing requirements in respect of the form or contents of a national or regional application that are more strict than those applicable to international applications under the PCT, except where otherwise provided for in accordance with the introductory words or item (iii) of this paragraph (see Notes 6.05 and 6.09). As in the case of PCT Article 27(4), a Contracting Party is free, under Article 2(1), to provide for requirements in respect of the form or contents of national and regional applications which, from the viewpoint of applicants, are more favorable than the requirements provided for under the PCT.

6.07 Item (ii). This item permits a Contracting Party to require that a national or regional application comply with any requirements relating to the "form or contents" that any PCT Contracting State is allowed to apply in the "national phase" of an international application, in particular, the requirements that are allowed under PCT Rule 51*bis*.1. Under the current wording, this item is not restricted to the particular "national phase" requirements under the PCT that the Contracting Party concerned applies, but rather applies to any "national phase" requirements allowed under the PCT.

6.08 It is implicit in items (i) and (ii) that any relevant amendments or modifications to the PCT, or to the Regulations or Administrative Instructions under the PCT, will automatically have effect under the present Treaty.

6.09 Item (iii). This item provides authority for the further requirements under Rule 3(1) in respect of divisional applications and applications by new applicants determined to be entitled to an invention contained in an earlier application.

6.10 Paragraph (2)(a). This provision permits, but does not oblige, a Contracting Party to require the use of a request Form or format prescribed by that Contracting Party. As regards the term "format", reference is made to Note 8.02. It also allows a Contracting Party to require that the contents of the request which are provided for in respect of international applications under PCT Rule 4.1, as well as any contents under Rule 3(1) of the Regulations under this Treaty, be contained in the request.

6.11 Paragraph (2)(b). This provision obliges a Contracting Party to accept the presentation of the formal contents of a request on a request Form, or in a format, as prescribed in Rule 3(2) (see Notes R3.02 to R3.04).

6.12 The effect of the phrase "and subject to Article 8(1)" is that a Contracting Party may require that a request Form or format provided for in Rule 3(2) comply with the requirements in respect of the form, format and means of filing communications, including applications, applied by that Contracting Party under that Article and Rule 8. However, where, after the expiration of the 10 year period prescribed in Rule 8(1)(a), a Contracting Party excludes the filing of communications on paper, that Contracting Party will still be obliged, under Article 5(1), to accept, for the purposes of the filing date, the filing on paper of a request Form or format containing the indications required under Article 5(1)(a)(i) to (iii) (see Note 5.05).

6.13 Paragraph (3). This paragraph permits a Contracting Party to require, after the filing date, the filing of a translation of the "part which on the face of it appears to be a description" referred to in Article 5(1)(a)(iii), where that part is not in a language accepted by the Office (as permitted for the purposes of the filing date under Article 5(2)(b) – see Note 5.13). It also permits a Contracting Party to require that the applicant file a translation of the other parts of the application that are not in an accepted language, or a transliteration of, for example, a name or address which is not in an accepted alphabet or character set. Reference is also made to the definition of the term "translation" in Article 1(xiii).

6.14 Paragraph (4). This paragraph permits, but does not oblige, a Contracting Party to charge fees in respect of applications. However, it does not regulate to whom the fee is paid, for example, whether it is paid to the Office or to another agency of the government. It also does not regulate the method of payment, so that each Contracting Party is free to decide whether to allow payments made, for example, from a deposit account with the Office or by electronic transaction, or whether to require, for example, in the case of applications filed electronically, that fees be paid by using a deposit account. A Contracting Party is also permitted to require the amount of the fee and/or its method of payment to be indicated, for example, on a fee sheet as prescribed under PCT Rule 3.3(a)(ii).

6.15 In addition to the fee to be paid in respect of the application, a Contracting Party may require the payment of separate fees, for example, for the publication of the application and the granting of the patent. A Contracting Party is permitted to combine those fees and require payment of such a combined fee upon the filing of the application (which may nevertheless be called an "application fee"). However, it follows from Article 5(1) that a Contracting Party may not refuse a filing date because the application fee has not been paid (see Note 5.02).

6.16 Paragraph (5). Regulations under this paragraph are prescribed in Rule 4.

6.17 Paragraph (6). The purpose of this paragraph is to reduce the burden on applicants by restricting the need for evidence in support of the formal contents of applications, declarations of priority and translations. Although it is for each Contracting Party to interpret the phrase "may reasonably doubt the veracity of any matter," the intention is that the Office may not ask for evidence on a systematic or a "spot-check" basis, but only where there are grounds for reasonable doubt. For example, where the applicant claims the benefit of Article 3 of the Paris Convention, but there is doubt as to the veracity of the applicant's allegations as to his nationality, the Office may require evidence in this matter. The Office is obliged, under paragraph (7), to notify the applicant of the requirement to file evidence and, under Rule 5, to state its reason for doubting the veracity of the matter in question.

6.18 In accordance with Article 2(2), the provisions of paragraph (6) do not apply to evidence that may be required in respect of substantive patent law. In particular, irrespective of whether or not there is reasonable doubt, a Contracting Party is permitted to require evidence concerning non-prejudicial disclosures or exceptions to lack of novelty, as is also allowed as a national requirement in respect of international applications under PCT Rule 51*bis*.1(a)(iv).

6.19 Paragraph (7). The time limit under this paragraph is prescribed in Rule 6(1). Reference is also made to the general provisions on notifications under Article 9 (see Notes 9.01 to 9.05).

6.20 Paragraph (8). The time limits under this provision are prescribed in Rule 6(2). *This paragraph is subject to a reservation by the Delegation of Egypt.*

6.21 Paragraph (8)(a). The sanction which may be applied under this provision may include refusal of the application. However, a Contracting Party could not revoke a filing date for failure to comply with requirements referred to in this provision.

6.22 Paragraph (8)(b). In accordance with Article 4D(4) of the Paris Convention, the consequence of failure to comply with the formality requirements in respect of a priority claim within the time limit prescribed under Rule 6(2) is generally the loss of the priority right. In addition, under this provision, the application could not be refused for failing to comply with such requirement. Nevertheless, where the description and drawings of a later application are replaced by a reference to a previously filed application under Article 5(7)(a), and the requirements under that Article, as prescribed in Rule 2(5), are not complied with within the time limit applicable under that Rule, the Contracting Party may refuse that later application under Article 5(7)(b), even though the same requirements are applicable in respect of a priority claim based on the same earlier application. The words "Subject to Article 13" are included to cover the situation in which a priority claim is corrected or added, or a priority right is restored, under that Article.

Notes on Article 7 *Representation*

7.01 This Article relates only to the appointment of a representative and to the possible limitation of the effect of such appointment, but does not deal with the termination of the appointment. In the latter respect, and in respect of any other matter relating to representation which is not covered by the Treaty, a Contracting Party is free to establish whatever provisions that it wishes. For example, a Contracting Party may provide that the appointment of a new representative terminates the appointment of all previous representatives unless otherwise indicated in the power of attorney. Or, a Contracting Party that allows sub-representation may require that the power of attorney expressly authorize a representative to appoint sub-representatives. Furthermore, a Contracting Party may require that, in the case of two or more co-applicants, those co-applicants be represented by a common representative.

7.02 Paragraph (1)(a), introductory words. As regards the terms "representative" and "procedure before the Office," reference is made to the definitions under Article 1(x) and (xiv), respectively (see Notes 1.08 and 1.11).

7.03 Item (i). The phrase "have the right ... to practice before the Office" is modeled after the terminology in PCT Rule 90.1(a) to (c). This item permits a Contracting Party to require that the appointed representative be a person, for example, a registered patent attorney, who is admitted to practice before the Office in respect of applications and patents. It also permits a Contracting Party to have a less strict requirement, for example, that any person may be appointed as representative unless debarred from acting as a representative on the grounds of misconduct. This item also leaves to the applicable law the matter of whether, and what type of, a firm could be appointed as a representative.

7.04 Item (ii). This item permits a Contracting Party to require that a representative provide, as his address, an address on a territory prescribed by the Contracting Party. A Contracting Party may apply this requirement instead of, or in addition to, the requirement that the applicant have the right to practice before the Office under item (i). A Contracting Party could require under item (ii) that the address be on its own territory. It could also require that the address be on any of two or more territories, for example, a Contracting Party that is a member of a regional grouping, such as the European Union, could require that the address be on the territory of any member State of that regional grouping. This item is without prejudice to the right of a Contracting Party to require that a communication contain the address of the representative under Rule 10(1)(b)(i) and an address for correspondence and/or legal service on its own territory under Article 8(6) and Rule 10(2) and (4).

7.05 Paragraph (1)(b) and (c). Paragraph (b) is modeled after PCT Rule 90.3(a). The term "procedure before the Office" is defined under Article 1(xiv) (see Note 1.11). Where any provision of the Treaty or Regulations refers to an act by, or in relation to, an applicant, that act may be performed by, or in relation to, the applicant's representative. However, under paragraph (1)(c), in the case of an oath or declaration or the revocation of a power of attorney, a Contracting Party is free to provide that the signature of a representative shall not have the effect of the signature of the applicant. The situation is the same where an owner or other interested person is represented. For example, where a communication is required to be signed by the applicant, the communication could be signed by the representative on behalf of the applicant. Where the Office is required to notify an applicant under Article 5(3) or 6(7), the notification would normally be sent to the applicant's representative. However, a Contracting Party may provide that correspondence be sent to the person who is represented, where that person provides his own address as the address for correspondence and/or legal service under Article 8(6).

7.06 Paragraph (2). This paragraph permits a Contracting Party to require representation for the purposes of any procedure before the Office after the filing date, except as provided under items (i) to (vi). Currently, items (ii) to (v) are placed in square brackets.

7.07 The effect of the exceptions under items (i) to (vi) is that an applicant, owner or other interested person is permitted to represent himself before the Office in respect of any of the procedures included in items (i) to (vi), provided that items (ii) to (v) would be included without surrounding square brackets. This is of particular benefit for a private person or a small enterprise who wishes to file an application or pay maintenance fees, in his or its own country without the services of a representative. Although an applicant would also be permitted to file an application or translation, and an owner would be permitted to pay maintenance fees, in a foreign country without representation, that applicant or owner could nevertheless be required, under Article 8(6) and Rule 10(2), to provide an address for correspondence and/or legal service in that country.

7.08 Items (i) to (vi) do not prevent an applicant, owner or other interested person from appointing a representative for any of the procedures concerned. However, any such representative must comply with the requirements applicable under paragraph (1). In particular, it is permissible for an applicant to appoint a representative from his own country to represent him in a foreign country, only if that representative is entitled to practice in that foreign country, which will not normally be the case.

7.09 Paragraph (2) is limited to procedures after the filing date for consistency with Article 5, which provides that a filing date be accorded to an application which complies with the requirements of that Article, whether or not the applicant is represented. This limitation permits elements additional to those referred to in Article 5(1)(a), in particular, one or more claims, to be included in the application as filed, and the application as filed to be accompanied by a translation and the filing fee, without the requirement for representation, if these additional elements are submitted before the filing date has been

accorded. However, a Contracting Party is permitted to require a representative to be appointed, for example, for the filing of claims after the filing date. As regards the terms "applicant," "owner," and "procedure before the Office" (see Notes 1.07, 1.08, and 1.11), reference is made to the definitions under Article 1(viii), (ix) and (xiv) and, as regards the expression "other interested person," reference is made to the explanation under Article 8(6) (see Note 8.13). *This paragraph is subject to reservations by the Delegations of Austria, Belgium, China, Cuba, Germany, Ireland, Japan, Kenya, Portugal, the Russian Federation, Spain, Tunisia and Zimbabwe.*

7.10 Item (ii). This item, which is placed in square brackets, permits an applicant to undertake, without representation, any procedure in respect of the filing date under Article 5. It includes such procedures that take place after the filing date, in particular, the filing of a missing part of the description or missing drawing under Article 5(6), and the filing of a copy of the previously filed application under Rule 2(5)(b) where the description and drawings are replaced by a reference to that application under Article 5(7).

7.11 Items (iii) and (iv). These items are placed in square brackets.

7.12 Item (v). This item, which is placed in square brackets, provides that further procedures in respect of which the appointment of a representative may not be required may be prescribed in the Regulations. The Regulations under this item are contained in Rule 7(1) (see Note R7.01). *This item is subject to a reservation by the Delegation of Brazil.*

7.13 Item (vi). Under this item, the requirement to appoint a representative is expressly excluded for the issue of a receipt or a notification by the Office in respect of any of the procedures referred to in items (i) to (v), since the freedom of not having to appoint a representative for such procedures could be undermined if the applicant, owner or other person concerned were required to be represented for the purposes of the issuing of a receipt or notification in respect of such procedures. *This item is subject to a reservation by the Delegation of Brazil.*

7.14 Paragraph (3). The Regulations under this paragraph are prescribed in Rule 7(2) to (4).

7.15 Paragraph (4). This paragraph establishes the exhaustive character of the list of formal requirements permitted under paragraphs (1) to (3) with respect to the matter of representation. The requirements referred to in this paragraph which are "otherwise provided for by this Treaty or prescribed in the Regulations" are, in particular, those under Article 8 and Rule 7.

7.16 Paragraph (5). The time limit under this paragraph is prescribed in Rule 7(5). Reference is also made to the provisions on notifications under Article 9 (see Notes 9.01 to 9.05).

7.17 Paragraph (6). The time limit under this paragraph is prescribed in Rule 7(6).

Notes on Article 8 *Communications; Addresses*

8.01 As to the definition of "communication", reference is made to Article 1(v).

8.02 Paragraph (1)(a). The requirements that a Contracting Party is permitted to apply under this provision are prescribed in Rule 8. The "form" of communication refers to the physical form of the medium which contains the information, for example, paper sheets, a floppy disk or an electronic file. The "format" refers to the presentation or arrangement of the information or data in a communication, for example, the International Standard Application Format, initiated by the United States Patent and Trademark Office, which uses standard data identifier tags to facilitate automatic data capture. The "means" refer to the manner in which the form was delivered or transmitted to the Office. For example, a paper communication mailed to the Office would represent paper form and physical means, while a floppy disk mailed to the Office would represent electronic form and physical means. A telefacsimile transmission resulting in a paper copy would represent a paper form transmitted by electronic means, and an electronic transmission from computer to computer would represent an electronic form transmitted by electronic means. The term "filing of communications" refers to the submission or transmission of any communication to the Office.

8.03 Paragraph (1)(b) and (c). These provisions ensure that no Contracting Party is obliged, against its wishes, to accept the filing of applications in electronic form or by electronic means, or to exclude the filing of applications on paper.

8.04 Paragraph (1)(d). Under this provision, a Contracting Party is obliged to continue to accept the filing of communications on paper for the purpose of complying with a time limit, even where, after the expiration of the 10 year period prescribed in Rule 8(1), a Contracting Party chooses to exclude the filing of communications on paper. While an applicant who filed a communication on paper with an Office that requires electronic communications would not fail to comply with a time limit, the paper form would be treated as a formal defect, and the Office would be permitted to require, under paragraph (7), that the communication be re-filed in an electronic form or by electronic means complying with the requirements applied by that Contracting Party. *This provision is subject to a reservation by the Delegation of Japan.*

8.05 Paragraph (2). This paragraph provides, generally, that a Contracting Party may require that any communication be in a language accepted by the Office as defined in Article 1(xii) (see Note 1.10). However, Article 5(2)(b) expressly provides that, for the purposes of the filing date, the part of the application which on the face of it appears to be a description may be in any language. In that case, the Office may require that a translation be filed under Article 6(3) (see also Note 6.13). The Treaty and Regulations also expressly provide for the filing of a translation of: (i) a copy of an earlier application (Article 6(5) and Rules 2(4)(iii) and 4(4)); (ii) a copy of a previously filed application under Rule 2(5)(b)(i); (iii) a power or attorney under Rule 7(3); and (iv) documentation of the basis of a change in applicant or owner under Rule 16(3), or of the basis of a licensing agreement under Rule 17(3).

8.06 Paragraph (3). This paragraph obliges a Contracting Party to accept communications corresponding to a Model International Form or a Model International Format. The establishment of such Forms and Formats is prescribed in Article 14(1)(c) and Rule 20. The effect of the phrase "subject to paragraph (1)(b)" is that a Contracting Party that does not accept the filing of communications other than on paper (in particular, filing in electronic form or by electronic means) would not be obliged to accept the filing of a request in an International Request Format that applies only to electronic communications. As regards the possibility for a Contracting Party to exclude the filing of communications on paper after the expiration of the 10 year period prescribed in Rule 8(1), reference is made to the explanations under paragraph (1)(d) and Articles 5(1)(a) and 6(2)(b) (see Notes 8.04, 5.05 and 6.12).

8.07 Paragraph (4). In accordance with the definition under Article 1(xi), the term "signature" means any means of self-identification (see also Note 1.09).

8.08 Paragraph (4)(a). Regulations concerning the signature of communications transmitted to the Office on paper, in electronic form or by electronic means are prescribed in Rule 9.

8.09 Paragraph (4)(b). Except in the cases referred to in Notes 8.10 and 8.11, this provision obliges a Contracting Party to accept a signature of the person concerned as sufficient authentication of a communication without the need for further authentication by way of, for example, attestation or notarization of that signature, thereby reducing the burden on applicants, owners and other interested persons.

8.10 In accordance with the exception prescribed in Rule 9(6), a Contracting Party may require confirmation of a signature in electronic form which does not result in a graphic representation of the signature.

8.11 Paragraph (4)(c). In case of reasonable doubt as to the authenticity of the signature, the Office may require the applicant, owner or other person filing the communication to file evidence of authenticity. Such evidence could, at the option of the applicant, owner or other interested person, be in the form of a certification. The Office is obliged under Rule 5 to inform the applicant of the reason for its doubt. In addition, the same considerations that apply to the requirement for evidence under this provision also apply to the requirement for evidence in respect of an application under Article 6(6) (see Note 6.17).

8.12 Paragraph (5). The indications that a Contracting Party may require under this paragraph are prescribed in Rule 10(1).

8.13 Paragraph (6), introductory words. As regards the terms "applicant" and "owner," reference is made to the definitions under Article 1(viii) and (ix), respectively. An "other interested person" could be,

for example, a petitioner for the revocation of a patent or, in the case of a transfer of an application or patent, the new applicant or owner.

8.14 Items (i) and (ii). It is a matter for each Contracting Party to determine what constitutes an address for correspondence or an address for legal service. It is also a matter for each Contracting Party to determine whether, and in what circumstances, it requires an address for correspondence or an address for legal service, or both, and in what communications such address(es) shall be indicated. Since the term "address for service" may be construed, depending on the applicable law, as either of the addresses under item (i) or (ii), a Contracting Party could use the term "address for service" in place of "address for correspondence" or "address for legal service," or both. The Regulations under these items are prescribed in Rule 10(2) to (4) (see Notes R10.03 to R10.05). As regards the sanction for failure to comply with the requirements under paragraph (6), reference is made to paragraph (8) (see Note 8.16).

8.15 Item (iii). This item is intended to provide for any future developments which necessitate a Contracting Party requiring an address other than those under items (i) and (ii), for example, an e-mail address for the purposes of electronic communication. At present, no provision for such other address is included in the Regulations.

8.16 Paragraph (7). The time limit under this paragraph is prescribed under Rule 11(1). Reference is also made to the general provisions on notification under Article 9 (see Notes 9.01 to 9.05).

8.17 Paragraph (8). The time limit under this paragraph is prescribed in Rule 11(2). The effect of the reference to Article 5 is that, where an application complies with the requirements under that Article for according a filing date, a Contracting Party is obliged to accord that filing date, and cannot revoke the filing date for failure to comply with requirements under Article 8, even where the application is subsequently refused under this paragraph (see also Note 5.01). Reference is also made to the Regulations under this paragraph in Rule 10(5).

Notes on Article 9 *Notifications*

9.01 This Article does not regulate the means of notification, for example, by mail or registered mail, or what constitutes the date of a notification for the purposes of determining the expiration of a time limit calculated from that date. These matters are therefore left to the applicable law of the Contracting Party concerned.

9.02 Paragraph (1). This paragraph prescribes the addresses that a Contracting Party is obliged to regard as sufficient for the purpose of notifications under the Treaty and Regulations. The reference to "any other address provided for in the Regulations for the purpose of this provision" is to provide for the possibility of permitting a Contracting Party to utilize other addresses, for example particular types of e-mail addresses, for the purpose of notifications in the future. However, no such other addresses are provided for in the Regulations at present. A Contracting Party may, but is not obliged to, additionally provide that a notification has legal effect even if it is sent to an address that is not referred to in this paragraph.

9.03 Paragraph (2). This provision is included for avoidance of doubt. It applies, in particular, where, as permitted for the purposes of the filing date under Article 5(1)(a)(ii), an application contains indications allowing the identity of the applicant to be established but not indications allowing the applicant to be contacted by the Office.

9.04 Paragraph (3). This paragraph is included for the avoidance of doubt. Although the applicant, owner or other interested person is not relieved of the obligation to comply with the requirements concerned in the absence of a notification, the obligations concerning certain requirements in respect of an application under Articles 6 and 8 are subject, under Article 10(1), to what is, in effect, a statute of limitation on the sanctions which may be applied where a patent is granted despite non-compliance with one or more of those requirements.

9.05 It is also to be noted that this paragraph does not relieve the Office of any obligation under the Treaty and Regulations to notify an applicant, owner or other interested person. Except where indications allowing the applicant, owner or other interested person to be contacted by the Office have not been

filed (see Note 9.03), or where Rule 2(3)(ii) applies (see Note R2.02), the effect of non-notification of non-compliance is that the time limit for compliance does not start to run. If a patent is granted despite non-compliance with a formal requirement referred to in Article 10(1) because the Office did not send a notification, the safeguard under that Article would apply.

Notes on Article 10
Validity of Patent; Revocation

10.01 Paragraph (1). This paragraph establishes that an Office, a court, a board of appeal or any other competent authority may not revoke or invalidate, either totally or in part, a patent once granted where it is subsequently discovered that the application failed to comply with one or more of the specified formal requirements which, although they may be needed for the processing of the application, are not essential to the content of the granted patent. This would apply irrespective of whether the Office failed to notify the applicant, under Article 6(7) or 8(7), of the failure to comply with the requirement(s) concerned or whether the applicant had failed to comply with the requirement(s) in response to a notification under those Articles. Reference is also made to the explanation under Article 9(3) (see Notes 9.04 and 9.05). The phrase "it may not be revoked or invalidated" is intended to also cover sanctions which are of equivalent effect to revocation or invalidation, such as non-enforceability of rights.

10.02 Since paragraph (1) is restricted to requirements in respect of applications, it does not prevent the revocation or invalidation of a granted patent for failure to comply with formal requirements in respect of the patent itself, for example, the requirement under a regional treaty for the filing of a translation of a regional patent. Similarly, it covers only those fees payable prior to the grant of a patent, such as the filing, publication and grant fees. It does not cover the lapse of a patent for the non-payment of a maintenance fee. This paragraph is also not applicable where there has been a voluntary surrender of a patent for the purpose of re-issue.

10.03 A Contracting Party is permitted, but not obliged, to provide for the revocation or invalidation of a granted patent when it is subsequently discovered that a translation of any part of the application required under Article 6(3), or evidence required under Article 6(6), had not been filed.

10.04 The exception for the situation in which the non-compliance occurred as a result of fraudulent intention is included to prevent the applicant benefiting from such fraud. What constitutes "fraudulent intention" is a matter for the relevant law of the Contracting Party. In particular, it may be interpreted to cover inequitable conduct. Alternatively, it may be restricted to the situation in which civil or criminal liability is established.

10.05 Paragraph (2). This paragraph is restricted to two formal aspects of proceedings: first, the owner must be given at least one opportunity to make observations on the intended revocation or invalidation; second, he must have at least one opportunity to make amendments and corrections where permitted under the applicable law. Accordingly, this paragraph does not regulate the grounds on which a granted patent may be revoked or invalidated, such as lack of novelty, nor any other aspect of such proceedings. It also does not regulate the form of observations which an owner may make. For example, an owner may be given the opportunity to file written observations prior to a decision in court proceedings. However, a Contracting Party may, alternatively, provide only for oral observations in such proceedings. No Contracting Party is required to provide an opportunity for amendments and corrections to be made where its national law does not provide for such amendments or corrections, either at all or in the circumstances of the particular proceedings. As in the case of paragraph (1), the phrase "A patent may not be revoked or invalidated" is intended to also cover sanctions which are of equivalent effect to revocation or invalidation, such as non-enforceability of rights (see Note 10.01).

Notes on Article 11
Relief in Respect of Time Limits

11.01 This Article obliges a Contracting Party to provide relief in respect of time limits. Such relief may be in the form of an extension of a time limit under paragraph (1) and/or continued processing under paragraph (2). Such relief is subject only to the filing of a request in accordance with the requirements of paragraph (1) or (2) and Rule 12 (see Note 11.08), and the payment of any fee required under paragraph (4). Accordingly, the applicant or owner cannot be required to state the grounds on which the request is based. In addition, in contrast to the re-instatement of rights under Article 12, a Contracting Party is not permitted to make the grant of relief under Article 11 conditional on a finding of due care or unintentionality by the Office.

11.02 The relief that a Contracting Party is obliged to provide under paragraphs (1) and (2) is restricted to time limits “fixed by the Office for an action in a procedure before the Office.” It is further subject to certain exceptions under paragraph (3) and Rule 12(5) (see Notes R12.04 to R12.09). The term “procedure before the Office” is defined in Article 1(xiv) (see Note 1.11). It is for each Contracting Party to decide which time limits, if any, are fixed by the Office. An example of a time limit that is fixed by some Offices is the time limit for response to an examiner’s substantive examination report. It follows that Article 11 does not apply to time limits that are not fixed by the Office, in particular, time limits established by national legislation or under a treaty providing for the grant of regional patents. It also does not apply to time limits for actions that are not before the Office, for example, actions before a court. Accordingly, although a Contracting Party is free to apply the same requirements in respect of such other time limits, it is also free to apply other requirements, or to make no provision for relief (other than re-instatement of rights under Article 12), in respect of those other time limits.

11.03 Paragraph (1). This paragraph provides for relief in the form of the extension of a time limit fixed by the Office. Under item (i), a Contracting Party may require that the request for extension be filed before the expiration of that time limit. Under item (ii), a Contracting Party may require that the request be filed after that expiration and within the time limit prescribed in Rule 12(2)(a). A Contracting Party may, of course, provide for both types of relief under items (i) and (ii). The requirements in respect of the request, the period of the extension, and the time limit for making a request referred to in item (ii) are prescribed in Rule 12(1) and (2). In particular, a Contracting Party may, under Rule 12(2)(b), require that all of the requirements in respect of which the time limit to be extended applied be complied with at the same time as the request under item (ii) is filed.

11.04 Paragraph (1) does not oblige a Contracting Party to provide for the extension of a time limit fixed by the Office under either item (i) or (ii). However, a Contracting Party that does not provide for extension after expiration of the time limit under item (ii) must provide for continued processing under paragraph (2).

11.05 Paragraph (2). This paragraph obliges a Contracting Party to provide for relief in the form of continued processing, after the applicant or owner has failed to comply with a time limit fixed by the Office, where that Contracting Party does not provide for the extension of time limits under paragraph (1)(ii). The effect of such continued processing is that the Office continues with the procedure concerned as if that time limit had been complied with. Also, the Office must, if necessary, re-instate the rights of the applicant or owner with respect to the application or patent concerned. The requirements in respect of the request referred to in item (i) are prescribed in Rule 12(3). The time limit for making a request, and complying with all of the requirements in respect of which the time limit concerned applied, referred to in item (ii), is prescribed in Rule 12(4). *This paragraph is subject to a reservation by the Delegation of France, with respect to the lack of a requirement for notification.*

11.06 Paragraph (3). The exceptions under this paragraph are prescribed in Rule 12(5).

11.07 Paragraph (4). Although a Contracting Party is permitted to charge a fee under this paragraph, it is not obliged to do so. Reference is also made to the explanation given under Article 6(4) (see, in particular, Note 6.14).

11.08 Paragraph (5). This provision prohibits a Contracting Party from imposing requirements additional to those provided under paragraphs (1) to (4). In particular, the applicant or owner concerned cannot be required to state the grounds on which the request is based or to file evidence with the Office. The requirements referred to in this paragraph which are “otherwise provided for by this Treaty or prescribed in the Regulations” are, in particular, those under Articles 7 and 8 and Rules 7 to 10.

11.09 Paragraph (6). This paragraph provides only the right to make observations on the intended refusal of a request under paragraph (1), for example, to assert that a fee required under paragraph (4) had in fact been paid. It does not provide an additional time limit to comply with any requirement under Article 11 or Rule 12 that was not complied with in making the request.

Notes on Article 12

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

12.01 This Article obliges a Contracting Party to provide for the re-instatement of rights with respect to an application or patent following failure to comply with a time limit for an action in a procedure before the Office. In contrast to Article 11, such re-instatement is subject to a finding by the Office that the failure occurred in spite of all due care required by the circumstances or, at the option of the Contracting Party, was unintentional. Also in contrast to Article 11, Article 12 is not restricted to time limits fixed by the Office, although it is subject to certain exceptions under paragraph (2) and Rule 13(3). *Article 12 is subject to a reservation by the Delegation of Argentina.*

12.02 Paragraph (1), introductory words. The condition that "that failure has the direct consequence of causing a loss of rights with respect to an application or patent" is intended to avoid circumventing the exclusions provided under Rule 13(3). For example, where failure to comply with a time limit under Article 13(1), (2) or (3) in respect of a priority claim or priority right has the direct consequence of the loss of that priority claim or priority right which, in turn, has the indirect consequence of the refusal of the application on the grounds of prior publication, a Contracting Party would not be obliged to provide, under paragraph (1), for re-instatement of the loss of rights resulting from that refusal. As regards the term "procedure before the Office," reference is made to the definition in Article 1(xiv) (see Note 1.11).

12.03 Item (i). The Regulations under this item are prescribed in Rule 13(1).

12.04 Item (ii). The time limit under this item is prescribed in Rule 13(2).

12.05 Item (iii). The applicant or owner may be required under paragraph (4) to file a declaration or other evidence in support of the grounds provided under this item.

12.06 Item (iv). This item restricts restoration of rights under paragraph (1) to cases where the failure to comply with the time limit occurred in spite of all due care required by the circumstances, or, at the option of the Contracting Party, was unintentional, for example, where there had been a loss in the mail or an interruption in the mail service, as provided for under PCT Rule 82. *This item is subject to a reservation by the Delegation of the United Kingdom.*

12.07 Paragraph (2). The exceptions under this paragraph are prescribed in Rule 13(3).

12.08 Paragraph (3). Reference is made to the explanations given under Article 6(4) (see, in particular, Note 6.14).

12.09 Paragraph (5). This paragraph provides the right to make observations on the intended refusal of a request under paragraph (1). It does not, however, provide an additional time limit to comply with any requirement which was not complied with in making the request. As in the case of Article 10(2), this paragraph does not regulate the form of observations which an applicant or owner must be given an opportunity to make (see Note 10.05).

12.10 Intervening Rights. The Treaty and Regulations do not regulate the rights, if any, acquired by a third party for any acts which were started, or for which effective and serious preparations were started, in good faith, during the period between the loss of rights resulting from the failure to comply with the time limit concerned and the date on which those rights are re-instated. These are left to the relevant law of the Contracting Party.

Notes on Article 13

Correction or Addition of Priority Claim; Restoration of Priority Right

13.01 Paragraph (1). This provision, which is modeled after PCT Rule 26bis.1, permits the applicant to

correct or add a priority claim, on or after the filing date, to an application which could have claimed the priority of an earlier application but did not do so. It applies both where the application as filed contains no priority claim and where the application already claims the priority of one or more earlier applications. This provision is compatible with the Paris Convention since that Convention does not require that the priority claim ("the declaration" referred to in Article 4D(1) of that Convention) be contained in the subsequent application itself.

13.02 Item (i). The requirements referred to in this item are prescribed in Rule 14(2).

13.03 Item (ii). The time limit referred to in this item is prescribed in Rule 14(3).

13.04 Item (iii). It is to be noted that, where the filing date of the subsequent application is later than the date of expiration of the priority period, restoration of the priority right may be possible under paragraph (2).

13.05 Paragraph (2). This provision provides for the restoration of the priority right where a subsequent application is filed after the expiration of the priority period, but within the time limit referred to in Rule 14(4)(a). It applies only where the failure to file the application within the priority period occurred in spite of all due care required by the circumstances having been taken, or, at the option of the Contracting Party, was unintentional. However, the priority period, namely the 12-month period under Article 4C(1) of the Paris Convention, would not be extended. A priority claim may be restored under this paragraph even if it was not included in the subsequent application as filed, provided that it accompanies the request for restoration (see Rule 14(5)(ii)). *This paragraph is subject to reservations by the Delegations of Argentina, Belgium, China, India, the Netherlands and Spain.*

13.06 Item (i). The requirements under this item are prescribed in Rule 14(5).

13.07 Item (ii). The time limit referred to in this item is prescribed in Rule 14(4)(b).

13.08 Paragraph (3). This paragraph provides a remedy for the applicant where a right of priority is lost because of the failure on the part of the Office with which the earlier application was filed to provide a copy of that application in time to comply with the time limit applicable under Article 6, despite a timely request for that copy having been made. Since this time limit would normally be established by national legislation or under a regional treaty, but not by the Office, a remedy in this respect would not normally be available by way of extension of time limit or continued processing under Article 11.

13.09 Item (i). The requirements under this item are prescribed in Rule 14(6).

13.10 Item (ii). The effect of this item is to permit an applicant who is unable to file the required copy of the earlier application within the time limit referred to in Rule 4(1) to, instead, file a request for restoration of the priority right within that time limit.

13.11 Item (iii). The time limit for making a request for a copy of the earlier application under this item is prescribed in Rule 14(7) (see Note R14.06). This time limit provides a legal assurance for the applicant in that, if he requests a copy of the earlier application within that time limit, he is entitled to restore his priority right in the event that the Office concerned fails to provide that copy in time for compliance with the time limit referred to in Rule 4(1).

13.12 Paragraph (4). Reference is made to the explanations given under Article 6(4) (see, in particular, Note 6.14).

13.13 Paragraph (5). Reference is made to the explanations given under Article 12(5) (see Note 12.09).

13.14 Intervening Rights. Reference is made to the explanations regarding intervening rights under Article 12 (see Note 12.10).

Notes on Article 14
Regulations

14.01 Paragraph (1)(a). This provision corresponds to Article 24(1) of the Geneva Act of the Hague Agreement Concerning the International Deposit of Industrial Designs ("the Geneva Act").

14.02 Paragraph (1)(b). The Regulations under this provision are prescribed in Rules 15 to 18.

14.03 Paragraph (1)(c). The Regulations under this provision are prescribed in Rule 20. Reference is also made to Article 16(2)(ii).

14.04 Paragraph (2). The three-fourths majority for amending the Regulations under this paragraph is the same as that for amending the PCT Regulations under PCT Article 58(2)(b).

14.05 Paragraph (3)(a). PCT Article 58(3)(a)(i) similarly provides that the PCT Regulations specify the PCT Rules which may be amended only by unanimous consent. It is proposed that amendment of Rules 3(1) and 8(1)(a) should require unanimity under this provision (see Rule 21).

14.06 Paragraph (3)(b). PCT Article 58(3)(b) and (c) contains a similar requirement for unanimity in respect of the exclusion, or inclusion, of Rules which may be amended only by unanimous consent.

14.07 Paragraph (3)(c). This paragraph is modeled after Rule 36(1) of the WIPO General Rules of Procedure.

Notes on Article 15
Relation to the Paris Convention

15.01 Paragraph (1). This paragraph is modeled after Article 2(2) of the Geneva Act and Article 15 of the Trademark Law Treaty ("TLT"). It obliges each Contracting Party to comply with those provisions of the Paris Convention which concern patents, namely Articles 2 to 5^{quater}, 11 and 12. This obligation is required since Article 19 entitles States that are members of the World Intellectual Property Organization ("WIPO"), as well as certain intergovernmental organizations, to become party to the Treaty, even if they are not party to the Paris Convention.

15.02 Paragraph (2)(a). This provision is modeled after Article 1(2) of the WIPO Copyright Treaty ("WCT") and Article 1(1) of the WIPO Performances and Phonograms Treaty ("WPPT"). It maintains the existing obligations that Contracting Parties have to each other under the Paris Convention.

15.03 Paragraph (2)(b). This provision, which is included for the avoidance of doubt, maintains the rights of applicants and owners under the Paris Convention.

Notes on Article 16
Assembly

16.01 Paragraph (1)(a). This provision, which is modeled after WCT Article 15(1)(a) and WPPT Article 24(1)(a), establishes an Assembly of Contracting Parties. In accordance with Article 1(xviii), the term "Contracting Party" means any State or intergovernmental organization party to this Treaty.

16.02 Paragraph (1)(b). This provision is modeled after Article 21(1)(b) of the Geneva Act.

16.03 Paragraph (1)(c). This provision is also contained in WCT Article 15(1) and WPPT Article 24(1). However, the relevant provisions of those treaties contain a further sentence, not contained in the present provision, that would enable the Assembly to request that a share of WIPO funds be spent on activities relating to the Treaty. In this context, it is to be noted that the Treaty does not establish any financial obligations: Contracting Parties do not have to pay any contribution to WIPO, neither does the Assembly adopt a program and budget.

16.04 Paragraph (2), item (i). This item is modeled after Article 21(2)(i) of the Geneva Act. Corresponding provisions are contained in WCT Article 15(2)(a) and WPPT Article 24(2)(a).

16.05 Item (ii). This item parallels Article 14(1)(c).

16.06 Item (iii). This item is the same as Article 21(2)(iv) of the Geneva Act.

16.07 Item (v). Similar provisions are contained in Article 21(2)(ix) of the Geneva Act, WCT Article 15(2)(b) and WPPT Article 24(2)(b).

16.08 Item (vi). A similar provision is contained in Article 21(2)(x) of the Geneva Act.

16.09 Paragraph (3). This paragraph is modeled after Article 21(3) of the Geneva Act. A provision along similar lines is contained in PCT Article 53(5)(a).

16.10 Paragraph (4)(a) and (b), item (i). These provisions are modeled after Article 21(4)(a) and (b)(i) of the Geneva Act.

16.11 Paragraph (4)(b), item (ii). The first two sentences of this item are modeled after Article 21(4)(b)(ii) of the Geneva Act. The third sentence ensures that two intergovernmental organizations with one or more States in common, for example, the European Community and the European Patent Organization, may not both participate in the same vote in place of their member States. The question of whether an intergovernmental organization or its member States should vote is a matter to be decided by that organization and those States.

16.12 Paragraph (5). This paragraph is modeled after Article 21(5) of the Geneva Act and PCT Article 53(6).

16.13 Paragraphs (6) and (7). These paragraphs are modeled after WCT Article 15(4) and (5) and WPPT Article 24(4) and (5) (except in respect of the provisions regarding a quorum and majorities which are regulated by paragraphs (3) and (5), respectively). The more detailed provisions contained in Article 21(6) and (7) of the Geneva Act, which reflect the more detailed administrative tasks of the Hague Assembly, are not needed for the purposes of this Treaty. For example, under Article 21(2)(vi) of the Geneva Act, the Hague Assembly has the task of determining the program and adopting the biennial budget of the Hague Union and approving its final accounts.

Note on Article 17
International Bureau

17.01 This Article is modeled after Article 22 of the Geneva Act.

Notes on Article 18
Revisions

18.01 Paragraph (1). The first sentence of this paragraph is modeled after Article 25(1) of the Geneva Act and PCT Article 60(1). The second sentence is modeled after Article 21(2)(a)(iii) of the Geneva Act and PCT Article 60(2).

18.02 Paragraph (2). This paragraph specifies those provisions of the Treaty which may be revised by the Assembly, without requiring a revision conference of the Contracting Parties under paragraph (1). It is restricted to amendments in respect of the tasks and sessions of the Assembly under Article 16(2) and (6). Article 25(2) of the Geneva Act and PCT Article 61(2)(a) similarly provide, *inter alia*, for amendment, by the respective Assemblies, of provisions relating to those Assemblies.

18.03 Paragraph (3)(a). This provision is modeled after Article 26(1) of the Geneva Act and PCT Article 61(1).

18.04 Paragraph (3)(b). This provision is modeled after Articles 25(2) and 26(2) of the Geneva Act and PCT Article 61(2)(b). However, it is to be noted that, although the adoption, by the Hague Assembly, of any amendment to certain Articles referred to in Article 25(2) of the Geneva Act generally requires a three-fourths majority, any amendment to the provisions relating to the Assembly contained in Article 21

of that Act requires a four-fifths majority, since all the provisions under that Article, including the provisions with respect to voting rights, could be amended by the Hague Assembly.

18.05 Paragraph (3)(c). This provision is modeled after Articles 25(3) and 26(3) of the Geneva Act and PCT Article 61(3).

Notes on Article 19 *Becoming Party to the Treaty*

19.01 Paragraph (1). This paragraph permits any State which is a party to the Paris Convention or a member of WIPO to become party to the Treaty if it either maintains an Office or provides for patents to be obtained through the Office of another State or of an intergovernmental organization. This means that, in addition to States which grant their own patents, States which do not grant patents, but for which patents are obtainable through another Office, are eligible to become party to the Treaty.

19.02 Paragraph (2). Under this paragraph, an intergovernmental organization, subject to admission by the Assembly, is eligible to become party to the Treaty if it complies with two conditions. First, in line with the requirements for the eligibility of States under paragraph (1), at least one of its member States must be party to the Paris Convention or a member of WIPO. Second, it must make a declaration that (i) it is competent to grant patents with effect for its member States, or (ii) it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by the Treaty. The regional organizations listed in paragraph (3) are all competent to grant patents with effect for their member States in accordance with item (i). Although it is apparent that an intergovernmental organization must also be duly authorized, in accordance with its internal procedures, to become party to the Treaty, this is a matter for that intergovernmental organization and its member States, not the Assembly. *Item (ii) of this paragraph is subject to a reservation by the Delegation of the United States of America.*

19.03 Paragraph (3). This paragraph provides for the regional organizations listed in square brackets to become party to the Treaty without a decision of the Assembly, subject to their making a declaration referred to in paragraph (2) at the Diplomatic Conference. Any regional organization listed in this paragraph that does not make the prescribed declaration at the Diplomatic Conference will still be eligible to be admitted to become party to the Treaty, subject to a decision of the Assembly, under paragraph (2).

19.04 Paragraph (4). This paragraph is modeled after Article 27(2) of the Geneva Act.

Notes on Article 20 *Entry into Force; Effective Dates of Ratifications and Accessions*

20.01 Paragraph (1). The requirement of the deposit of ten instruments of ratification or accession for entry into force of the Treaty under this paragraph was adopted by the Standing Committee on the Law of Patents at its second session. As in the case of Article 28(2) of the Geneva Act, and other WIPO treaties, including the PCT, WCT and WPPT, only instruments deposited by States are taken into consideration. These requirements are intended to ensure that the initial Assembly comprises a substantial number of States at the time the Treaty enters into force. The period of three months between the deposit of the required number of instruments of ratification or accession and the entry into force of the Treaty is the same as that under Article 28(2) of the Geneva Act and under other WIPO treaties, including the treaties referred to above.

20.02 Paragraph (2). This paragraph is modeled after WCT Article 21, WPPT Article 30 and TLT Article 20(3), taking into account the provisions of Article 28(3) of the Geneva Act.

20.03 Items (ii) to (iv). The three-month period mentioned in these items is the same as that under Article 28(3) of the Geneva Act, as well as under the PCT, WCT, WPPT and TLT. It takes into account that the instrument of ratification or accession of the intergovernmental organizations referred to in Article 19(3) are not among the ten instruments that cause the initial entry into force of the Treaty. Other intergovernmental organizations may deposit an instrument of accession only after the entry into force of the Treaty, since their request for accession will have to be decided upon by the Assembly, which will start

functioning only after the entry into force of the Treaty. The words "or from any later date indicated in that instrument" are modeled after Article 28(3)(b) of the Geneva Act .

Notes on Article 21

Application of the Treaty to Existing Applications and Patents

21.01 Paragraph (1)(a). This provision obliges a Contracting Party to apply the provisions of the Treaty and Regulations to all patents in force and applications pending at the date on which the Treaty and Regulations bind that Contracting Party. It is subject to two exceptions. First, a Contracting Party is not obliged to apply, to pending applications or existing patents, the provisions in respect of the filing date of an application under Article 5, the form or contents of an application under Article 6(1) or the presentation of contents of an application under Article 6(2). Second, it is subject to the provisions of paragraph (2) (see Note 21.03).

21.02 Paragraph (1)(b). This provision, which is included in square brackets, would oblige a Contracting Party to provide for re-instatement, under Article 12, of loss of rights with respect to an application or patent, after a finding of due care or unintentionality by the Office, where the applicant or owner has failed to comply with a time limit. As expressly provided, it applies even where the failure to comply with that time limit occurred prior to the date on which the Contracting Party is bound by the Treaty. Accordingly, this provision would oblige a Contracting Party that did not already do so, to provide for the re-instatement, under Article 12, of rights in applications that had lapsed or been refused or abandoned, and patents that had lapsed or been revoked or invalidated, prior to that date. In practice, this would apply only to those applications and patents in respect of which the time limit provided in Rule 13(2) for making a request under Article 12 has not expired.

21.03 Paragraph (2). Under this paragraph, a Contracting Party is not obliged to apply the provisions of the Treaty and Regulations to individual procedures in proceedings with respect to applications and patents, if that procedure commenced before the date on which the Treaty and Regulations bind that Contracting Party. A Contracting Party is free to interpret the term "procedure," and to decide whether such procedure is considered as having commenced before or after the date on which the Treaty binds that Contracting Party. However, where, for example, the Office of a State, which is not yet bound by the Treaty, notifies a time limit for an action in a procedure, that is less than the time limit for that action prescribed by the Regulations, and that State subsequently becomes bound by the Treaty during that time limit, the Office will not be obliged to change the notified time limit since the procedure in question commenced before the date on which that State became so bound.

Notes on Article 22

Reservations

22.01 Paragraph (1). This paragraph, which is modeled after TLT Article 21(1), permits a reservation in respect of requirements as to unity of invention, *and is introduced in response to a reservation with respect to Article 6(1) expressed by the Delegation of the United States of America (see Note 6.04)*. The inclusion of any further reservations in this Article is a matter for the Diplomatic Conference. As provided for in paragraph (4), a Contracting Party is not permitted to make any reservation that is not provided for in this paragraph, as adopted by the Diplomatic Conference.

22.02 Paragraphs (2) to (4). These paragraphs are modeled after TLT Article 21(2) to (4).

Notes on Article 23

Denunciation of the Treaty

23.01 Paragraph (1). This paragraph is modeled after Article 23(1) of the Geneva Act. Corresponding provisions are also contained in WCT Article 23, first sentence, WPPT Article 31, first sentence and TLT Article 23(1).

23.02 Paragraph (2). This paragraph is modeled after Article 23(2) of the Geneva Act. A corresponding provision is also contained in TLT Article 23(2).

Notes on Article 24
Languages of the Treaty

24.01 Paragraph (1). This provision is modeled after Article 33(1)(a) of the Geneva Act.

24.02 Paragraph (2). This paragraph provides for the establishment, by the Director General, of official texts in further languages after consultation with the interested parties. The definition of "interested party" in the second sentence takes account of the provisions regarding eligibility of States and intergovernmental organizations to become party to the Treaty under Article 19(1) to (3). Article 33(1)(b) of the Geneva Act similarly provides for the establishment of texts in further languages, but is restricted to consultation with the interested governments, even though intergovernmental organizations are eligible to become party to that Act under Article 27(1)(ii).

Note on Article 25
Signature of the Treaty

25.01 The provision, under this Article, that the Treaty shall remain open for signature, at the WIPO headquarters, for one year after the adoption of the Treaty, is modeled after the provision under Article 33(1) of the Geneva Act. For consistency with the provisions of Article 19(1) of this Treaty, only those States that are eligible to become party to the Treaty may sign it. Similarly, the only intergovernmental organizations that may sign are those regional organizations that are entitled to become party to the Treaty under Article 19(3) without having to await admission by the Assembly. Any eligible State or intergovernmental organization that has not signed the Treaty may deposit an instrument of accession under Article 19(4)(ii).

Notes on Article 26
Depositary; Registration

26.01 Paragraph (1). This paragraph is modeled after Article 34 of the Geneva Act, and corresponds to present trends in WIPO (see also, for example, WCT Article 25, WPPT Article 33 and TLT Article 25).

26.02 The depositary functions include archival responsibility for the signed copy of the Treaty, the placing of the original copy at the disposal of those States which wish and have the right to sign it, the establishment and distribution of certified copies of the Treaty, the receipt of the deposit of instruments of ratification or accession and of notifications of denunciation, as well as the individual notification of those events to all interested parties, and the publication of all signatures, ratifications, accessions and denunciations and dates of entry into force of the Treaty.

26.03 Paragraph (2). This paragraph is for the purpose of clarity. It corresponds to similar provisions in other treaties, for example PCT Article 68(3).

II. EXPLANATORY NOTES ON THE BASIC PROPOSAL FOR THE REGULATIONS UNDER THE PATENT LAW TREATY

Notes on Rule 2 *Details Concerning the Filing Date Under Article 5*

R2.01 Paragraphs (1), (2), item (i) and (3), item (i). The time limits of not less than two months from the date of the notification, prescribed by these provisions for subsequent compliance with the filing date requirements of Article 5(1) and (2), are more favorable, from the viewpoint of applicants, than the corresponding time limits under PCT Rules 20.2(a)(ii) and 20.6(b), which prescribe a time limit of between 10 days and one month for fulfilling the filing date requirements in respect of an international application under PCT Article 11(1). This difference takes account of the situation that international applications are usually filed with the applicant's national office as a receiving Office under the PCT, whereas many applications filed under the national/regional patent laws originate from foreign countries. Where indications allowing the applicant to be contacted have been filed, the time limits under paragraph (2), item (i), and paragraph (3), item (i), do not start running until the Office has notified the applicant under Article 5(3) (see Notes 9.02 to 9.05).

R2.02 Paragraphs (2), item (ii), and (3), item (ii). These items are included for avoidance of doubt. They apply where, as permitted for the purposes of the filing date under Article 5(1)(a)(ii), an application contains indications allowing the identity of the applicant to be established but not indications allowing the applicant to be contacted by the Office. It is to be noted that the time limit under paragraph (3)(ii) applies in all cases where a notification has not been made, and not only where indications allowing the applicant to be contacted have not been filed.

R2.03 Paragraph (4), item (iii). As regards the expression "a language accepted by the Office," reference is made to the explanation under Article 1(xii) (see Note 1.10). As regards the term "translation," reference is made to the definition in Article 1(xiii).

R2.04 Items (iv) and (vi). The determination under item (iv) that the missing part of the description or missing drawing is completely contained in the earlier application could be carried out as a clerical check, based on the indication provided by the applicant under item (vi) as to where that missing part or missing drawing is contained in the earlier application or translation of the earlier application.

R2.05 Paragraph (5). It is to be noted that this paragraph does not require that the previously filed application be in the name of the applicant of the application containing the reference or his predecessor in title. References to the previously filed application filed by a person who was neither the applicant of that application nor his successor in title can be expected to occur only in rare cases. For example, in the case of entitlement disputes which may occur in respect of an invention resulting from a joint research project, a reference to the previously filed application filed by another person may be necessary, if such a dispute exists at the time of filing an application. Where the applicant indicated in the application containing the reference is not the same as the applicant identified in the previously filed application, the Office may require that documentary evidence as to the later applicant's entitlement to file the application be filed under Article 6(1)(ii) (with reference to PCT Article 27(2)(ii) and PCT Rule 51bis.1(a)(ii) to (iv)), within the time limit prescribed in Rule 6(1). *The Delegation of the Russian Federation has reserved its position concerning the omission from this paragraph of a requirement that the applicant identified in the previously filed application be the same as, or be the predecessor in title of, the applicant identified in the application containing the reference or, in the case of two or more applicants, that at least one of those applicants be identified as an applicant in both applications.*

R2.06 Paragraph (5)(a). In accordance with this provision, the indication that the description and any drawings are replaced by the reference to the previously filed application, as well as the number of that application and the Office with which that application was filed, must be included in the application. This provision does not require that the reference identify any claims of the previously filed application that are incorporated by reference, since claims are not required for the purposes of the filing date.

R2.07 Paragraph (5)(b), item (i). In order to incorporate the content of the replaced description and drawings, a Contracting Party may require a copy, or a certified copy, of the previously filed application. A certified copy of the previously filed application referred to in item (ii) may provide a safeguard against fraudulent references.

R2.08 Item (ii). The time limit of not less than four months under this item corresponds to the minimum time limit for filing a certified copy of an earlier application in respect of a priority claim under Rule 4(1) and (2).

Notes on Rule 3

Details Concerning the Application Under Article 6(1) and (2)

R3.01 Paragraph (1). This paragraph provides for further requirements in respect of divisional applications under Rule 2(6)(i), and applications by new applicants determined to be entitled to an invention contained in an earlier application under Rule 2(6)(iii). It does not provide for indications in respect of applications for a patent of addition, or applications for a continuation or continuation-in-part (as referred to in Rule 2(6)(ii)), since the requirements in respect of such applications under PCT Rule 4.13 and 4.14, respectively, are incorporated by reference under Article 6(1)(i). Amendment of this paragraph requires unanimity under Rule 21.

R3.02 Paragraph (2), item (i). This item obliges a Contracting Party to accept the use of a request Form corresponding to the PCT request Form with any modifications established by the Assembly under Rule 20(1)(b). Such modifications could include, for example, omission of the indication for the designation of PCT Contracting States, omission of the indication for the designation of States of regional organizations, and the addition of the indications for a request that the application be treated as a divisional application or an entitlement application referred to in Rule 2(6)(i) and (iii).

R3.03 Items (ii) and (iii). Item (ii) permits an applicant to use a PCT request Form for the purpose of filing a national or regional application by accompanying the Form with an indication to that effect. Item (iii) provides for the future possibility that the PCT request Form may be modified to provide for such an indication.

R3.04 Item (iv). As regards the term "format," reference is made to the explanation under Article 8(1)(a) (see Note 8.02).

Notes on Rule 4

Availability of Earlier Application Under Article 6(5) and Rule 2(4) and of Previously Filed Application Under Rule 2(5)(b)

R4.01 Paragraph (1). The time limit under this provision for filing a copy of the earlier application is not less than 16 months from the filing date of the earlier application. This time limit, which is the same as that under PCT Rule 17.1, is more generous than the minimum period of three months from the filing of the subsequent application provided in Article 4D(3) of the Paris Convention. It is to be noted that, under that Article of the Paris Convention, a Contracting Party may not require a fee for the filing of the copy, if it is filed within three months of the filing of the subsequent application. If the time limit under paragraph (1) is not complied with because of a failure, on the part of the Office with which the earlier application was filed, to provide a copy in time, restoration of the priority right may be available under Article 13(3).

R4.02 Paragraph (2). This paragraph maintains the right of a Contracting Party, under Article 4D(3) of the Paris Convention, to require certification of the copy of the earlier application and of the date of filing of that application.

R4.03 Paragraph (3). The intention of this paragraph is to reduce the burden on applicants of providing copies of earlier applications and previously filed applications, and certification of filing dates. Thus, where the earlier application or previously filed application was filed with the Office of the Contracting Party concerned, it would serve no useful purpose for the applicant to request a copy of the earlier application or previously filed application from that Office and then re-file it with the same Office. Similarly, in that circumstance, certification of the filing date would serve no purpose since it would be that Office which provides the certification.

R4.04 The expression “is available to that Office in a legally accepted electronic format from a digital library which is accepted by that Office” is included to take account of developments which would enable Offices to obtain copies of earlier applications from such a digital library.

R4.05 Paragraph (4). Under Article 4D(3) of the Paris Convention, any country of the Paris Union may require that a copy of an earlier application be accompanied by a translation. However, the high cost of preparing different translations for the different countries in which priority is claimed may impose a significant burden on applicants. In addition, it is generally accepted that, in a majority of cases, no use is made of such translations because the determination of the priority date is not put at issue. Also, a translation of an earlier application can be made at any time after the copy of the earlier application has been filed should the need arise. Accordingly, in order to significantly reduce the burden on applicants, paragraph (4) provides that Contracting Parties waive their right under the Paris Convention to require a translation of an earlier application in every case, but instead require such translation only where the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable. Where that question is to be determined, the Office may invite the applicant to file the translation within the time limit which shall be not less than two months from the date of the invitation and not less than the time limit, if any, applied under paragraph (1). It is for the Contracting Party to decide whether, in any particular case or circumstance, “the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable.” *This provision is subject to reservations by the Delegations of Belgium, China, Greece, India, Ireland, Portugal, the Russian Federation, Spain and Uruguay.*

Note on Rule 6

Time Limits Concerning the Application Under Article 6(7) and (8)

R6.01 Paragraph (2). Where the filing date of an application is not earlier than the date on which one or more of the elements referred to in Article 5(1)(a) were first received by the Office, a Contracting Party is permitted to calculate the time limit under item (ii) from the filing date. This would not be possible in the case of applications, for example, divisional applications, which are entitled to an earlier filing date. Reference is also made to the explanation given under Rule 2(2) and (3) (see Notes R2.01 and R2.02).

Notes on Rule 7

Details Concerning Representation Under Article 7

R7.01 Paragraph (1). Items (i) and (ii) of this paragraph, which is placed in square brackets, relate to the filing of copies of earlier and previously filed applications, after the filing date, in the procedures referred to in Article 5(6)(b) and (7)(a), respectively. These items will therefore not be required if Article 7(2)(ii), which is placed in square brackets and applies generally in respect of “any procedure referred to in Article 5,” is adopted. If neither these items nor Article 7(2)(ii) are adopted, a Contracting Party will be permitted to require an applicant to use a representative to file a copy of an earlier application or previously filed application that is required under Article 5(6)(b) or (7)(a) for the purposes of the filing date.

R7.02 Paragraph (2)(a). This provision obliges a Contracting Party to accept the appointment of a representative either (i) in a separate power of attorney signed by the applicant or other person appointing the representative, or (ii) in the request Form or format signed by the applicant (as under PCT Rule 90.4 (a)). A Contracting Party is free, but not obliged, to accept the appointment of a representative in any other manner. As in the case of communications in general, a Contracting Party is permitted, under Article 8 and Rule 8, to apply requirements as regards the form, format and means of filing a power of attorney. Under Article 8(3), a Contracting Party is obliged to accept the presentation of a power of attorney on a Model International Form, or in a Model International Format, established under Rule 20(1)(a)(i) or (2).

R7.03 Paragraph (2)(b). This provision obliges a Contracting Party to accept a single power of attorney in respect of one or more applications and/or patents of the same person. A Contracting Party is also obliged to accept what is sometimes referred to as a “general power of attorney,” that is, a power of attorney that relates to all existing and future applications and/or patents of the same person. In the second sentence, the words “subject to any exception indicated by the appointing person” oblige a Contracting Party to allow the person making the appointment to indicate possible exceptions in the

power of attorney itself (for example, appointment only for future applications and patents), or to make exceptions at a later time. Apart from this, Rule 7 does not regulate further details of the so-called "general power of attorney."

R7.04 Under the third sentence of paragraph (2)(b), a Contracting Party is permitted to require that a separate copy of the single power of attorney be filed for each application and patent to which it relates. It is also permitted to require, under Rule 10(1)(b)(ii), that any communication made to the Office by a representative for the purposes of a procedure before the Office contain a reference to any power of attorney or general power of attorney.

R7.05 Paragraph (3). As regards the terms "a language accepted by the Office" and "translation," reference is made to Article 1(xii) and (xiii) (see Note 1.10).

R7.06 Paragraph (4). An Office that requires evidence under this paragraph is obliged, under Rule 5, to state its reason for doubting the veracity of the indication in question. This paragraph applies even in the case of an indication which is submitted voluntarily by the applicant, without any requirements under the law of the Contracting Party concerned. As regards the phrase "where the Office may reasonably doubt the veracity of," reference is made to the explanation under Article 6(6) (see Note 6.17).

Notes on Rule 8 *Filing of Communications Under Article 8(1)*

R8.01 Paragraph (1)(a). This provision guarantees the right of applicants, owners and other interested persons to file communications on paper for a period of 10 years from the date of entry into force of the Treaty. After that period, any Contracting Party would be permitted, but not required (see Article 8(1)(c)) to exclude the filing of communications on paper, except for the purposes of a filing date under Article 5(1) and for meeting a time limit under Article 8(1)(d) (see Notes 5.05 and 8.03, respectively). Amendment of this provision requires unanimity under Rule 21. *This provision is subject to a reservation by the Delegation of Cameroon.*

R8.02 Paragraph (2)(a). The requirements under the PCT applicable under this provision are prescribed in PCT Rules 89*bis* and 92.4. As regards the terms "form" and "means", reference is made to the explanation given under Article 8(1)(a) (see Note 8.02). The expression "filing of communications in electronic form or by electronic means" includes filing by telegraph, teleprinter, telefacsimile or other like means. This provision is also applicable to such means that do not result in the filing of a printed or written document, but, for example, telefacsimile transmission to a computer terminal. This provision does not prevent a Contracting Party from allowing electronic filing in accordance with its own requirements. It only obliges a Contracting Party, which permits the electronic filing of communications under the PCT in respect of international applications, to accept the electronic filing of communications in respect of national applications in accordance with those PCT requirements.

R8.03 The restriction of the requirements to a particular language would cover the situation in which the PCT prescribes different requirements for the electronic filing of applications in different languages. Thus, the requirements for electronic filing in a language using the Latin alphabet, for example, English, may be different from the requirements for electronic filing in a language which does not use that alphabet, for example, Chinese.

R8.04 Paragraph (2)(c). A similar provision is contained in PCT Rule 92.4(d). Where a document is prepared on a computer and directly transmitted by telefacsimile, a printout of that document from the computer would constitute the original.

R8.05 Paragraph (3)(a). The requirements under the PCT applicable under this provision are prescribed in PCT Rule 89*ter*.1. That Rule enables a national Office or intergovernmental organization to provide that, where an international application, or other document relating to an international application, is filed on paper, a copy thereof in electronic form, in accordance with the PCT Administrative Instructions, be furnished by the applicant.

Notes on Rule 9
Details Concerning the Signature Under Article 8(4)

R9.01 Paragraph (1). This paragraph applies to the signature of any natural person, including the case where a natural person signs on behalf of a legal entity. Item (ii), which corresponds to the note in box No. IX of the PCT request Form, would apply, in particular, where a person signs on behalf of a legal entity.

R9.02 Paragraph (3), item (iii). The right to require the indication of the nationality of the person who signs the communication is included in this item in view of the national law of at least one State relating to the use of seals by the nationals of that State.

R9.03 Paragraph (4). This paragraph applies to cases, for example, where communications are filed by telefacsimile resulting in the filing of communications on paper on which the graphic representation of the handwritten signature appears. It also applies to communications filed by telefacsimile transmission to a computer terminal on which the graphic representation of the handwritten signature appears. In accordance with Rule 8(2)(c), a Contracting Party may require the filing of the original of the transmitted document on which the original signature appears. As regards the phrase "the filing of communications in electronic form or by electronic means," reference is made to the explanation under Rule 8(2)(a) (see Note R8.02).

R9.04 Paragraph (5). This paragraph applies to signatures on communications filed in electronic form or by electronic means that are not covered by the provisions under paragraph (4), because the signature does not appear as a graphic representation.

R9.05 Paragraph (5)(a). A "signature in electronic form as prescribed by that Contracting Party" may be a signature in electronic or digital form attached to or logically associated with an electronic record which may be used to identify the signer of the electronic record and indicate the signer's approval of the information contained in the electronic record. A Contracting Party may further require that such a signature in electronic form be uniquely linked to the signer, be capable of identifying the signer, be created using means that the signer can maintain his sole control and be linked to the information contained in the electronic record in such a manner that any subsequent change of the data is detectable. It also could be a means of self-identification using an ID number and a password.

R9.06 Paragraph (5)(b). At present, there are no requirements under the PCT in relation to signatures in electronic form of communications filed in electronic form or by electronic means which do not result in a graphic representation of a signature. However, the matter is under consideration by the Ad Hoc Advisory Group on PCT Legal Matters with respect to legal issues and by the Standing Committee on Information Technologies (SCIT) with respect to technical issues.

Notes on Rule 10
Details Concerning Indications Under Article 8(5), (6) and (8)

R10.01 Paragraph (1)(a), item (iii). The registration number or other indication referred to in this item may be required for data capture. In the case of electronic communications, it could be a personal identification number (PIN), or a digital certificate containing a registration number.

R10.02 Paragraph (1)(b), item (iii). Reference is made to the explanation under paragraph (1)(a)(iii) (see Note R10.01).

R10.03 Paragraph (2). As regards the requirement that an address be "on a territory prescribed by that Contracting Party," reference is made to the explanation under Article 7(1)(a)(ii) (see Note 7.04).

R10.04 Paragraph (3). This provision obliges a Contracting Party to treat, in the absence of an indication to the contrary, the address of an unrepresented applicant, owner or other interested person as the address for correspondence and the address for legal service under Article 8(6)(i) and (ii). As regards the requirement that an address be "on a territory prescribed by the Contracting Party," reference is made to the explanation under Article 7(1)(a)(ii) (see Note 7.04).

R10.05 Paragraph (4). This provision obliges a Contracting Party to treat, in the absence of an indication to the contrary, the address of a representative as the address for correspondence and the address for legal service under Article 8(6)(i) and (ii). In addition, if that address is not on the territory of the Contracting Party, that Contracting Party may require, under Article 7(1)(a)(ii), that the address provided by the representative be on a territory prescribed by it (see Note 7.04).

Notes on Rule 12

Details Concerning Relief in Respect of Time Limits Under Article 11

R12.01 Paragraph (1)(a). In accordance with Article 7(1)(b), a representative may sign on behalf of the applicant or owner referred to in item (i).

R12.02 Paragraph (1)(b). This provision is modeled after existing practice in, for example, the United States of America.

R12.03 Paragraph (3). In accordance with Article 7(1)(b), a representative may sign on behalf of the applicant or owner referred to in item (i).

R12.04 Paragraph (5)(a). This provision lists procedures in respect of which a Contracting Party is not obliged to provide for the extension of a time limit under Article 11(1) or continued processing under Article 11(2), but is permitted to do so.

R12.05 Item (i). Under this item, which is placed in square brackets, a Contracting Party would not be obliged to grant more than one instance of relief under Article 11(1) or (2), although it would be permitted to do so. It would similarly not be obliged to grant continued processing under Article 11(2) after an extension of the time limit concerned had been previously granted under Article 11(1). Any second or subsequent instance of relief that is granted would not be regulated by Article 11(1) or (2) or Rule 12, so that a Contracting Party would be permitted to grant shorter extensions than, and/or to apply requirements which are additional to, or different from, those under that Article and that Rule.

R12.06 Items (ii) and (iv). These items are intended to prevent an applicant or owner from obtaining what would be, in effect, double relief in respect of the procedure concerned.

R12.07 Item (iii). Although, under this item, a Contracting Party is not obliged to provide for the extension of, or continued processing in respect of, a time limit fixed by the Office for the payment of maintenance fees, it is still obliged to provide a period of grace for the payment of such fees under Article 5bis(1) of the Paris Convention.

R12.08 Items (v) and (vii). These items are placed in square brackets.

R12.09 Paragraph (5)(b). This provision ensures that the provisions of the applicable law in respect of a maximum time limit for the grant of a patent prevail over relief in respect of a time limit fixed by an administrative action of the Office.

Notes on Rule 13

Details Concerning Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12

R13.01 Paragraph (1). In accordance with Article 7(1)(b), a representative may sign on behalf of the applicant or owner.

R13.02 Paragraph (3). This provision lists procedures in respect of which a Contracting Party is not obliged to provide for the re-instatement of rights under Article 12(1), although it is permitted to do so.

R13.03 Item (ii). Although under this item, which is placed in square brackets, a Contracting Party would not be obliged to provide for re-instatement of rights for failure to comply with a time limit for the payment of maintenance fees, a Contracting Party that is party to the Paris Convention would still be obliged to provide a period of grace for the payment of such fees under Article 5bis(1) of that Convention.

R13.04 Items (iii) and (iv). These items are intended to prevent an applicant or owner from obtaining what would be, in effect, double relief in respect of the procedure concerned.

R13.05 Item (v). This item is placed in square brackets.

R13.06 Item (vi). *This provision, which is placed in square brackets, is subject to a reservation by the Delegation of Belgium as to its deletion.*

Notes on Rule 14
*Details Concerning Correction or Addition of Priority Claim and Restoration of
Priority Right Under Article 13*

R14.01 Paragraph (1). This paragraph is modeled after PCT Rule 26bis.1(b), and is modified to apply to requests for expedited or accelerated processing as well as requests for early publication.

R14.02 Paragraph (2). In accordance with Article 7(1)(b), a representative may sign on behalf of the applicant or owner.

R14.03 Paragraph (3). The applicable time limit for the correction or addition of a priority claim by a notice submitted to the receiving Office after the filing of an international application under PCT Rule 26bis.1(a) is 16 months from the priority date or, where that correction or addition would cause a change in the priority date, 16 months from the priority date so changed, whichever 16-month period expires first, provided that such a priority claim may be submitted until the expiration of four months from the filing date of the international application.

R14.04 Paragraph (5), item (i) and paragraph (6)(a), item (i). Reference is made to the explanation under Rule 13(1) (see Note R13.01).

R14.05 Paragraph (6)(b), item (i). The declaration or other evidence referred to in this item may be required in order that the Office may determine whether the requirement under Article 13(3)(iii) is complied with.

R14.06 Paragraph (7). A two-month time limit is provided having regard to, first, the minimum period of four months between the expiration of the 12-month priority period and the 16-month time limit under Rule 4(1), and, second, the time needed by Offices to provide copies of earlier applications.

Notes on Rule 15
Request for Recordation of Change in Name or Address

R15.01 This Rule standardizes the procedure concerning requests for recordation of a change in the name or address of an applicant or owner where there is no change in the person of that applicant or owner, for example, a change in the name of a company, a change of name on marriage or a change in the person of the representative (see Note R15.10). Where there is a change in the person of the applicant or owner, Rule 16 applies.

R15.02 Paragraph (1), introductory words. In accordance with Article 1(vii), the term "recordation" means any act of including information in the records of the Office. As regards the terms "applicant" and "owner," reference is made to the explanations under Article 1(viii) and (ix) (see Notes 1.06 and 1.07).

R15.03 Item (ii). Where the application number has not been issued, or is not known, the provisions of Rule 19 apply.

R15.04 Item (iv). The name and address referred to in this item are those which are reflected in the records of the Office concerned. If that is not the case, the Office could, for example, require that evidence that the indications given are correct be filed under paragraph (4), or that the change concerned be recorded beforehand or be included in the request.

R15.05 Paragraph (2). The amount of the fee could differ depending on the number of the patents or applications involved (see Note R15.06). Reference is also made to the explanations under Article 6(4) (see, in particular, Note 6.14).

R15.06 Paragraph (3). This paragraph obliges a Contracting Party to allow a change in both name and address, and a change in respect of more than one patent and/or application of the same person, to be included in a single request. However, it permits a Contracting Party to require that a separate copy of a single request be filed for each application and patent to which it relates. It is also implicit that a Contracting Party which so wished could itself make a copy of the request for each application and patent, optionally on the payment, under paragraph (2), of an additional fee for each copy.

R15.07 Paragraph (4). This paragraph permits a Contracting Party to require evidence, for example, in the case of a change in both name and address, where there is a doubt as to whether such change is not in fact a disguised change in ownership. The Office is obliged, under Rule 5, to state its reason for doubting the veracity of the indication concerned. As regards the phrase "may reasonably doubt the veracity of," reference is made to the explanations under Article 6(6) (see Note 6.17).

R15.08 Paragraph (5). This paragraph establishes the exhaustive character of the list of requirements under paragraphs (1) to (4). The requirements referred to in this paragraph which are "otherwise provided for by the Treaty or prescribed in these Regulations" are, in particular, those under Articles 7 and 8 and Rules 7 to 10. One requirement which is prohibited is the furnishing of a certified copy of the recordation of the change in the register of companies as a condition for the recordation of the change in the records of the Office, where the name of the company has changed.

R15.09 Paragraphs (6) and (7). The prohibition of a more severe sanction excludes the possibility of, for example, revocation of the patent for failure to comply with the requirements of this Rule. Reference is also made to the general provisions on notifications under Article 9 (see Notes 9.01 to 9.05).

R15.10 Paragraph (8). As regards a change in the name or address of the representative, due to the *mutatis mutandis* effect of Rule 15(1), this provision applies only where there is no change in the person of the representative (see Note R15.01). While Model International Forms are not provided for requests for recordation of a change in the name and/or address of a representative or of a change in the address for correspondence or address for legal service, a Contracting Party would be free to accept such a request presented on a form, with appropriate alterations, corresponding to the Model International Form or Model International Format referred to in Rule 20(1)(ii) and (2).

Notes on Rule 16

Request for Recordation of Change in Applicant or Owner

R16.01 This Rule standardizes the procedure concerning requests for recordation of a change in the person of an applicant and owner, in particular, changes resulting from a change of ownership. Where there is a change in the name, but no change in the person, of the applicant or owner, Rule 15 applies. It is to be noted that Rule 16 deals with the requirements which should be fulfilled before a Patent Office and not before any other authorities of a Contracting Party, for example, the fiscal authorities.

R16.02 Paragraph (1)(a), introductory words. Reference is made to the explanation under Rule 15(1), introductory words (see Note R15.02).

R16.03 Item (ii). Reference is made to the explanations given under Rule 15(1)(ii) (see Note R15.03).

R16.04 Item (vii). The basis for the change in the person of the applicant or owner could be, for example, a contract assigning the ownership of the application or patent concerned, a merger, the reorganization or division of a legal entity, the operation of law, or a court decision transferring the ownership of an application or patent.

R16.05 Paragraph (1)(b), item (i). A Contracting Party may require that the statement referred to in this item be filed in all cases.

R16.06 Item (ii). An example of government interest is the provision under the law of the United States of America (35 C.F. RS 267) which provides that the Commissioner may extend the time for taking action in the case of an application which is the property of the United States of America.

R16.07 Paragraph (2)(a). This provision prescribes the documentation which may be required where the change in the person of the applicant or owner results from a contract. If the text within square brackets were to be included in the Regulations, the documentation referred to could not be required where the recordation for change is requested by the applicant or owner shown in the records of the Office. Without the text within square brackets, the documentation could be requested in all cases. In addition, in both alternatives, a Contracting Party would be permitted to require information relating to the registration of the contract where such registration is compulsory. *This provision is subject to a reservation by the Delegations of Brazil, Cuba, Mexico and Spain.*

R16.08 Items (i) to (iii). These items list three different documents which, alternatively, may serve as evidence of a change of applicant or owner resulting from a contract. Where a Contracting Party requires that the request be accompanied by one of these documents, it must accept any one of the three documents listed. It is up to the requesting party to choose one of them to accompany his request. However, since this provision sets a maximum requirement, in accordance with Article 2(1), a Contracting Party could, for example, under item (ii), accept a transcription of an extract of the contract, instead of the extract itself, if this were permitted under its law.

R16.09 It is to be noted that, although items (i) to (iii) correspond to items (i) to (iii) in Article 11(1)(b) of the Trademark Law Treaty, paragraph (2)(a) contains no item corresponding to item (iv) of that Article. Accordingly, a Contracting Party would not be obliged to record a change in applicant or owner resulting from a contract where the request is accompanied by an uncertified transfer document signed by both the applicant and the new applicant or by both the owner and the new owner, although it would be permitted to do so.

R16.10 While a Contracting Party is free to require that a copy or extract of the contract filed under item (i) or (ii) be certified, it is the choice of the applicant as to who (a notary public, a competent public authority or, where permitted, a representative) certifies the relevant document.

R16.11 Where the requesting party chooses to file a certificate of transfer, as provided in item (iii), a Contracting Party is not permitted to require that this certificate be the subject of any form of certification. Rule 20(1)(a)(iv) and (2)(a) provides for the establishment of a Model International Form and Model International Format for a certificate of transfer.

R16.12 Paragraph (2)(b). This provision applies where the change in the applicant or owner results from a merger, or from the reorganization or division of a legal entity. A Contracting Party is permitted to require that the request be accompanied by a copy of a document, originating from a competent authority, evidencing that fact and any attribution of rights involved, for example, an extract from a register of commerce. It is only permitted to require that a copy of the document be filed; it cannot require that the original of the document be filed, or that the copy of the document be signed by the applicant and the new applicant or by the owner and the new owner. As regards the requirement that the copy be certified, reference is made to the explanation under Note R16.10.

R16.13 Paragraph (2)(c). This provision applies where the change in ownership does not result from a contract, from a merger, or from the reorganization or division of a legal entity. In such a case, a Contracting Party is permitted to require that the request be accompanied by a copy of any document which it deems appropriate to evidence the change. Although a Contracting Party cannot require that the original of such a document be filed, it may require that the copy of that document be certified by, at the option of the requesting party, the authority which issued the document, a notary public, a competent public authority, or, where permitted, a representative.

R16.14 Paragraph (2)(d). This provision applies where, under the applicable law, a co-applicant or co-owner who transfers his share in an application or patent needs the consent of any other co-applicant or co-owner to obtain recordation of the change. It is a matter for the Contracting Party to determine what constitutes consent to the change, including whether a copy of a prior agreement of joint applicants or owners to the sale of a share would constitute sufficient evidence under this provision, and whether the communication containing the consent should be signed.

R16.15 Paragraph (3). As regards the expression "a language accepted by the Office," reference is made to the explanation under Article 1(xii) (see Note 1.10). As regards the term "translation," reference is made to the definition under Article 1(xiii).

R16.16 Paragraphs (4) and (5). Reference is made to the explanations given under Rule 15(2) and (3) (see Notes R15.05 and R15.06).

R16.17 Paragraph (6). Evidence could be required under this paragraph where, for example, the Office has reason to suspect that the request may be fraudulent. Reference is also made to the explanations given under Rule 15(4) (see Note R15.07).

R16.18 Paragraph (7). This paragraph establishes the exhaustive character of the list of formal requirements under paragraphs (1) to (6) with respect to a request for recordation of a change in applicant or owner. An example of a prohibited requirement could be making the admissibility of the request dependent on an advertisement of the change in one or several newspapers. Since, in accordance with Article 2(2), the Treaty does not regulate the substantive requirements relating to the validity of the change, a Contracting Party would be permitted to require the fulfillment of additional conditions of a substantive or fiscal nature, for example, in situations concerning inheritance, bankruptcy or tutelage. The requirements referred to in this paragraph which are "otherwise provided for by the Treaty or prescribed in these Regulations" are, in particular, those under Articles 7 and 8 and Rules 7 to 10.

R16.19 Paragraph (8). Reference is made to the explanations under Rule 15(6) and (7) (see Note R15.09).

R16.20 Paragraph (9). This paragraph permits, but does not oblige, a Contracting Party, in particular, one which requires that a patent be applied for in the name of the actual inventor, to exclude the provisions of Rule 16 in respect of changes in inventorship. The second sentence is included for the avoidance of doubt.

Notes on Rule 17

Request for Recordation of a Licensing Agreement or Security Interest

R17.01 Paragraph (1)(a), introductory words. It follows from the words "Where a licensing agreement in respect of an application or patent may be recorded under the applicable law" that no Contracting Party is obliged to provide for recordation of such licensing agreements, and that any Contracting Party which allows for such recordation is free to decide which licensing agreements may be recorded. In accordance with Article 1(vii), the term "recordation" means any act of including information in the records of the Office.

R17.02 Item (ii). Reference is made to the explanation given under Rule 15(1)(ii) (see Note R15.03).

R17.03 Paragraph (1)(b). As regards items (i) and (ii), reference is made to the explanations given under Rule 16(1)(b), items (i) and (ii) (see Notes R16.05 and R16.06).

R17.04 Paragraph (2)(a). The considerations which apply to documentation which may be required under this provision are essentially the same as those which apply under Rule 16(2)(a) (see Notes R16.07 to R16.11). The words "portions of that agreement" in item (ii) include, in particular, information regarding the territory and duration of the licensing agreement, and whether there is a right to sub-license. *This provision is subject to reservations by the Delegations of Brazil, Cuba, Mexico and Spain.*

R17.05 Paragraph (2)(b). This provision permits a Contracting Party to require the filing of a document containing the consent to recordation of the licensing agreement of an applicant, owner, exclusive licensee, co-applicant, co-owner or co-exclusive licensee who is not party to that agreement. For example, where the applicant or owner has already granted an exclusive license in respect of an application or patent, a Contracting Party may require the consent of the exclusive licensee to the recordation of another licensing agreement, in respect of that application or patent, to which the exclusive licensee is not a party. Similarly, a Contracting Party may require the consent of the applicant or owner to a sub-licensing agreement by an exclusive licensee. Also, where a co-applicant or co-owner licenses his share in an application or patent, a Contracting Party may require the consent of any other

co-applicant, co-owner or co-exclusive licensee to the recordation of the licensing agreement. A co-applicant, co-owner or co-exclusive licensee who represents all of the co-applicants, co-owners or exclusive licensees may consent to the change on behalf of the other co-applicants, co-owners or co-exclusive licensees. The situation in which the consent of a co-applicant, co-owner or co-exclusive licensee cannot be obtained, for example, because that person cannot be contacted, is not regulated by the Treaty or Regulations and therefore remains a matter for the applicable law of the Contracting Party. Reference is also made to the explanations under Rule 16(2)(d) (see Note R16.14).

R17.06 Paragraph (3). Reference is made to the explanation given under Rule 16(3) (see Note R16.15).

R17.07 Paragraphs (4) and (5). Reference is made to the explanations given under Rule 15(2) and (3) (see Notes R15.05 and R15.06).

R17.08 Paragraphs (6) and (7). Reference is made to the explanations given under Rule 16(6) and (7) (see Notes R16.17 and R16.18).

R17.09 Paragraph (8). Reference is made to the explanations given under Rule 15(6) and (7) (see Note R15.09).

R17.10 Paragraph (9). Item (i) relates to the recordation of a security interest, such as an interest in a patent or application, acquired by contract for the purpose of securing payment or performance of an obligation, or indemnifying against loss or liability, for example, where the rights in an application or patent have been pledged as a security for a loan. However, as in the case of recordation of licensing agreements under paragraph (1), a Contracting Party is not obliged to provide for recordation of security interests, and any Contracting Party which does allow for such recordation is free to decide which security interests may be recorded. Similarly, under item (ii), a Contracting Party is not obliged to provide for cancellation of the recordation of a licensing agreement or security interest.

R17.11 In applying the provisions of paragraphs (1) to (8), *mutatis mutandis*, to a request for recordation, or cancellation of recordation, of a security interest, references to the terms "a licensing agreement," "licensor" and "licensee" are to be read as references to the terms "a security interest," "a person providing the security interest," and "a person in favor of whom the security interest is established," respectively. In addition, if the words in square brackets under paragraph (2)(a) were maintained, the application of the introductory words of this paragraph, *mutatis mutandis*, to requests for cancellation of the recordation of a licensing agreement or a security interest would have the effect that the documentation referred to in paragraph (2)(a)(i) or (ii) might be required where the cancellation of the recordation was requested by the licensor or the person in favor of whom the security interest was established, as the case may be.

Notes on Rule 18 *Request for Correction of a Mistake*

R18.01 This Rule regulates the formal requirements and procedures concerning the request for correction of a mistake. In accordance with Article 2(2), it does not regulate the substantive requirements which a Contracting Party may apply in determining the allowability of a correction. For example, a Contracting Party may require that the correction be obvious in the sense that it is unequivocally clear that nothing else could have been intended other than what is offered as the correction. It also does not regulate corrections in the application which are not the subject of a request for correction, in particular, the amendment of the description, claims or drawings, either voluntarily following the receipt of a search report, or in the course of substantive examination.

R18.02 Paragraph (1)(a), introductory words. The expression "mistake in the records of the Office" is to be interpreted in light of the definition of the term "records of the Office" under Article 1(vi) (see Note 1.04). Examples of mistakes which could be the subject of a request under paragraph (1) are mistakes in the bibliographic data, in details concerning a priority claim, or in the description, claims or drawings of the application or patent concerned. It follows from the wording "which is correctable under the applicable law" that the question of which mistakes are correctable is not regulated by this Rule. As regards the terms "applicant" and "owner," reference is made to the explanations given under Article 1(viii) and (ix) (see Notes 1.06 and 1.07).

R18.03 Item (ii). Reference is made to the explanations given under Rule 15(1)(ii) (see Note R15.03).

R18.04 Paragraph (1)(b). This provision allows a Contracting Party to require that a replacement part (for example, a replacement page in the case of an application filed on paper), or a part incorporating the correction (for example, an errata sheet), be filed. In the case where the request applies to more than one application and/or patent, an Office may require that a separate replacement part, or part incorporating the correction, be filed for each application and patent, to facilitate the work of the Office.

R18.05 Paragraph (1)(c). This provision permits a Contracting Party to refuse a request for correction of a mistake where the requesting party is unable to file a declaration that the said mistake was made in good faith, for example, where the mistake was made with deceptive intention. It is a matter for the Contracting Party concerned to decide what constitutes good faith.

R18.06 Paragraph (1)(d). This provision permits a Contracting Party to refuse a request for correction of a mistake where there was undue or intentional delay in making the request after the discovery of the mistake. It is a matter for the Contracting Party concerned to decide what constitutes undue or intentional delay; for example, it may consider that there is undue delay where the request is not diligently made.

R18.07 Paragraph (2)(a). Reference is made to the explanation under Rule 15(2) (see Note R15.05).

R18.08 Paragraph (3). Reference is made to the explanation under Rule 15(3) (see Note R15.06).

R18.09 Paragraph (4). This paragraph permits a Contracting Party to require evidence in the case of any request for correction where, for example, notwithstanding the declaration referred to in paragraph (1)(c), there is reasonable doubt as to whether the mistake was made in good faith, or where there is reasonable doubt as to whether the request was made without undue or intentional delay following the discovery of the mistake in accordance with paragraph (1)(d) (see also Note R18.06). Reference is also made to the explanations given under Rule 15(4) (see Note R15.07).

R18.10 Paragraph (5). Reference is made to the explanations given under Rule 15(5) (see Note R15.08). As regards the restriction to formal requirements, reference is made to the explanation in Note R18.01.

R18.11 Paragraph (6). Reference is made to the explanations given under Rule 15(6) and (7) (see Note R15.09).

R18.12 Paragraph (7)(a). This paragraph permits a Contracting Party, in particular, one which requires that a patent be applied for in the name of the actual inventor, to apply provisions in respect of changes in inventorship which are different from, or additional to, provisions under paragraphs (1) to (6).

R18.13 Paragraph (7)(b). This provision is for the avoidance of doubt. Under the law of the United States of America, a patentee may apply for a re-issue patent to correct a patent that is, or may be, inoperative or invalid because the claims are too narrow or too broad due to an error made without deceptive intention.

Notes on Rule 19
*Manner of Identification of an Application
Without Its Application Number*

R19.01 *This Rule is subject to a reservation by the Delegation of China.*

R19.02 Paragraph (1). This paragraph prescribes the indications and elements which a Contracting Party is obliged to accept where the application number is required to be filed under Rules 2(5)(a), 10(1)(a)(ii), 15(1)(ii), 16(1)(ii), 17(1)(a)(ii) and 18(1)(a)(ii), but that number has not been issued or is not known. It follows from Article 2(1) that this paragraph allows a Contracting Party to accept less information than that prescribed in items (i) to (iii) or, additionally, to accept other means of identification.

Notes on Rule 20
Establishment of Model International Forms and Formats

R20.01 Paragraph (1)(b). The modifications of the PCT request Form referred to in this provision are the modifications for the purpose of filing national and regional applications in accordance with Article 6(2)(b) and Rule 3(2)(i) (see Note R3.02). The PCT request Form for the purposes of filing international applications under the PCT will continue to be established as part of the Administrative Instructions under PCT Rule 89.

R20.02 Paragraph (2). As regards the term "format," reference is made to the explanation under Article 8(1)(a) (see Note 8.02).

Notes on Rule 21
Requirement of Unanimity for Amending Certain Rules Under Article 14(3)

R21.01 This provision lists the Rules that can only be amended with unanimous agreement.

R21.02 Item (i). Under this item, any amendment, whether by way of addition or deletion, of further requirements under Rule 3(1) relating to the form or contents of the application under Article 6(1)(iii) requires a unanimous decision of the Assembly.

R21.03 Item (ii). Under this item, during the period of 10 years from the date of the entry into force of this Treaty, the obligation of Contracting Parties, under Rule 8(1), to permit the filing of communications on paper, can only be modified by a unanimous decision of the Assembly. After that period has expired, it will also require unanimity to amend the provisions under Rule 8(1) which will, as from the expiration of the said period, allow any Contracting Party to exclude the filing of communications on paper.

R21.04 Item (iii). This item is intended to prevent the provisions of items (i) and (ii) being circumvented without unanimity, and to prevent the addition of reference to other Rules without the unanimous consent of the Assembly.

PT/DC/6
April 28, 2000 (Original: English)

RESULTS OF THE TWENTY-EIGHTH (16TH EXTRAORDINARY) SESSION OF THE PCT ASSEMBLY,
MARCH 13 TO 17, 2000; ISSUES FOR POSSIBLE DISCUSSION AT THE DIPLOMATIC CONFERENCE

prepared by the International Bureau

INTRODUCTION

1. At its third session, held from September 6 to 14, 1999, the Standing Committee on the Law of Patents (SCP) discussed the interface between the draft Patent Law Treaty (PLT) and the Patent Cooperation Treaty (PCT). During that meeting, the International Bureau indicated that it would follow the ongoing discussions on possible amendments to the Regulations under the PCT and take appropriate action as to their possible repercussions for the forthcoming Diplomatic Conference (see paragraph 123 of document SCP/3/11). The present document reports the results of the twenty-eighth (16th extraordinary) session of the PCT Union Assembly, held in Geneva from March 13 to 17, 2000, and identifies some issues for possible discussion at the Diplomatic Conference, including suggested provisional draft text.

RESULTS OF THE PCT ASSEMBLY

2. The twenty-eighth (16th extraordinary) session of the PCT Union Assembly was held in Geneva from March 13 to 17, 2000. The two following issues which had relevance to the draft Patent Law Treaty (PLT) were discussed: proposed amendments to the PCT Regulations and proposed modifications of the PCT Administrative Instructions relating to the draft PLT; and the implementation of electronic filing and processing of international applications (see the Assembly's report in document PCT/A/28/5).

Amendments of the PCT Regulations and proposed modifications of the PCT Administrative Instructions relating to the draft Patent Law Treaty

3. The Assembly considered and adopted amendments of the Regulations under the PCT relevant to the link between the PLT and the PCT (see documents PCT/A/28/2, 2 Add. 1 and 2 Add. 2). The amendments permit applicants to file with the international application certain declarations using standardized wording, as prescribed in the PCT Administrative Instructions, in fulfillment of national phase requirements. The amendments also permit applicants to correct or add to the international application any such declaration until the expiration of 16 months from the priority date, or at the latest until technical preparations for international publication have been completed by the International Bureau. If such a declaration is filed, a designated Office of or acting for a PCT Contracting State could not, during the national phase of processing, require further documents or evidence regarding the issue with which the declaration is concerned unless the designated Office may reasonably doubt the veracity of the declaration.

4. The Assembly unanimously adopted the amendments to the Regulations as set out in Annex II of the report (see document PCT/A/28/5) and decided that the amendments would enter into force on March 1, 2001.

5. The Assembly also adopted certain transitional provisions. In general, if the law of a PCT Contracting State is not compatible with certain amendments on March 17, 2000, those amendments shall not apply to that Contracting State for as long as the amendments continue not to be compatible with that law, provided that the Contracting State informs the International Bureau accordingly by November 30, 2000.

6. Proposed modifications of the Administrative Instructions regarding the standardized wording for the declarations which may be filed with the international application were also discussed. Administrative Instructions are not adopted by the PCT Assembly, but promulgated by the Director General after consultation with the PCT Contracting States. Accordingly, the International Bureau will take into account the comments made by the Contracting States when revising the draft revised standardized wording of the declarations.

Implementation of electronic filing and processing of international applications

1. The PCT Assembly discussed electronic filing and processing of international applications (see document PCT/A/28/3 and 3 Add. 1 to Add. 5). The Assembly agreed that extensive redrafting of the draft technical standard ("Annex F") and proposed new Part 7 of the Administrative Instructions was required, and that such redraft should be made available by the International Bureau at a later stage (see paragraphs 24 and 37 of document PCT/A/28/5).

2. With respect to the draft PLT, the Assembly noted that draft PLT Rule 8(2) would have the effect that any Office which accepted electronic filing of international applications under the PCT would have to also accept electronic filing of national applications, applying the same requirements. The International Bureau further noted that the provisions in the draft PLT concerning electronic filing contained the maximum which Offices could require, but that the latter would be free to accept communications desired by applicants and requiring a different level of technical capability (see paragraph 31 of document PCT/A/28/5).

3. A detailed description of the discussion is contained in the report of the PCT Assembly (document PCT/A/28/5).

SUGGESTIONS FOR DISCUSSION AT THE DIPLOMATIC CONFERENCE RELATING TO THE INTERFACE BETWEEN THE DRAFT PLT AND THE PCT

4. The discussions at the PCT Assembly raised a number of issues relating to the interface between the draft PLT and the PCT, and to provisions relating to electronic filing, including the filing date for applications filed electronically. During the meeting, a number of questions were identified by the International Bureau as requiring discussion at the Diplomatic Conference.

5. These issues include:

- (1) Incorporation-by-reference of future changes to the PCT;
- (2) Incorporation under the PLT of reservations contained in the present PCT Regulations;
- (3) Definitions of "form", "Form", "format", "means" and "form or contents";
- (4) Filing date.

These issues, and a number of suggested solutions, are outlined below. Preliminary suggested draft text to implement those solutions is presented in the Annexes, to clarify the issues raised and the possible solutions posed, and to facilitate consideration by the delegations.

*(1) Incorporation-by-reference of future changes to the PCT**

6. Note 6.08 to the basic proposal for the PLT (document PT/DC/5) states:

"6.08 It is implicit in items (i) and (ii) [of Article 6] that any relevant amendments or modifications to the PCT, or to the Regulations or Administrative Instructions under the PCT, will automatically have effect under the present Treaty."

7. This principle, which is not explicitly incorporated into the provisions of the basic proposal, is implicitly assumed in order to make the interface between the PLT and the PCT viable over time. However, there has been no discussion in the context of the SCP of the international treaty law implications of such automatic incorporation by reference of future changes to another treaty.

8. The International Bureau has been unable to identify any identical or analogous provisions in other treaties. The closest examples in the intellectual property field appear to be the following:

- Article 62(3) of the PCT states that Article 24 of the Paris Convention shall apply. It is to be noted, however, that the membership to PCT is limited to countries party to the Paris Convention.
- Article 14(7) of the Madrid Agreement Concerning the International Registration of Marks states that Article 24 of the Paris Convention shall apply. Membership to the Madrid Agreement is limited to countries party to the Paris Convention.
- Article 2.1 of the TRIPS Agreement incorporates Articles 1 to 12 and 19 of the Stockholm Act of the Paris Convention by reference. The TRIPS Agreement does not, however, incorporate future changes to the Paris Convention.
- Article 15 of the Trademark Law Treaty provides for an obligation to comply with the provisions of the Paris Convention, as revised and amended, which concern marks. In this case, membership is not limited to being a Contracting Party to the Paris Convention.
- Article 1(4) of the WIPO Copyright Treaty requires Contracting Parties to comply with Articles 1 to 21, and the Appendix, of the Paris Act of the Berne Convention. Membership is not limited to being a Contracting Party to the Berne Convention.

* Any reference to the "PCT" is to be construed as a reference to the Patent Cooperation Treaty, together with the Regulations and the Administrative Instructions under the Patent Cooperation Treaty, unless otherwise specified.

9. The incorporation by reference of PCT requirements into the PLT poses special difficulties, most especially for countries which are not Contracting States of the PCT and which are therefore not represented in the PCT Assembly, as they would have no voice in future changes to the PCT Regulations. Further, future changes to the PCT Administrative Instructions are automatically incorporated into the PLT, even though these changes are promulgated by the Director General of WIPO after consultation with Offices or Authorities which have a direct interest in the proposed modifications, but without express approval by the PCT Assembly (noting, however, that the Director General is required to consult interested Offices and Authorities before modifying the PCT Administrative Instructions, and that the contents of those Administrative Instructions are under the ultimate control of the PCT Assembly, since PCT Rule 89.2(c) provides that "the Assembly may invite the Director General to modify the Administrative Instructions, and the Director General shall proceed accordingly.").

10. The International Bureau considers that this issue is essential to the long-term viability of the PLT, and would therefore suggest that it be discussed fully at the Diplomatic Conference. In order to facilitate that discussion, a number of possible solutions, along with suggested amended text, are presented below. These possible solutions have been based on the premise that membership in the PLT should be as open as possible, as has been decided by the SCP.

Option (1): Require PLT Assembly to Ratify Future PCT Changes

11. This option would require that the PLT Assembly explicitly ratify any future changes to the PCT before those changes have effect under the PLT.

12. An advantage of this option is that it would be sound under international law, since the incorporated PCT changes would have the same status as changes to the PLT Regulations which are adopted by the PLT Assembly. For convenience, future changes to the PCT Regulations could be adopted by a joint session of the PCT and PLT Assemblies. A disadvantage is that this option would require that the PLT Assembly meet to ratify each future PCT change, even if the change only involved the PCT Administrative Instructions.

Option (2): Automatic Incorporation of Future PCT Changes with Possibility for the PLT Assembly to Reject

13. This option would give the possibility to the PLT Assembly to reject future PCT changes within a certain time period. If the changes were not rejected by the PLT Assembly, they would have automatic effect under the PLT.

14. An advantage of this option is that it would not require the PLT Assembly to meet for every future PCT change, including changes in the Administrative Instructions. A disadvantage is that a special procedure would be required to convene the PLT Assembly in special session in order to decide not to incorporate the change.

Option (3): Consultation Procedure for Ratification/Rejection of Future PCT Administrative Instructions Changes

15. This option would allow the PLT Assembly to adopt or reject future PCT Administrative Instruction changes without convening in session. This procedure could be used in conjunction with either of the above options. It would solve the problem of having to convene the PLT Assembly each time the PCT Administrative Instructions were modified. The PCT contains provisions for such a consultation procedure in the case of modifications to the Administrative Instructions (PCT Article 58(4) and Rule 89). Under the PCT, this consultation procedure may be either a written procedure, or an oral procedure at a PCT Assembly meeting. In the future, a common written procedure for both PCT Contracting States and PLT Contracting Parties may be envisaged. As under the PCT, if the PLT Assembly meets, an oral consultation may also be appropriate in certain cases.

Option (4): Availability of General or Individual Reservations to Future PCT Changes by PLT Contracting Parties

16. The PCT Assembly has on occasion decided, when adopting amendments to the Regulations under the PCT, to include provisions to the effect that certain amended Rules would not apply to any State (or Office) which informs the International Bureau, within a certain period, of incompatibility with the national (or regional) law as in force at the time of the adoption of the amendments; the amended Rules concerned would then not apply to that State (or Office) for as long as the incompatibility continues. Such provisions allowing for "transitional reservations" have been necessary in order to give PCT Contracting States time to bring their national law into conformity with amended Rules, even though the principles underlying the amendments have been unanimously agreed by the PCT Assembly. This possibility could be incorporated into the PLT with respect to future PCT changes, whereby Contracting Parties to the PLT could enter a reservation to PCT changes as they are applied under the PLT. These could be adopted by the PLT Assembly as general reservations, which would cover all Contracting Parties (for example, with respect to PCT Regulations which do not pertain to national filings), or as individual reservations, which would allow a period of time for PLT Contracting Parties to enter reservations with respect to the application, under the PLT, of specific PCT changes.

17. Suggested draft text concerning certain combinations of the above options is contained in Annexes I to III.

(2) Incorporation under the PLT of transitional reservations contained in the present PCT Regulations

18. According to the present text of the draft PLT, transitional reservations made by PCT Contracting States to provisions of the PCT Regulations would be incorporated into the PLT. Current reservations are contained in PCT Rules 4.10(d), 20.4(d), 26.3ter(b), 26.3ter(d), 49.5(l), 51bis.1(f), 51bis.2(c), 51bis.3(c) and 76.6. It has been suggested that existing transitional reservations contained in the PCT Regulations not be carried over into the PLT, but that future transitional reservations be carried over, to allow sufficient time for implementation in national laws. This could be accomplished by a new provision as suggested in Annex IV.

(3) Definitions of "form", "Form", "format", "means" and "form or contents"

19. The terms "form", "format", "means" and "form or contents" are used in both the draft PLT and the PCT, but in some cases they are used in different ways. For example, "format" in the PLT is used to refer to the order and arrangement of data in a communication, while it is used in the draft PCT Administrative Instructions to refer to the way in which data is presented in electronic documents.

20. In order to ensure harmonized use of these terms in both treaties, it is suggested that a discussion at the Diplomatic Conference take place in order to consider either removing or defining those terms.

21. One option would be to delete the word "format" from the draft PLT, and to subsume it in the definition of the term "form". That definition could be included according to the following suggested draft text for draft PLT Article 1:

"(ivbis) The word "form" means the physical medium which contains the information, including the physical requirements or the electronic protocol in which the information is fixed, as well as the presentation and arrangement of the information, on that medium, except where the context indicates otherwise."

22. Taking into account the rapid changes in the technical field related to the definition of "form", it may be appropriate to include that definition into Rule 1 of the Regulations, and to provide for the legal basis in the Treaty. It has, however, to be noted that the definition would define a term used both in the Treaty and the Regulations. Another option is to include the definition in the Treaty, and to make it subject to amendment by the PLT Assembly, pursuant to draft PLT Article 18(2). Corresponding modifications of draft PLT Article 18(2) and (3) would be required.

23. The term "Form", which is used only in the PLT, would not require a definition, as it only appears along with the qualifiers "request" or "Model International".

24. It is suggested, in draft PLT Article 5(1) and Rules 7(2)(b), 15(3)(b) and 16(5), to replace "means" with a mention of "as otherwise permitted by the Office", and to replace "means" and "means of filing" with "means of transmittal" in Articles 1(v) and 8(1) and Rules 8(2) to (4) and 9(4).

25. The phrase "form or contents" has the same meaning in the draft PLT as under the PCT. A specific aspect arising in conjunction with the review of this phrase concerns its use in draft PLT Article 6, and in particular the relationship of Article 6 with draft PLT Article 8 and Rule 8 on communications. Suggested draft text for consideration at the Diplomatic Conference is contained in Annex V.

(4) Filing date

26. The PCT Assembly discussed the effect of electronic filing of applications on the filing date. In particular, in respect of the so-called "ticket mechanism", numerous delegations expressed doubts concerning whether the ticket mechanism (as explained in document PCT/A/28/3 Add.1) satisfied the requirements of Article 11 of the PCT, or their respective national or regional laws for according a filing date. However, some delegations indicated their desire to utilize the ticket mechanism or an alternative mechanism to accomplish the same objectives of safeguarding international filing dates. It was agreed that the legal and technical aspects of the possible implementation of the ticket mechanism would be further reviewed.

27. It is suggested that a discussion take place at the Diplomatic Conference on the question of amending draft PLT Article 5(1), perhaps in a general way or subject to future amendments of the Regulations, in order to allow applicants to obtain a filing date using future technologies. Under these conditions, the words "no later than" may no longer be needed. Suggested draft text for consideration at the Diplomatic Conference is contained in Annex VI.

ANNEX I

The following draft text suggests amendments related to the interface between the PLT and the PCT as explained in paragraphs 12 to 23 of document PT/DCI/6, and in particular concerning draft PLT Article 1.

These amendments are applicable to both options contained in Annexes II and III and are to be used in conjunction with those two Annexes.

Article 1 *Definitions*

(xvi) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, signed on March 20, 1883, as revised ~~and amended~~ at Stockholm on July 14, 1967 and as amended on September 28, 1979;

(xvii) "Patent Cooperation Treaty" means the Patent Cooperation Treaty ("PCT"), signed on June 19, 1970, ~~as amended and modified together with the Regulations and the Administrative Instructions under that Treaty, as amended and modified by June 2, 2000, and including amendments and modifications made after that date as provided for in Article 15(3);~~

ANNEX II

The following draft text suggests amendments related to the interface between the PLT and the PCT as explained in paragraphs 12 to 23 of document PT/DC/6, and in particular a combination of Options 1, 3 and 4 that relates to draft PLT Articles 15 and 16.

Options 1, 3 and 4

Article 15

Relation to the Paris Convention and the Patent Cooperation Treaty

(3) [Future Amendments and Modifications of the Patent Cooperation Treaty] The Patent Cooperation Treaty as defined in Article 1(xvii) shall include any amendment and modification of the provisions under the Patent Cooperation Treaty made after June 2, 2000, provided that such inclusion is decided by the Assembly, as prescribed in the Regulations, and that such inclusion is compatible with the Articles of this Treaty.

Article 16

Assembly

(2) [Tasks] The Assembly shall:

(vbis) decide whether any future amendment and modification to the provisions under the Patent Cooperation Treaty shall be included in this Treaty pursuant to Article 15(3);

Rule 22

Details Concerning the Future Amendments and Modifications of the Patent Cooperation Treaty Under Article 15(3)

(1) Inclusion of any future modifications of the Administrative Instructions under the Patent Cooperation Treaty under Article 15(3) shall be decided by way of a written consultation procedure or of an oral consultation procedure by the Assembly.

(2) At the request of any Contracting Party, the Director General shall proceed with the written consultation procedure referred to in paragraph (1).

[(3) Where any future amendment or modification of the Regulations and the Administrative Instructions under the PCT which is included in the Treaty under Article 15(3) is not compatible with the applicable law of a Contracting Party [which is not a Contracting State of the Patent Cooperation Treaty], that amendment or modification shall not apply under the Treaty to that Contracting Party for as long as the said amendment or modification continues not to be compatible with that law, provided that the said Contracting Party informs the International Bureau accordingly within [six] months from its inclusion in the Treaty.]

(4) [The details concerning the procedure to ratify future PCT changes under Article 15(3) are reserved.]

ANNEX III

The following draft text suggests amendments related to the interface between the PLT and the PCT as explained in paragraphs 12 to 23 of document PT/DC/6, and in particular a combination of Options 2, 3 and 4 that relates to draft PLT Articles 15 and 16.

Options 2, 3 and 4

Article 15

Relation to the Paris Convention and the Patent Cooperation Treaty

(3) [Future Amendments and Modifications of the Patent Cooperation Treaty] The Patent Cooperation Treaty as defined in Article 1(xvii) shall automatically include any amendment and modification of the provisions under the Patent Cooperation Treaty made after June 2, 2000, except where the Assembly decides not to include that amendment or modification, as prescribed in the Regulations, provided that such inclusion is compatible with the Articles of this Treaty.

Article 16

Assembly

(2) [Tasks] The Assembly shall:

(vbis) decide that any future amendment and modification to the provisions under the Patent Cooperation Treaty shall not be included in this Treaty pursuant to Article 15(3);

Rule 22

*Details Concerning the Future Amendments and Modifications
of the Patent Cooperation Treaty Under Article 15(3)*

(1) The decision under Article 15(3) concerning non-inclusion of any future modifications of the Administrative Instructions under the Patent Cooperation Treaty shall be made by way of a written consultation procedure or of an oral consultation procedure by the Assembly.

(2) At the request of any Contracting Party, the Director General shall proceed with the written consultation procedure referred to in paragraph (1).

(3) Where any future amendment or modification of the Regulations and the Administrative Instructions under the PCT which is included in the Treaty under Article 15(3) is not compatible with the applicable law of a Contracting Party [which is not a Contracting State of the Patent Cooperation Treaty], that amendment or modification shall not apply under the Treaty to that Contracting Party for as long as the said amendment or modification continues not to be compatible with that law, provided that the said Contracting Party informs the International Bureau accordingly within [six] months from its inclusion in the Treaty.]

(4) [This provision shall set out the details concerning the procedure to reject future PCT changes within a certain time period by the Assembly under Article 15(3).]

ANNEX IV

The following draft text suggests a new draft PLT Rule 3(1)(c) according to which existing transitional reservations under the PCT would not take effect under the PLT, as explained in paragraph 24 of document PT/DC/6.

Rule 3
Details Concerning the Application Under Article 6(1) and (2)

...

(1)(c) For the purpose of this Treaty and the Regulations, no Contracting Party may apply the provisions of PCT Rules 4.10(d), 20.4(d), 26.3ter(b), 26.3ter(d), 49.5(l), 51bis.1(f), 51bis.2(c), 51bis.3(c) and 76.6.

ANNEX V

The following draft text suggests amendments concerning the relationship between the application (draft PLT Article 6) and communications (draft PLT Article 8 and related Rule 8), as referred to in paragraph 31 of document PT/DCI/6.

Article 8
Communications; Addresses

(1) [~~Form; Format and Means of Filing Transmittal of Communications~~] (a) Except for the establishment of a filing date under Article 5(1), and subject to Article 6(1), the Regulations shall, subject to subparagraphs (b) to (d), set out the requirements which a Contracting Party shall be permitted to apply as regards the ~~form, format and means of filing-transmittal~~ of communications.

...

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

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

Rule 8
Filing of Communications Under Article 8(1)

(1) [*Communications Filed on Paper*] (a) During a period of 10 years from the date of the entry into force of the Treaty, a Contracting Party shall permit the filing of communications on paper. After that period has expired, any Contracting Party may, subject to Articles 5(1) and 8(1)(d), exclude the filing of communications on paper.

(b) Subject to Article 8(3) and paragraph (c), a Contracting Party may ~~require~~ prescribe the requirements relating to the form of ~~that a communications~~ on paper ~~be filed on a form, or in a format, prescribed by that Contracting Party.~~

(c) Where a Contracting Party permits the filing of communications on paper, the Office shall permit the filing of communications on paper in accordance with the requirements under the Patent Cooperation Treaty relating to the form of communications on paper.

ANNEX VI

The following draft text suggests amendments concerning the filing date (draft PLT Article 5 and Rule 21, as explained in paragraphs 32 and 33 of document PT/DC/6.

Article 5
Filing Date

(1) *[Elements of Application]* (a) Subject to paragraphs (2) to (8) and to any requirements prescribed in the Regulations, a Contracting Party shall provide that the filing date of an application shall be ~~no later than~~ the date on which its Office has received all of the following elements, filed, at the option of the applicant, on paper or ~~by other means~~ as otherwise permitted by the Office for the purpose of according a filing date:

Rule 21
Requirement of Unanimity for Amending Certain Rules Under Article 14(3)

Amendment of the following Rules shall require unanimity:

(iibis) the Rules established under Article 5(1);

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May 11, 2000 (Original: English)

ARTICLES 7, 9 AND 11, AND RULE 12

proposal by the Delegation of Germany

The following modifications are suggested by the German Delegation in order to clarify meaning of certain provisions.

In Article 7(2), item (ii) should be deleted because the procedures concerned described in Article 5 can be very complicated and are much more important than the simple filing of the application. The Office should be permitted to require representation to facilitate the procedure in favour of the applicant.

In Article 7(2), item (vi) should be deleted because the fact that a notification has to be transmitted to the applicant is one of the most important cases where the requirement of representation is needed. In practice, transmission in a foreign country is one of the most complicated and laborious procedures. It is advantageous for the applicant and for the procedure relating to the application for an applicant who does not have any address in the relevant territory to have a representative for the purpose of transmission.

In Article 9, it should be added that a time limit cannot start to run before the applicant has been notified about the time limit and the consequent loss of rights. This addition clarifies the spirit of the Treaty that no loss of rights can occur without any notification by the Office and without any opportunity for the applicant to give his opinion.

In Article 11, clarification is suggested to the effect that the time limit set by the Office will have the direct loss of rights as a consequence. Without that clarification, the relief provided in Article 11 can be confused with the possible appeal against the decision of an Office which is part of the jurisdiction.

The aim of the Patent Law Treaty is to harmonize the provisions of formal patent law. It cannot achieve a harmonization of the provisions governing court procedure.

The amendment in Rule 12(4) is suggested in the event that the clarification suggested in Article 11 cannot be adopted. Without the clarification in Article 11, there will be a difference in the time limits provided for the relief in Article 11 and the time limit provided for court procedure. In most cases, the time limit requested for the appeal to a court is shorter than two months. If the clarification suggested in Article 11 cannot be adopted, there will be a need to adjust time limits in court procedures. As the aim of the Patent Law Treaty is not the harmonization of court procedures, there should be more flexibility in Rule 12(4). If the suggested wording cannot be adopted there will be need for a more detailed regulation.

It is suggested that Rule 12(5)(vii) be deleted because there is no need to restrict the Office to giving relief in respect of a time limit for an action in a procedure before the Office in respect of which a request for expedited or accelerated processing has been granted. There can be legitimate reasons for the applicant asking for such relief so that the Office should have the opportunity to decide on its own authority whether to give that relief or not.

The following wording is suggested in the Articles and Rules referred to:

Article 7 *Representation*

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

- (i) the payment of maintenance fees;
- ~~[(ii) any procedure referred to in Article 5;]~~
- [(iii) the payment of fees;]
- [(iv) the filing of a translation;]
- [(v) any other procedure as prescribed in the Regulations;]
- ~~[(vi) the issue of a receipt or notification by the Office in respect of any procedure referred to in item[s] (i) [to (v)].~~

Article 9 *Notifications*

(3) *[Failure to Notify]* Subject to Article 10(1), where an Office does not notify an applicant, owner or other interested person of a failure to comply with any requirement under this Treaty or the Regulations, that absence of notification does not relieve that applicant, owner or other interested person of the obligation to comply with that requirement and does not set in motion a time limit fixed by the Office.

Article 11 *Relief in Respect of Time Limits*

(1) *[Extension of Time Limits]* A Contracting Party may provide for the extension, for the period prescribed in the Regulations, of a time limit fixed by the Office for an action in a procedure before the Office in respect of an application or a patent, if the expiry of that time limit has as a consequence the immediate loss of rights, and a request to that effect is made to the Office in accordance with the

requirements prescribed in the Regulations, and the request is made, at the option of the Contracting Party:

- (i) prior to the expiration of the time limit; or
- (ii) after the expiration of the time limit, and within the time limit prescribed in the Regulations.

(2) [*Continued Processing*] Where an applicant or owner has failed to comply with a time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office in respect of an application or a patent, and the expiry of that time limit has as a consequence the immediate loss of rights, and that Contracting Party does not provide for extension of a time limit under paragraph (1)(ii), the Contracting Party shall provide for continued processing with respect to the application or patent and, if necessary, re-instatement of the rights of the applicant or owner with respect to that application or patent, if:

- (i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;
- (ii) the request is made, and all of the requirements in respect of which the time limit for the action concerned applied are complied with, within the time limit prescribed in the Regulations.

Rule 12 *Details Concerning Relief in Respect of Time Limits Under Article 11*

(4) [*Time Limit for Filing a Request Under Article 11(2)(ii)*] The time limit referred to in Article 11(2)(ii) shall expire not earlier than at least one ~~two~~ months after a notification of the Office that the applicant did not comply with the time limit fixed by the Office. ~~from the date of the expiration of the time limit that was not complied with.~~

(5) [*Exceptions Under Article 11(3)*] (a) No Contracting Party shall be required under Article 11(1) or (2) to grant:

- (i) a second, or any subsequent, relief in respect of a time limit for which relief has already been granted under Article 11(1) or (2);]
 - (ii) relief for filing a request for relief under Article 11(1) or (2) or a request for re-instatement under Article 12(1);
 - (iii) relief in respect of a time limit for the payment of maintenance fees;
 - (iv) relief in respect of a time limit referred to in Article 13(1), (2) or (3);
 - [(v) relief in respect of a time limit for an action before a board of appeal or other review body constituted in the framework of the Office;]
 - (vi) relief in respect of a time limit for an action in *inter partes* proceedings;
 - ~~[(vii) relief in respect of a time limit for an action in a procedure before the Office in respect of which a request for expedited or accelerated processing has been granted.]~~
-

PT/DC/8

May 12, 2000 (Original: English)

ARTICLES 1 TO 3, 5 TO 8, 11 TO 13, 17, 19, 21 AND 24
AND RULES 7, 8, 12, 13, 16 AND 18

comment and proposal by the Delegation of the United States of America

The following comments are made, and modifications are suggested, by the Delegation of the United States of America.

(1) *Article 1(v)*. Comment and proposal: In item (v), the use of the phrase "means permitted by the Office" in this definition, and in the chapeau to Article 5(1)(a), may conflict with Article 8(1)(a) which states that the establishment of a filing date is not subject to the requirements which a Contracting Party shall be permitted to apply as regards the "form, format and means of filing of communications." The statement in Note 1.03 that the limited nature of this definition "allows a Contracting Party to disregard any communication that is filed by means which that Office does not permit, except as otherwise prescribed in the Treaty" does not suffice for making the intended distinction. The phrase "except as otherwise prescribed in the Treaty" should be included in the definition, as follows:

"(v) "communication" means any application, or any request, declaration, document, correspondence or other information relating to an application or patent, whether relating to a procedure under this Treaty or not, which is filed with the Office by means, except as otherwise prescribed in the Treaty, permitted by the Office;"

(2) *Article 1(viii)*. Comment and proposal: The "person ... applying for the patent" should be subject to the same "applicable law" limitation to which the "another person ... filing or prosecuting the application" is subject. Accordingly, the United States proposes the insertion of the phrase ", pursuant to the applicable law," after "who" in the second line of this provision, as follows:

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

(3) *Article 2(1)*. Comment and proposal: The comments herein are dependent upon the fate of Article 5. The United States has consistently regarded the requirements of Article 5 to be maximum requirements similar to the requirements throughout the rest of the treaty. As such, the United States proposes the deletion of the phrase "other than Article 5," as presented in the Basic Proposal. We have also consistently supported the retention of the phrase "no later than" throughout Article 5. However, if Article 5 is changed to: (1) limit paragraph (1)(a) to item (iii) (a description), alone, and (2) accommodate electronic filing, the United States may be able to support this provision with the phrase "other than Article 5," as presented in the Basic Proposal. It is worth noting that if "no later than" is adopted throughout Article 5, the retention of the phrase "other than Article 5" here in Article 2 appears meaningless.

(4) *Article 3(1)(a)*. Comments and proposal: In item (i), the United States proposes that the phrase "that can" be changed to "permitted to." This change would provide Contracting Parties with the assurance that current freedoms to control the types of applications that are permitted, by applicable law, to be filed as international applications will be maintained. The phrase "that can" may introduce ambiguities in this regard.

In item (ii), the United States proposes the addition of the phrase "of the types of applications in (i)" after "applications" to more clearly exclude plant and design applications, which, in some Contracting Parties, may be regarded as applications for inventions.

(5) *Article 3(1)(b)*. Comment and proposal: The United States supports the addition of a comma after "applications" to clarify that "international applications" applies to both "patents for invention" and "patents of addition."

(6) *Article 5.* Comment and proposal: As noted with regard to Article 2, the position below is dependent upon whether certain changes to Article 5 to: (1) limit paragraph (1)(a) to item (iii) (a description), alone, and (2) accommodate the electronic filing issue are, in fact, adopted at the Diplomatic Conference. If those proposals are not offered by another delegation, the United States hereby proposes them. If those proposals are adopted, we may be able to accept paragraph (1) of this Article as so amended.

Otherwise, the United States proposes the insertion of the phrase "no later than" throughout Article 5 in those locations where it is included in brackets in the Basic Proposal. If "no later than" is not accepted, then, to preserve flexibilities on this issue, the United States will seek the deletion of the phrase "other than Article 5" in Article 2(1).

(7) *Article 5(1)(a).* Comments and proposal: The United States proposes that the phrase "permitted by the Office" in the chapeau to paragraph (1)(a) be deleted. From the understanding of this provision achieved during the last meeting of the SCP, a filing date must be granted even if an application does not comply with Article 8(1) and Rule 8 requirements. This understanding is reflected in Note 5.05. This is also expressed in Article 8(1)(a) which states "[e]xcept for the establishment of a filing date under Article 5(1)." We have consistently supported the grant of a filing date for anything received by and comprehensible to an Office of a Contracting Party.

(8) *Article 6(1) and Article 1.* Comment and proposal: With regard to Article 6(1)(ii), a definition for "Contracting State" should be provided in Article 1. It is defined in PCT Article 1(1) as "States party to the Patent Cooperation Treaty."

(9) *Article 7(2)* Comment and proposal: With regard to Article 7(2), the United States has consistently supported maximizing the exceptions to mandatory representation. Accordingly, the United States proposes the retention of the bracketed language in this provision.

(10) *Article 8 and Rule 8.* Comment and proposal: With regard to Article 8, Rule 8 and other provisions, on the issue of reconciling the use of the terms "form, format and means," throughout the articles and rules, discussed in PT/DC/6, the United States has reviewed the recommendations in that document. The United States prefers the use of the terms "media," "format" and "means of delivery," respectively, and cannot, without further explanation by the IB, support the IB's recommendation to merge the terms "form" and "format" into "form." See attached chart for an elaboration on the use of the three terms and the basis for our recommendation.

(11) *Article 8 and Rule 8.* Comment and proposal: The rate at which electronic filing technology is evolving is so great, even greatly accelerating within the last year, that the 10-year period in Rule 8(1)(a) will be counter-productive. This 10-year period will also have a pronounced effect of discouraging the adoption of electronic filing throughout the world. It is not only the pace of electronic filing development that mandates a different solution in Rule 8(1)(a), it is also the nature of recently received patent applications that dictates a different solution. For example, the United States Patent and Trademark Office recently received a patent application that is 400,000 pages in length. We are absolutely incapable of handling and processing this patent application on paper. We do not have the luxury of being able to wait 10 years to mandate that such an application be filed electronically. We have similar concerns with the need to provide some of our applicants with enhanced publication mechanisms, in which amendments may be permitted up to a very late stage if submitted in an electronic, ready-to-publish, form; to accommodate the submission of genetic sequence information; to process other "jumbo" or "mega" applications; and to accommodate microfiche-only submissions for computer program listings. As Rule 8(1)(a) will, in general, discourage the adoption of electronic filing, it will also have the effect of precluding offices from accommodating the needs of these patent applicants which may be best served by the submission of certain communications in electronic form, alone, or accompanied by paper. To address these issues, the United States proposes the following:

(a) To the extent that some of the above issues are currently addressed in the PCT, the United States proposes that Article 8(1)(a) of the PLT be amended to make reference to PLT Article 6(1), which reference would thereby incorporate the relevant PCT provisions. Accordingly, the United States proposes that the phrase ", and subject to Article 6(1)," be added to Article 8(1)(a) after the reference to "Article 5(1)."

(b) In Rule 8(1)(a), the United States proposes that "10 years" be changed to "5 years."

(c) To address the need to immediately accommodate certain types of applications, the United States proposes the following new paragraph for Rule 8(1):

"Rule 8(1)(c) Where the filing or processing of communications on paper is deemed not practicable, Contracting Parties may, notwithstanding paragraph (1)(a) and as prescribed in the Regulations, require the filing of communications in another [form] [medium] or by other means of [transmittal] [delivery] for those communications."

(12) *Articles 11, 12 and 13.* Comment and proposals: In Articles 11(6), 12(5), and 13(5), the United States proposes the deletion of the term "intended." The term "intended" implies that a Contracting Party would have to give an applicant a notification to show cause why a request should not be denied, rather than merely denying a request and giving an applicant an opportunity to request reconsideration of the denial.

(13) *Article 12 and Rule 13.* Comments and proposals: The United States supports a modification of Note 12.02 to include a statement that Contracting Parties are free to determine what constitutes a "loss of rights with respect to an application or patent." It is important that Article 12 not apply to determinations relating to additional patent term. Accordingly, the United States also proposes the inclusion of a new exception in Rule 13(3) as follows:

"(viii) in a determination of additional patent term"

(14) *Articles 12 and 13.* Comment and proposal: The United States proposes a text for an Agreed Statement to clarify the "in spite of all due care" standard that may be applied in Articles 12 and 13. Contracting Parties should not be free to impose standards of "due care" that are so high that Article 12 and Article 13 relief becomes meaningless. For example, Contracting Parties should not be permitted to impose a "beyond the control of the applicant" standard. The draft Agreed Statement follows:

"For the purposes of Articles 12 and 13, it is understood that the "all due care required by the circumstances" standard does not require an applicant or owner to provide evidence demonstrating that the event giving rise to the failure to comply with the time limit or the failure to file the subsequent application within the priority period could not have been prevented under any circumstances, and shall not be considered to require proof of events entirely beyond the control of the applicant or owner. Instead, the standard only requires a showing by an applicant or owner that the failure occurred notwithstanding the exercise by that applicant or owner of a reasonable level of due care under the circumstances, such as reliance on trustworthy/dependable procedures and personnel.

(15) *Article 17(4)(b).* Comment and proposal: The United States proposes that the phrase "WIPO member States" be included in this provision. Otherwise, non-PLT Contracting Parties would be excluded from consultations but international and national NGOs and IGOs would be included.

(16) *Article 19(4).* Comment and Proposal: The United States proposes the amendment below that will clarify that States and IGOs must, obviously, satisfy the requirements of the referred to paragraphs in order to ratify or accede to this Treaty.

"(4) [*Ratification or Accession*] Any State or intergovernmental organization satisfying the requirements referred to in paragraphs (1) to (3) may deposit: [...]"

(17) *Article 20(2).* Proposal: In items (ii), (iii) and (iv), delete the phrase ", or from any later date indicated in that instrument" in each occurrence.

(18) *Article 21(1)(a).* Comment and proposal: In Article 21(1)(a), the United States proposes the insertion of "and related Regulations" after "Article 6(1) and (2)" for completeness and avoidance of doubt.

(19) *Article 21(1)(b).* Comment and proposal: In Article 21(1)(b), the United States supports the retention of the bracketed provision and proposes the retention of that provision.

(20) *Article 24.* Comment and proposal: In Article 24, the United States proposes that additional language texts be established only "as designated by the Assembly." This is consistent with Article 33 of

the Geneva Act of the Hague. Further, the United States proposes that the note should include a statement as follows: "The official texts established in Article 24(2) are not equally authentic."

(21) *Declarations Made by Contracting Parties.* A new Article addressing "Declarations Made by Contracting Parties" should be incorporated in the PLT, as the PLT allows Contracting Parties to make declarations. See, e.g., Article 22 of the PLT. See also Article 30 of the Geneva Act of the Hague Agreement for suggested language. Similarly, a corresponding Rule in the Regulations is necessary. See Rule 32 of the Geneva Act of the Hague Agreement.

(22) *Effective Date of Application.* Although Article 21 of the Treaty establishes the application of the Treaty to existing applications and patents, there is no provision with respect to applications and patents filed on or after the date on which this Treaty binds a Contracting Party under Article 20. Accordingly, a provision should be included in Article 21 to indicate that Contracting Parties must apply the provisions of this Treaty and the Regulations to all applications filed on or after the date on which this Treaty binds the Contracting Party under Article 20.

(23) *Rule 7.* Comment and proposal: With respect to Rule 7 - The United States supports the retention of paragraph (1) and items (i) and (ii) and proposes the retention of those bracketed provisions.

(24) *Rule 12(5)(a)(i).* Comment and proposal: In Rule 12(5)(a), the United States opposes the inclusion of item (i). Contracting Parties should be required to provide either multiple two-month extensions of time or extensions for up to the maximum period permitted by law.

(25) *Rule 12(5)(a)(v).* Comment and proposal: In Rule 12(5)(a), the United States supports the retention of item (v) and proposes that the bracketed language be retained. Alternatively, we could accept the requirement to provide such relief and mandate by rule those time limits for which relief would not be available, thereby removing those time limits from the umbrella of "time limits set by the Office." The time limits affected include requests for oral hearings, requests for reconsideration and petitions for patent term adjustments.

(26) *Rule 12(5)(a)(vi).* Comment only: In Rule 12(5)(a), the United States supports item (vi).

(27) *Rule 12(5)(a)(vii).* Comment only: In Rule 12(5)(a), the United States does not support the retention of item (vii). Contracting Parties should be required to provide extensions of time as appropriate and revert processing of the application to normal processing.

(28) *Rule 13(3)(ii).* Comment only: In Rule 13(3), the United States is strongly opposed to the retention of item (ii). Contracting Parties should be required to provide relief for the late payment of maintenance fees. Clearly, one of the greatest potential benefits of Article 12 will be lost if this exception is included.

(29) *Rule 13(3)(v) and (vi).* Comment only: In Rule 13(3), the United States does not support the retention of items (v) and (vi). Contracting Parties should be required to provide Article 12 relief under these circumstances. The exclusion of these items in this provision is strongly desired by users.

(30) *Rule 13(3)(vii).* Comment only: In Rule 13(3), the United States supports item (vii).

(31) *Rules 16(2)(a) and 17(2)(a).* Comment only: In Rules 16(2)(a) and 17(2)(a), the United States does not support the inclusion of the bracketed provisions. In both instances, an underlying document is necessary regardless of who the requestor is.

(32) *Rule 18(1).* Comment and proposal: In Rule 18(1), the United States agrees with the last sentence of Note 18.01 and proposes an explicit mention of the substance of that sentence in the chapeau to paragraph (1). It is important that the procedures for correcting mistakes not be available to patent applicants as an alternative to normal examining procedures.

"(1) [Request] (a) Where an application, a patent or any request communicated to the Office in respect of an application, not related to search or substantive examination, or a patent contains a mistake which is correctable under the applicable law, the Contracting Party shall accept that a request for correction of that mistake in the records and publications of the Office be made in a communication signed by the applicant or owner and containing the following indications: [...]"

ANNEX

DEFINITIONS OF FORM, FORMAT AND MEANS

Form: Medium upon which the message is written or resides (prefer- medium)

Format: Arrangement of the information on the medium

Means: Manner in which the form was delivered to the Office

FORM (<i>prefer Medium</i>)	FORMAT	MEANS (<i>prefer Means of Delivery</i>)
Paper	Data formats: character sets, font, color, size Display Format: Arrangement of Information Language: English, French Encoding: XML tags -ISAF	mail, hand, special carrier
Floppy disk, tapes, Zips	Data formats: ASCII, Unicode, character sets Display Format: determined by DTD Machine formats: HD Mac, HD IBM Software formats: XML, PDF, Word, WordPerfect Language: English, French Data Wrapping: PCS7, Dig. Signature, Encryption, PKI	mail, hand, special carrier
CD CD-ROM CD-RW CD-R	Data: ASCII, Unicode, character sets Display Format: determined by DTD Machine format: ISO 9660 Software: XML, PDF, Word, WordPerfect Language: English, French Data Wrapping: PCS7, Dig. Signature, Encryption, PKI	mail, hand, special carrier
Electronic (really RAM, wire, buffer etc.)	Data: ASCII, Unicode, character sets Display Format: determined by DTD Machine Formats: depends on storage, transmission Software: XML, PDF, Word, WordPerfect Language: English, French Data Wrapping: PCS7, Dig. Signature, Encryption, PKI	wire signal, radio signal

PT/DC/9
May 12, 2000 (Original: English/French)

ARTICLE 19(2)

*proposal by the Delegation of Portugal on behalf of
the Member States of the European Union*

The Delegation of Portugal on behalf of the Member States of the European Union proposes the following text to replace the present text of Article 19(2) as follows:

"(2) Any intergovernmental organization may become party to this Treaty if at least one member State of that intergovernmental organization is a party to the Paris Convention or a member of the organization, and the intergovernmental organization declares that:

- (i) it is competent to grant patents with effect for its member States; or
- (ii) it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by this Treaty.

PT/DC/10
May 15, 2000 (Original: English)

ARTICLES 5, 6 AND 13, AND RULES 2, 9, 12, 14 AND 16

proposal by the Delegation of Japan

The following modifications are suggested by the Delegation of Japan in the Articles and Rules referred to:

Article 5
Filing Date

(7) [*Replacing Description and Drawings by Reference to a Previously Filed Application*] (a) Subject to the requirements prescribed in the Regulations, a reference, made upon the filing of the application, in a language accepted by the Office, to a single previously filed application shall, for the purposes of the filing date of the application, replace the description and any drawings. The Contracting Party may also require that the application referred to be the application as filed on its filing date, and that it have been filed by the same applicant or its successor.

Rule 2
Details Concerning Filing Date Under Article 5

(5) [*Requirements Under Article 5(7)(a)*]

[...]

(b) The reference referred to Article 5(7)(a) shall be made within a time limit which shall be not less than 12 months after the previously filed application was made.

(b~~c~~) Any Contracting Party may, subject to Rule 4(3), require...

Article 6
Application

(2) [*Request Form or Format*] (a) A Contracting Party may require that the contents of an application which correspond to the contents of the request of an international application under the Patent Cooperation Treaty be presented on a request Form, or in a format, prescribed by that Contracting Party. A Contracting Party may also require that any further contents prescribed in the Regulations pursuant to paragraph (1)(iii) or certain national requirements allowed under the Patent Cooperation Treaty be contained in that request Form or format.

Rule 9
Details Concerning the Signature Under Article 8(4)

(4) [*Signature of Communications Filed in Electronic Form or by Electronic Means Resulting in Graphic Representation*] Where a Contracting Party permits the filing of communications ~~in electronic form or by electronic means~~ by telefacsimile or other like means, it shall consider such a communication signed if a graphic representation of a signature accepted by that Contracting Party under paragraph (3) appears on that communication as received by the Office of that Contracting Party.

Rule 12
*Details Concerning Relief in Respect of
Time Limits Under Article 11*

(5) [*Exceptions Under Article 11(3)*] (a) No Contracting Party shall be required under Article 11(1) or (2) to grant:

{(i) a second, or any subsequent, relief in respect of a time limit for which relief has already been granted under Article 11(1) or (2);}

[...]

{(v) relief in respect of a time limit for an action before a board of appeal or other review body constituted in the framework of the Office;}

Article 13
Correction or Addition of Priority Claim; Restoration of Priority Right

(3) [*Failure to File a Copy of Earlier Application*] Where a copy of an earlier application required under Article 6(5) is not filed with the Office within the time limit prescribed in the Regulations pursuant to Article 6, the Office shall restore the right of priority, if:

[...]

(iv) A copy of the earlier application is filed within the time limit prescribed in the Regulations.

Rule 14

Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13

(8) [Time Limit Under Article 13(3)(iv)] The time limit referred to in Article 13(3)(iv) shall be not less than twelve months from the date of expiration of the time limit prescribed in Rule 4(1).

Rule 16

Request for Recordation of Change in Applicant or Owner

(2) *[Documentation of the Basis of the Change in Applicant or Owner]*

[...]

(e) Where a request for recordation of the change is made in a communication signed by the applicant or owner, or by the new applicant or new owner under paragraph (1)(a), a Contracting Party may require that the consent to make that change recorded to the Office be made in a communication by the other party, who has not signed in the request.

PT/DC/11
May 15, 2000 (Original: English)

AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE REGARDING
ARTICLE 1(XIV) OF THE PATENT LAW TREATY

proposal by the Delegation of Japan

When adopting Article 1(xiv), the Diplomatic Conference understood that, where a procedure before the Office is governed by a law of a Contracting Party that relates to general administrative appeal procedures, that Contracting Party may provide that, in the case of conflict between the provisions of that law and the provisions of the Patent Law Treaty and its Regulations with respect to any procedure before the Office, the provisions of the law relating to general administrative appeal procedures shall prevail.

PT/DC/12
May 16, 2000 (Original: English)

AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE
ON THE AVAILABILITY OF PRIORITY DOCUMENTS

proposal by the Delegation of the United Kingdom

At the third session of the Standing Committee on the Law of Patents (SCP) held in Geneva, September 6-14, 1999 - as reported in paragraphs 43 to 48 of SCP/3/11 - the discussion on draft Article 5(5) saw the International Bureau introduce document SCP/3/5 (Availability of Priority Documents). This document suggested studying the possibility of establishing a central digital library of priority documents among the Member States of WIPO and the Paris Union, outside of the draft Patent Law

Treaty (PLT). After some discussion, the Committee decided to follow the draft recommendation of SCP/3/5.

In connection with this issue, in the course of the discussion of Article 13(3), it was suggested that Offices should be obliged to provide copies of earlier applications as soon as possible. In response, the International Bureau proposed an additional Article 13*bis* (Paper No. 4, SCP3, September 9, 2000) for consideration by the SCP. The UK Delegation noted that the draft text of this Article seemed to be in the form of an agreed statement of the Diplomatic Conference, and suggested the withdrawal of the proposed draft Article.

The United Kingdom therefore proposes the following agreed statement for adoption by the Diplomatic Conference:

"When adopting Articles 6(5) and 13(3) and Rules 4 and 14, the Diplomatic Conference understood that each Office would undertake to make available to the applicant and, after publication, to third parties upon request, copies of applications filed with its Office which serve as a basis of a priority claim, as soon as is reasonably possible.

"Furthermore, the Diplomatic Conference urged the World Intellectual Property Organization to expedite the creation of a digital library for priority documents. Such a centralised library would be of benefit to patent owners and others wanting access to priority documents."

PT/DC/13

May 17, 2000 (Original: English)

RULES OF PROCEDURE

as adopted on May 11, 2000, by the Diplomatic Conference

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CHAPTER I: OBJECTIVE, COMPETENCE, COMPOSITION AND SECRETARIAT OF THE CONFERENCE

Rule 1: Objective and Competence of the Conference

(1) The objective of the Diplomatic Conference for the Adoption of the Patent Law Treaty (hereinafter referred to as "the Conference") is to negotiate and adopt such a Treaty and Regulations under that Treaty (hereinafter referred to, respectively, as "the Treaty" and as "the Regulations").

(2) The Conference, meeting in Plenary, shall be competent to:

- (i) adopt the Rules of Procedure of the Conference (hereinafter referred to as "these Rules") and to make any amendments thereto;
- (ii) adopt the agenda of the Conference;
- (iii) decide on credentials, full powers, letters or other documents presented in accordance with Rules 6, 7 and 8 of these Rules;
- (iv) adopt the Treaty and the Regulations;
- (v) adopt any recommendation or resolution whose subject matter is germane to the Treaty and the Regulations;
- (vi) adopt any agreed statements to be included in the Records of the Conference;
- (vii) adopt any final act of the Conference;
- (viii) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition of the Conference

(1) The Conference shall consist of:

- (i) delegations of the States which are party to the Paris Convention for the Protection of Industrial Property or States members of the World Intellectual Property Organization (hereinafter referred to as "the Ordinary Member Delegations"),
- (ii) the delegations of the African Intellectual Property Organization, the African Regional Industrial Property Organization, the European Patent Organization and the Eurasian Patent Organization (hereinafter referred to as the "Special Member Delegations"),
- (iii) the delegations of States members of the United Nations other than the States which are party to the Paris Convention for the Protection of Industrial Property or States members of the World Intellectual Property Organization invited to the Conference as observers (hereinafter referred to as "the Observer Delegations"),
- (iv) representatives of intergovernmental and non-governmental organizations invited to the Conference as observers (hereinafter referred to as "the Observer Organizations").

(2) References in these Rules of Procedure to Member Delegations shall be considered as references to the Ordinary Member Delegations and the Special Member Delegations.

(3) References in these Rules of Procedure to "Delegations" shall be considered as references to the three kinds (Ordinary Member, Special Member and Observer) of Delegations but not to Observer Organizations.

Rule 3: Secretariat of the Conference

(1) The Conference shall have a Secretariat provided by the International Bureau of the World Intellectual Property Organization (hereinafter referred to as "the International Bureau" and "WIPO," respectively).

(2) The Director General of WIPO and any official of the International Bureau designated by the Director General of WIPO may participate in the discussions of the Conference, meeting in Plenary, as well as in any committee or working group thereof and may, at any time, make oral or written statements, observations or suggestions to the Conference, meeting in Plenary, and any committee or working group thereof concerning any question under consideration.

(3) The Director General of WIPO shall, from among the staff of the International Bureau, designate the Secretary of the Conference and a Secretary for each committee and for each working group.

(4) The Secretary of the Conference shall direct the staff required by the Conference.

(5) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents, for the interpretation of oral interventions and for the performance of all other secretarial work required for the Conference.

(6) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference. The International Bureau shall distribute the final documents of the Conference after the closing of the Conference.

CHAPTER II: REPRESENTATION

Rule 4: Delegations

(1) Each Delegation shall consist of one or more delegates and may include advisors.

(2) Each Delegation shall have a Head of Delegation and may have a Deputy Head of Delegation.

Rule 5: Observer Organizations

An Observer Organization may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

(1) Each Delegation shall present credentials. If a final act of the Conference (see Rule 1(2)(vii)) is adopted, it shall be open for signature by any Delegation whose credentials have been found in order under Rule 9(2).

(2) Full powers shall be required for signing the Treaty. Such powers may be included in the credentials.

Rule 7: Letters of Appointment

The representatives of Observer Organizations shall present a letter or other document appointing them.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 shall be presented to the Secretary of the Conference, preferably not later than twenty-four hours after the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee referred to in Rule 11 shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7, respectively, and shall report to the Conference, meeting in Plenary.

(2) The decision on whether a credential, full powers, letter or other document is in order shall be made by the Conference, meeting in Plenary. Such decision shall be made as soon as possible and in any case before the adoption of the Treaty.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and Observer Organizations shall be entitled to participate provisionally in the deliberations of the Conference as provided in these Rules.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

(1) The Conference shall have a Credentials Committee.

(2) The Credentials Committee shall consist of seven Ordinary Member Delegations elected by the Conference, meeting in Plenary.

Rule 12: Main Committees and Their Working Groups

(1) The Conference shall have two Main Committees. Main Committee I shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the substantive provisions of the Treaty, the Regulations and any recommendation, resolution or agreed statement referred to in Rule 1(2)(v) and (vi). Main Committee II shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the other provisions of the Treaty.

(2) Each Main Committee shall consist of all the Member Delegations.

(3) Each Main Committee may create working groups. In creating a working group, the Main Committee creating it shall specify the tasks of the Working Group, decide on the number of the members of the Working Group and elect such members from among the Member Delegations.

Rule 13: Drafting Committee

- (1) The Conference shall have a Drafting Committee.
- (2) The Drafting Committee shall consist of 11 elected members and two *ex officio* members. The elected members shall be elected by the Conference, meeting in Plenary, from among the Member Delegations. The Presidents of the two Main Committees shall be the *ex officio* members.
- (3) The Drafting Committee shall prepare drafts and give advice on drafting as requested by either Main Committee. The Drafting Committee shall not alter the substance of the texts submitted to it. It shall coordinate and review the drafting of all texts submitted to it by the Main Committees, and it shall submit the texts so reviewed for final approval to the competent Main Committee.

Rule 14: Steering Committee

- (1) The Conference shall have a Steering Committee.
- (2) The Steering Committee shall consist of the President and Vice-Presidents of the Conference, the President of the Credentials Committee, the Presidents of the Main Committees and the President of the Drafting Committee. The meetings of the Steering Committee shall be presided over by the President of the Conference.
- (3) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress, including, in particular, decisions on the coordinating of the meetings of the Plenary, the committees and the working groups.
- (4) The Steering Committee shall propose the text of any final act of the Conference (see Rule 1(2)(vii)), for adoption by the Conference, meeting in Plenary.

CHAPTER IV: OFFICERS

Rule 15: Officers and their Election; Precedence Among Vice-Presidents

- (1) The Conference shall have a President and 10 Vice-Presidents.
- (2) The Credentials Committee, each of the two Main Committees and the Drafting Committee shall have a President and two Vice-Presidents.
- (3) Any Working Group shall have a President and two Vice-Presidents.
- (4) The Conference, meeting in Plenary, and presided over by the Director General of WIPO, shall elect its President and then, presided over by its President, shall elect its Vice-Presidents and the officers of the Credentials Committee, the Main Committees and the Drafting Committee.
- (5) The officers of a Working Group shall be elected by the Main Committee that establishes that Working Group.
- (6) Precedence among the Vice-Presidents of a given body (the Conference, the Credentials Committee, the two Main Committees, any Working Group, the Drafting Committee) shall be determined by the place occupied by the name of the State of each of them in the list of Member Delegations established in the alphabetical order of the names of the States in French, beginning with the Member Delegation whose name shall have been drawn by lot by the President of the Conference. The Vice-President of a given body who has precedence over all the other Vice-Presidents of that body shall be called "the ranking" Vice-President of that body.

Rule 16: Acting President

(1) If the President is absent from a meeting, the meeting shall be presided over, as Acting President, by the ranking Vice-President of that body.

(2) If all the officers of a body are absent from any meeting of the body concerned, that body shall elect an Acting President.

Rule 17: Replacement of the President

If a President becomes unable to perform his or her functions for the remainder of the duration of the Conference, a new President shall be elected.

Rule 18: Vote by the Presiding Officer

(1) No President, whether elected as such or acting (hereinafter referred to as "the Presiding Officer"), shall take part in voting. Another member of his or her Delegation may vote for that Delegation.

(2) Where the Presiding Officer is the only member of his or her Delegation, he or she may vote, but only in the last place.

CHAPTER V: CONDUCT OF BUSINESS

Rule 19: Quorum

(1) A quorum shall be required in the Conference, meeting in Plenary; it shall, subject to paragraph (3), be constituted by one-half of the Member Delegations represented at the Conference.

(2) A quorum shall be required for the meetings of each Committee (the Credentials Committee, the two Main Committees, the Drafting Committee and the Steering Committee) and any working group; it shall be constituted by one-half of the members of the Committee or working group.

(3) The quorum at the time of the adoption of the Treaty and the Regulations by the Conference, meeting in Plenary, shall be constituted by one half of the Ordinary Member Delegations whose credentials were found in order by the Conference meeting in Plenary.

Rule 20: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon Presiding Officers elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. The Presiding Officer shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose to the body over which he or she presides the limitation of time to be allowed to each speaker, the limitation of the number of times each Delegation may speak on any question, the closure of the list of speakers or the closure of the debate. The Presiding Officer may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the

question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected.

Rule 21: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 22 and 23, the Presiding Officer shall call upon persons in the order in which they ask for the floor.

(2) The Presiding Officer may call a speaker to order if the remarks of the speaker are not relevant to the subject under discussion.

Rule 22: Precedence in Receiving the Floor

(1) Member Delegations asking for the floor are generally given precedence over Observer Delegations asking for the floor, and Member Delegations and Observer Delegations are generally given precedence over Observer Organizations.

(2) The President of a Committee or working group may be given precedence during discussions relating to the work of the Committee or working group concerned.

(3) The Director General of WIPO or his representative may be given precedence for making statements, observations or suggestions.

Rule 23: Points of Order

(1) During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless the appeal is approved.

(2) The Member Delegation that has risen to a point of order under paragraph (1) may not speak on the substance of the matter under discussion.

Rule 24: Limit on Speeches

In any meeting, the Presiding Officer may decide to limit the time allowed to each speaker and the number of times each Delegation and Observer Organization may speak on any question. When the debate is limited and a Delegation or Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 25: Closing of List of Speakers

(1) During the discussion of any given question, the Presiding Officer may announce the list of participants who have asked for the floor and decide to close the list as to that question. The Presiding Officer may nevertheless accord the right of reply to any speaker if a speech, delivered after the list of speakers has been closed, makes it desirable.

(2) Any decision made by the Presiding Officer under paragraph (1) may be the subject of an appeal under Rule 23.

Rule 26: Adjournment or Closure of Debate

Any Member Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has asked for the floor. In addition to the proposer of the motion to adjourn or close the debate, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing it, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time allowed to speakers under this Rule.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

Rule 28: Order of Procedural Motions; Content of Interventions on Such Motions

(1) Subject to Rule 23, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting,
- (ii) to adjourn the meeting,
- (iii) to adjourn the debate on the question under discussion,
- (iv) to close the debate on the question under discussion.

(2) Any Member Delegation that has been given the floor on a procedural motion may speak on that motion only, and may not speak on the substance of the matter under discussion.

Rule 29: Basic Proposal; Proposals for Amendment

(1) (a) Documents PT/DC/3 and 4 shall constitute the basis of the discussions in the Conference, and the text of the draft Treaty and of the draft Regulations contained in these documents shall constitute the "basic proposal."

(b) Where, for any given Article or Rule, there are two or three alternatives in the basic proposal, consisting of either two or three texts, or one or two texts and an alternative that there should be no such provision, the alternatives shall be designated with the letters A, B and, where applicable, C, and shall have equal status. Discussions shall take place simultaneously on the alternatives and, if voting is necessary and there is no consensus on which alternative should be put to the vote first, each Ordinary Member Delegation shall be invited to indicate its preference among the two or three alternatives. The alternative supported by more Ordinary Member Delegations than the other one or two alternatives shall be put to the vote first.

(c) Wherever the basic proposal contains words within square brackets, only the text that is not within square brackets shall be regarded as part of the basic proposal, whereas words within square brackets shall be treated as a proposal for amendment if presented as provided in paragraph (2).

(2) Any Member Delegation may propose amendments to the basic proposal.

(3) Proposals for amendment shall, as a rule, be submitted in writing and handed to the Secretary of the body concerned. The Secretariat shall distribute copies to the Delegations and the

Observer Organizations. As a general rule, a proposal for amendment cannot be taken into consideration and discussed or put to the vote at a meeting unless copies of it have been distributed not later than three hours before it is taken into consideration. The Presiding Officer may, however, permit the taking into consideration and discussion of a proposal for amendment even though copies of it have not been distributed or have been distributed less than three hours before it is taken into consideration.

Rule 30: Decisions on the Competence of the Conference

(1) If a Member Delegation moves that a duly seconded proposal should not be taken into consideration by the Conference because it is outside the latter's competence, that motion shall be decided upon by the Conference, meeting in Plenary, before the proposal is taken into consideration.

(2) If the motion referred to in paragraph (1), above, is made in a body other than the Conference, meeting in Plenary, it shall be referred to the Conference, meeting in Plenary, for a ruling.

Rule 31: Withdrawal of Procedural Motions and Proposals for Amendment

Any procedural motion and any proposal for amendment may be withdrawn by the Member Delegation that has made it, at any time before voting on it has commenced, provided that no amendment to it has been proposed by another Member Delegation. Any motion or proposal thus withdrawn may be reintroduced by any other Member Delegation.

Rule 32: Reconsideration of Matters Decided

When any matter has been decided by a body, it may not be reconsidered by that body unless so decided by the majority applicable under Rule 34(2)(ii). In addition to the proposer of the motion to reconsider, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote.

CHAPTER VI: VOTING

Rule 33: Right to Vote

Each Ordinary Member Delegation shall have the right to vote. An Ordinary Member Delegation shall have one vote, may represent itself only and may vote in its name only.

Rule 34: Required Majorities

(1) All decisions of all bodies shall be made as far as possible by consensus.

(2) If it is not possible to attain consensus, the following decisions shall require a majority of two-thirds of the Ordinary Member Delegations present and voting:

(i) adoption by the Conference, meeting in Plenary, of these Rules, and, once adopted, any amendment to them,

(ii) decision by any of the bodies to reconsider, under Rule 32, a matter decided,

(iii) adoption by the Conference, meeting in Plenary, of the Treaty and the Regulations,

whereas all other decisions of all bodies shall require a simple majority of the Ordinary Member Delegations present and voting.

(3) "Voting" means casting an affirmative or negative vote; express abstention or non-voting shall not be counted.

Rule 35: Requirement of Seconding; Method of Voting

(1) Any proposal for amendment made by a Member Delegation shall be put to a vote only if seconded by at least one other Member Delegation.

(2) Voting on any question shall be by show of hands unless an Ordinary Member Delegation, seconded by at least one other Ordinary Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the alphabetical order of the names in French of the States, beginning with the Ordinary Member Delegation whose name shall have been drawn by lot by the Presiding Officer.

Rule 36: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit an Ordinary Member Delegation to explain its vote or its abstention, either before or after the voting.

Rule 37: Division of Proposals

Any Member Delegation may move that parts of the basic proposal or of any proposal for amendment be voted upon separately. If the request for division is objected to, the motion for division shall be put to a vote. In addition to the proposer of the motion for division, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing it. If the motion for division is carried, all parts of the basic proposal or of the proposal for amendment that have been separately approved shall again be put to the vote, together, as a whole. If all operative parts of the basic proposal or of the proposal for amendment have been rejected, the basic proposal or the proposal for amendment shall be considered rejected as a whole.

Rule 38: Voting on Proposals for Amendment

(1) Any proposal for amendment shall be voted upon before the text to which it relates is voted upon.

(2) Proposals for amendment relating to the same text shall be put to the vote in the order of their substantive remoteness from the said text, the most remote being put to the vote first and the least remote being put to the vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such other proposal or text shall not be put to the vote.

(3) If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to the vote.

(4) Any proposal the purpose of which is to add to or delete from a text shall be considered a proposal for amendment.

Rule 39: Voting on Proposals for Amendment on the Same Question

Subject to Rule 38, where two or more proposals relate to the same question, they shall be put to the vote in the order in which they have been submitted, unless the body concerned decides on a different order.

Rule 40: Equally Divided Votes

(1) Subject to paragraph (2), if a vote is equally divided on a matter that calls only for a simple majority, the proposal shall be considered rejected.

(2) If a vote is equally divided on a proposal for electing a given person to a given position as officer and the nomination is maintained, the vote shall be repeated, until either that nomination is adopted or rejected or another person is elected for the position in question.

CHAPTER VII: LANGUAGES AND MINUTES

Rule 41: Languages of Oral Interventions

(1) Subject to paragraph (2), oral interventions made in the meetings of any of the bodies shall be in Arabic, Chinese, English, French, Russian or Spanish, and interpretation shall be provided by the Secretariat into the other five languages.

(2) Any of the Committees and any working group may, if none of its members objects, decide to dispense with interpretation or to limit interpretation to some only of the languages that are referred to in paragraph (1).

Rule 42: Summary Minutes

(1) Provisional summary minutes of the meetings of the Conference, meeting in Plenary, and of the Main Committees shall be drawn up by the International Bureau and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the minutes have been made available, inform the International Bureau of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the International Bureau.

Rule 43: Languages of Documents and Summary Minutes

(1) Any written proposal shall be presented to the Secretariat in Arabic, Chinese, English, French, Russian or Spanish. Such proposal shall be distributed by the Secretariat in Arabic, Chinese, English, French, Russian and Spanish.

(2) Reports of the Committees and any working group shall be distributed in Arabic, Chinese, English, French, Russian and Spanish. Information documents of the Secretariat shall be distributed in English and French.

(3) (a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English, French or Spanish; if the speaker has used another language, the intervention shall be rendered in English or French at the choice of the International Bureau.

(b) The final summary minutes shall be made available in English and French.

CHAPTER VIII: OPEN AND CLOSED MEETINGS

Rule 44: Meetings of the Conference and of the Main Committees

The meetings of the Conference, meeting in Plenary, and of the Main Committees shall be open to the public unless the Conference, meeting in Plenary, or the interested Main Committee, decides otherwise.

Rule 45: Meetings of Other Committees and of Working Groups

The meetings of the Credentials Committee, the Drafting Committee, the Steering Committee and any working group shall be open only to the members of the Committee or the working group concerned and to the Secretariat.

CHAPTER IX: OBSERVER DELEGATIONS AND OBSERVER ORGANIZATIONS

Rule 46: Status of Observers

(1) Observer Delegations may attend, and make oral statements in, the Plenary meetings of the Conference and the meetings of the Main Committees.

(2) Observer Organizations may attend the Plenary meetings of the Conference and the meetings of the Main Committees. Upon the invitation of the Presiding Officer, they may make oral statements in those meetings on questions within the scope of their activities.

(3) Written statements submitted by Observer Delegations or by Observer Organizations on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which the written statements were made available to it.

CHAPTER X: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 47: Possibility of Amending the Rules of Procedure

With the exception of the present Rule, these Rules may be amended by the Conference, meeting in Plenary.

PT/DC/14

May 15, 2000 (Original: Russian)

ARTICLE 1(XVIII)

proposal by the Delegation of the Russian Federation

The following additional definitions are suggested by the Delegation of the Russian Federation to be included in Article 1 of the draft Treaty:

- "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituent treaty of that intergovernmental organization applies;
- "instrument of ratification" shall be construed as including instruments of acceptance or approval;
- "law of a Contracting Party" means, where the Contracting Party is a State, the law of that State and, where the Contracting Party is an intergovernmental organization, the legal enactments of that intergovernmental organization.

PT/DC/15

May 17, 2000 (Original: English)

ARTICLES 5, 8 AND 12 AND RULES 4, 13 AND 17

proposal by the Delegation of Israel

The following modifications are suggested by the Delegation of Israel:

Article 5(7)(a). We propose that Article 5(7)(a) be modified as follows:

"(a) [*Replacing Description and Drawings by Reference to a Previously Filed Application*]
(a) Subject to the requirements prescribed in the Regulations, a reference, made upon the filing of the application, in a language accepted by the Office, to a previously filed application filed by the same applicant or his predecessor in right shall, [...]"

Article 8(4)(b). Contracting Parties should be permitted to require certification or notarization of affidavits submitted to their offices in accordance with national law.

Article 12(1). This Article relates to applications and patents. We feel that the provision of reinstatement of rights should relate only to applications. When a final time limit concerning a patent is not complied with, the patent becomes open to the public who may start using the invention. The public should therefore have an opportunity to challenge any request for reinstating a patent.

Rule 4(4). In Rule 4(4), delete "... and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable, ..."

Rule 13(3), item (ii). We support the view that rights lost due to failure to pay renewal fees within the six month grace period, should not be reinstatable under Article 12. The correct procedure should be open to opposition by the public and subject to safeguarding of rights of anyone who has started to exploit the invention after the lapse of rights.

Rule 17(1)(b). We propose that new item (iv) be inserted in Rule 17(1)(b) as follows:

"(iv) the date of the licensing agreement and its duration, if limited."

PT/DC/16

May 16, 2000 (Original: Russian)

ARTICLE 4

proposal by the Delegation of the Russian Federation

Considering that intergovernmental organizations referred to in the draft Treaty do not concern themselves with national security functions, the Delegation of the Russian Federation suggests to amend Article 4 to read as follows:

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

PT/DC/17

May 16, 2000 (Original: English)

FIRST REPORT OF THE CREDENTIALS COMMITTEE

prepared by the Secretariat

1. The Credentials Committee ("the Committee"), established on May 11, 2000, by the Diplomatic Conference for the Adoption of the Patent Law Treaty, met on May 16, 2000.
2. The delegations of the following States, elected members of the Committee by the Diplomatic Conference, attended the meeting: France, Madagascar, Peru, Portugal, Slovakia, Uganda and United Kingdom.
3. The President of the Committee, elected by the Diplomatic Conference, was Ms. Joyce C. Banya (Uganda). The Vice-Presidents, elected by the Diplomatic Conference, were Ms. Michèle Weil-Guthmann (France) and Ms. Betty Berendson (Peru).
4. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on May 11, 2000 (document PT/DC/13; "the Rules of Procedure"), the Committee examined the credentials, full powers, letters or other documents of appointment presented for the purposes of Rules 6 and 7 by delegations of the States which are party to the Paris Convention for the Protection of Industrial Property ("Paris Convention") or States members of the World Intellectual Property Organization ("WIPO"), participating in the Conference in accordance with Rule 2(1)(i) of the Rules of Procedure ("Ordinary Member Delegations"), by the delegations of the African Intellectual Property Organization, the African Regional Industrial Property Organization, the European Patent Organization and the Eurasian Patent Organization, participating in the Conference in accordance with Rule 2(1)(ii) of the Rules of Procedure ("Special Member Delegations"), and by delegations of States members of the United Nations other than the States which are party to the Paris Convention or States members of WIPO, participating in the

Conference in accordance with Rule 2(1)(iii) of the Rules of Procedure ("Observer Delegations"), as well as by the representatives of intergovernmental and non-governmental organizations, participating in the Conference in accordance with Rule 2(1)(iv) of the Rules of Procedure ("Observer Organizations").

5. On the basis of the information provided by the Secretariat as to the practice prevailing in other diplomatic conferences, and in particular in diplomatic conferences convened by WIPO, the Committee decided to recommend to the Conference, meeting in Plenary, that the following criteria should be applied by the Committee in its examination of, and should govern the decision of the Conference on, the credentials, full powers, letters or other documents presented for the purposes of Rules 6 and 7 of the Rules of Procedure:

(i) as far as any State is concerned, its delegation's credentials and full powers should be accepted if they were signed by that State's Head of State, Head of Government or Minister for Foreign Affairs; credentials, but not full powers, should be accepted if they were contained in a *note verbale* or letter of that State's Permanent Representative in Geneva or in a *note verbale* of that State's Ministry of Foreign Affairs or its Permanent Mission in Geneva and should not otherwise be accepted; in particular, a communication emanating from a Minister other than the Minister for Foreign Affairs, or from an official other than the Permanent Representative or Chargé d'affaires a.i. in Geneva, should not be treated as credentials;

(ii) as far as any Organization is concerned, its representative's letter or other document of appointment should be accepted if it was signed by the Head (Director General, Secretary General or President) or Deputy Head or official responsible for external affairs of the Organization;

(iii) facsimile and telex communications should be accepted if, as to their source, the requirements stated in points (i) and (ii) were fulfilled.

6. Pending a final decision by the Conference, meeting in Plenary, on the said criteria, the Committee decided to apply those criteria to the documents received by it.

7. Accordingly, the Committee found in order

(a) as far as *Ordinary Member Delegations* are concerned,

(i) the *credentials* and *full powers* (that is, credentials for participating in the Conference and signing the Final Act of the Conference, and full powers to sign the Patent Law Treaty to be adopted by the Diplomatic Conference) of the delegations of the following 40 States:

Austria	Madagascar
Benin	Mali
Bhutan	Malta
Burkina Faso	Monaco
Burundi	Morocco
Central African Republic	Niger
Chad	Poland
Cuba	Republic of Moldova
Czech Republic	Romania
Democratic People's Republic of Korea	San Marino
Estonia	Sao Tome and Principe
Finland	Slovenia
France	Sudan
Greece	The former Yugoslav Republic of Macedonia
Guinea	Togo
India	Tunisia
Israel	Uganda
Italy	United Kingdom
Kenya	Zambia
Kyrgyzstan	
Latvia	

(ii) the *credentials* without full powers (that is, credentials for participating in the Conference and signing the Final Act of the Conference) of the delegations of the following 74 States:

Algeria	Lesotho
Angola	Libyan Arab Jamahiriya
Argentina	Lithuania
Australia	Luxembourg
Azerbaijan	Malawi
Bangladesh	Malaysia
Barbados	Mauritania
Belgium	Mexico
Bosnia and Herzegovina	Nepal
Brazil	Netherlands
Bulgaria	New Zealand
Canada	Nicaragua
Cape Verde	Nigeria
China	Norway
Colombia	Panama
Costa Rica	Peru
Croatia	Philippines
Denmark	Portugal
Dominican Republic	Republic of Korea
Ecuador	Russian Federation
Egypt	Samoa
El Salvador	Saudi Arabia
Equatorial Guinea	Singapore
Ethiopia	Slovakia
Gabon	Spain
Georgia	Sri Lanka
Ghana	Swaziland
Haiti	Sweden
Holy See	Syrian Arab Republic
Indonesia	Thailand
Iran (Islamic Republic of)	Ukraine
Iraq	United Republic of Tanzania
Ireland	United States of America
Jamaica	Uruguay
Japan	Venezuela
Jordan	Yemen
Kazakhstan	

(b) as far as *Special Member Delegations* are concerned, the *credentials* and *full powers* of the European Patent Organization (1), and the *credentials* of the African Regional Industrial Property Organization and the Eurasian Patent Organization (2);

(c) as far as *Observer Organizations* are concerned, the *letters* or *documents of appointment* of representatives of the following Observer Organizations (listed in the alphabetical order of the name of the organization according to its name in French if it exists or, if it does not exist, according to its name in another language):

(i) *intergovernmental organizations*: European Community (EC), League of Arab States (LAS), Organization of African Unity (OAU), World Trade Organization (WTO) (4);

(ii) *non-governmental organizations*: American Intellectual Property Law Association (AIPLA), Association of Spanish Attorneys before Industrial and Intellectual Property Organizations (AGESORPI), Asian Patent Attorneys Association (APAA), *Associação Brasileira da Propriedade Intelectual* (ABPI), *Associação Brasileira dos Agentes da Propriedade Industrial* (ABAPI), Korea Patent Attorneys Association (KPAA), Republic of Korea, Inter-American Association of Industrial Property (ASIPI), International Association for the Protection of Industrial Property (AIPPI), Japan Patent Attorneys Association (JPAA), Japan Intellectual Property Association (JIPA), World Association for Small and Medium Enterprises (WASME), *Association sénégalaise pour la promotion des inventions et innovations* (ASPI), Federal Chamber of Patent Agents (FCPA), Germany, Chartered Institute of Patent Agents (CIPA), United Kingdom, Committee of National Institutes of Patent Agents (CNIPA), Federation of German Industry (BDI), International Federation of Inventors' Associations (IFIA), International Federation of Industrial Property Attorneys (FICPI), Trade Marks Patents and Designs Federation (TMPDF), United Kingdom, Intellectual Property Institute of Canada (IPIC), Institute of Professional Representatives before the European Patent Office (EPI), Intellectual Property Owners Association (IPO), United States of America, International League of Competition Law (LIDC), Biotechnology Industry Organization (BIO), Union of European Practitioners in Industrial Property (UEPIP) (25).

28. The Committee recommends to the Conference, meeting in Plenary, to accept the credentials and full powers of the delegations mentioned in paragraph 7(a)(i) and 7(b), above, the credentials of the delegations mentioned in paragraph 7(a)(ii) and 7(b), above, and the letters or documents of appointment of the representatives of the organizations mentioned in paragraph 7(c), above.

29. The Committee expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers"), 7 ("Letters of Appointment"), 8 ("Presentation of Credentials, etc.") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of Member Delegations or Observer Delegations not having presented credentials or full powers and of the representatives of Observer Organizations not having presented letters or other documents of appointment.

30. The Committee decided that a report on its meeting should be prepared by the Secretariat and issued as its report, to be presented by the President of the Committee to the Conference, meeting in Plenary.

31. The Committee decided that it would re-convene to examine any further communications concerning Ordinary Member Delegations, Special Member Delegations, Observer Delegations, or Observer Organizations which might be received by the Secretariat after the close of its meeting.

PT/DC/18

May 22, 2000 (Original: English)

ARTICLE 4

proposal by the Delegation of Sudan

The Delegation of Sudan proposes to amend the English version of Article 4 of the Draft Treaty by replacing "deemed" by "it deems". While the word "deemed" is ambiguous since it does not refer to the Contracting Party only, the phrase "it deems" expresses exactly the intended meaning.

PT/DC/19

May 16, 2000 (Original: English)

ARTICLE 6(3)

proposal by the Delegation of Finland

The following amendment is suggested by the Delegation of Finland:

In Article 6(3), the present text should become subparagraph (a) and a new subparagraph (b) should be added as follows:

"(b) A Contracting Party may, in addition to subparagraph (a), also require a translation of the title, claims and the abstract of an application that is in a language accepted by the Office into any other languages accepted by the Office."

PT/DC/20

May 16, 2000 (Original: English)

RULE 4

proposal by the Delegation of Portugal

The following modification concerning Rule 4(4) is suggested by the Delegation of Portugal:

~~"(4) [Translation] Where the earlier application is not in a language accepted by the Office and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable~~ the Contracting Party may require that a translation of the earlier application referred to in paragraph (1) be filed by the applicant, upon invitation by the Office, within a time limit which shall be not less than two months from the date of that invitation, and not less than the limit, if any, applied under that paragraph."

PT/DC/21

May 17, 2000 (Original: Spanish)

ARTICLE 5(1)(C)

proposal by the Latin American and Caribbean Group (GRULAC)

1. The Latin American and Caribbean Group (GRULAC) considers that there should be an item in paragraph (1) of Article 5 that allows payment of the prescribed fees to be required for the purpose of the setting of the filing date. While that option is contemplated in Article 6(4), Article 6(8)(a) provides that failure to comply with the requirement to pay would not result in loss of the filing date.

In view of the foregoing, GRULAC proposes the addition of the following provision as subparagraph (c) to paragraph (1) of Article (5):

"(c) A Contracting Party may require proof of payment of the prescribed fees for the purposes of the filing date."

2. In addition GRULAC proposes the following drafting amendment to item (ii) of Article 5(1)(a), which amounts to substituting "and" for "or" so that the item reads thus:

"indications allowing the identity of the applicant to be established and allowing the applicant to be contracted by the Office;"

PT/DC/22

May 17, 2000 (Original: English)

RULE 9(4) AND (6)

proposal by the Delegation of Switzerland

The Delegation of Switzerland suggests modifications in Rule 9(4) and (6) as follows:

Rule 9

Details Concerning the Signature Under Article 8(4)

(4) [Signature of Communications Filed in Electronic Form or by Electronic Means Resulting in Graphic Representation] Where a Contracting Party permits the filing of communications in electronic form or by electronic means, other than the communications referred to in Rules 7 and 15 to 17, it shall consider such a communication signed if a graphic representation of a signature accepted by that Contracting Party under paragraph (3) appears on that communication as received by the Office of that Contracting Party.

(6) [Exception to Certification of Signature Under Article 8(4)(b)] A Contracting Party may require that any signature referred to in paragraph (5) or any signature referred to in Rules 7 and 15 to 17 be confirmed by a process for certifying signatures in electronic form specified by that Contracting Party.

PT/DC/23

May 17, 2000 (Original: French)

AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE CONCERNING
ARTICLE 1 (ABBREVIATED EXPRESSIONS)

proposal by the Delegation of Switzerland

The Delegation of Switzerland proposes the following statement concerning Article 1:

On the adoption of Article 1 by the Diplomatic Conference, it was understood that the term "Office" in Article 1(i) of this Treaty did not cover the tribunals responsible under national legislation for hearing civil, criminal or administrative actions on matters governed by patent law, in particular the judicial bodies in charge of appeals. It was further understood that the words "procedure before the Office" in Article 1(xiv) did not cover procedures before such tribunals.

PT/DC/24

May 18, 2000 (Original: Russian)

RULE 4(4)

proposal by the Delegation of the Russian Federation

The following amendments are proposed by the Delegation of the Russian Federation in order to maintain the balance of rights and interests of the applicant on the one hand, and those of third parties on the other hand.

Version a):

~~(4) [Translation] Where the earlier application is not in a language accepted by the Office and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable, the Contracting Party may require that a translation of the earlier application referred to in paragraph (1) be filed by the applicant, upon invitation by the Office, within a time limit which shall be not less than two months from the date of that invitation, and not less than the time limit, if any, applied under that paragraph.~~

Version b):

Rule 4(4)

~~(4) [Translation] (a) Where the earlier application is not in a language accepted by the Office and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable, a Contracting Party may require that a translation of the earlier application be filed within the time limit applicable under paragraph (1), allowing the applicant a possibility to file, in place of the translation, a declaration to the effect that he authorizes the Office to open the earlier application for inspection by the person wishing to verify the validity of the priority claim.~~

(b) Where the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable and the applicant has filed the declaration referred to in subparagraph (a), the Contracting Party may require that a translation of the earlier application referred to in paragraph (4) [or relevant parts thereof] be filed by the applicant, upon invitation by the Office, within a time limit

which shall be not less than two months from the date of that invitation, and not less than the time limit, if any, applied under that paragraph (1).

Note

Article 6(5) and Rule 4(4) relieve the applicant of the need to file a translation of the earlier application, except where such a translation is required for verification of the validity of the priority claim in determining whether the invention concerned is patentable (Rule 4(4)). These provisions indeed provide some relief for the applicant. But at the same time this approach would, in fact, mean that the Office would abandon verification of the validity of the priority claim in all cases, except as provided for in Rule 4(4).

There also exist at least two cases where, in order to observe legitimate interests of third parties, verification of the validity of the priority claim might be required.

First case

The legislation of the majority of countries does not allow recognition of the novelty of an invention disclosed in the application, but not necessarily included in the claims, filed by another person with the Office of a given country and having an earlier filing date or enjoying the right of priority.

An example of such an application might be an application claiming the priority of the earlier application filed with another Office. It might happen that the earlier application has not been published (because, for example, the applicable law of that Office's country does not provide for the publication of applications or because the application has been withdrawn by the applicant). Consequently, the person whose application is opposed by the application having an earlier priority date is not in a position to verify the validity of the priority claim independently, for he cannot inspect the unpublished earlier application. The Office likewise cannot arrange to familiarize him with the earlier application because it is not included in the prior art.

Therefore it should be provided either that the Office may verify the validity of the priority claim (for which purpose it might need a translation of the earlier application) or that the interested person may familiarize himself with the earlier application or the relevant parts thereof.

Second case

The legislation of the majority of countries provides for the right of prior use.

Where a patent has been granted on an application claiming the priority of the earlier application, then, in a case of commencement of use that is earlier than the filing date of that application but later than the date of the priority claimed, an interested user has, as in the previous case, the right to expect the Office to verify the validity of the priority claim, or he must have the opportunity to acquaint himself with the priority document.

Apparently, problems arising in the above two cases are not relevant for all Offices. Consequently all Offices may be satisfied with the proposed version (a), whereby the PLT allows each Contracting Party to decide, at its own discretion, whether it should make use of the provision in the Paris Convention on the right to require a translation.

In case version (a) is not acceptable, version (b) is proposed, which is preferable for applicants and contains within itself an alternative proposal given in square brackets. In this version, when filing an application, the applicant enjoys the right to choose: to submit a translation of the earlier application or a declaration to the effect that he authorizes the Office to disclose the contents of the earlier application to a person interested in the verification of the validity of the priority claim. In so doing, the Office reserves the right to require a translation if the latter is necessary for the verification of the validity of the priority claimed when determining the patentability of the invention concerned (similar to what Rule 4(4) provides).

PT/DC/25

May 18, 2000 (Original: English)

RULE 12(5)

proposal by the Delegation of Israel

The following modification concerning the inclusion of new Rule 12(5)(viii) is proposed by the Delegation of Israel:

"(viii) relief in respect of a time limit for an action in a procedure before the Office concerning the prosecution of an application after the applicant has been notified by the Office that the prosecution of another application of a different applicant is being suspended until the completion of the procedure."

Explanation: In a State where an application is only published after the completion of the examination, any delay in publication may delay the examination of a further application against which the first-mentioned application could be cited.

Where the Office has notified an applicant of such a situation, the applicant should not be granted relief against the interest of the applicant of the second application.

PT/DC/26

May 18, 2000 (Original: Spanish)

ARTICLE 5(5)

proposal by Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela

The Delegations of Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela make the following comments and propose the following amendments.

1. Comments:

In paragraph (5) of Article 5 it is provided that where, in establishing the filing date, the Office finds that a part of the description APPEARS to be missing from the application, or that the application refers to a drawing which appears to be missing from the application, the Office shall promptly notify the applicant accordingly.

The countries sponsoring this proposal consider that the wording of paragraph (5) of Article 5 is inconsistent with paragraph (1)(a)(iii) of the same Article, in view of the fact that, while in the latter it is provided that the application requires "a part which on the face of it appears to be a description," paragraph (5) prescribes—the Article is not optional—that the Office shall examine the description of the application in order to ascertain whether part of the description is missing from the application itself, with a view to notifying the applicant if that is the case.

Moreover, analysis of the requirements specified in paragraphs (1) and (2) is a merely administrative task, but if on the other hand it is necessary to determine whether part of the description is missing, it becomes a task to be carried out by an expert specialized in the subject matter concerned. It is therefore considered that this subverts the universally accepted patent procedure whereby analysis of the

description is done superficially in the course of the preliminary examination — for the purposes of the publication of the application — and in depth only at the time of substantive examination.

Under some national legislation, for the assignment of a filing date to an application, not only is analysis of the description dispensed with, but the description is accepted even where it does not meet all the requirements of form laid down in the patent law. At the time of the substantive examination the description is analyzed, and if it proves to be so incomplete that it is not possible to understand the invention, the application is rejected. Now, if this PLT provision is accepted, the applicant whose application has been rejected in the course of the substantive examination on account of the description being incomplete could contest the rejection and put forward the argument that the Office failed to warn him in good time — which it has to do — that the description was incomplete. As a result the provision, far from streamlining prosecution, is in fact a potential source of conflict and creates an element of legal insecurity.

The countries sponsoring this proposal understand that the applicant's obligation is to disclose the invention completely at the time of the filing of the application. That disclosure forms part of the specification. It is from the disclosure that the positive elements should emerge which enable the Office to understand the invention and establish that it possesses novelty, involves an inventive step and is industrially applicable. In the interest of the applicant, and to spare him administrative obstacles to the assignment of a filing date, he is allowed to file the description even if it does not yet meet all the requirements (which is what the PLT provides), but it is not acceptable from the point of view of legal security that it should be the Office that determines at the outset whether the description of the application is complete, as it is to be hoped that the applicant will prosecute his application conscientiously and responsibly.

While the explanatory notes drawn up by the International Bureau on this provision make it clear that the paragraph in question does not oblige the Office to check, when establishing the filing date, whether part of the description or a drawing is missing, that conclusion does not follow from the non-optional character of the Article.

2. Proposal for Article 5(5):

In view of the foregoing, it is proposed that paragraph (5) of Article 5 be made optional and worded as follows:

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

PT/DC/27
May 22, 2000 (Original: English)

AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE CONCERNING
RULES 12(5)(VI) AND 13(3)(VII)

proposal by the Delegation of Australia

Article 11 (Relief in Respect of Time Limits) and Article 12 (Re-instatement of Rights After a Finding of Due Care or Unintentionally by the Office) are intended to provide conditional relief where an applicant or owner is unable to meet a time limit set by the Office or where there has been a failure to comply with a time limit despite all due care or unintended delay. These provisions ensure that the rights of an applicant or owner are not jeopardized by delays and lapses in procedure that are unavoidable in the real world. Rules 12(5)(vi) and 13(3)(vii) however provide exceptions for actions relating to *inter partes*

proceedings. This is necessary because Articles 11 and 12 do not provide adequately for the intervening rights of third parties. Nevertheless, many countries do provide for extensions of time and continued processing in these circumstances.

Australia considers that it is highly desirable that, where national law provides for *inter partes* proceedings, remedies analogous to Articles 11 and 12 should be provided to ensure that the rights of either party are not lost.

Consequently this Delegation proposes the following statement for the Diplomatic Conference:

“When adopting Rules 12(5)(vi) and 13(3)(vii) the Diplomatic Conference understood that, while it was appropriate to exclude actions in relation to *inter partes* proceedings from the relief provided by Articles 11 and 12, it was desirable that the applicable law of Contracting Parties provide similar relief in those circumstances which takes into account the competing interests of third parties.”

PT/DC/28
May 19, 2000 (Original: English)

ARTICLE 5(1) AND RULE 21

suggestion by the President of Main Committee I

The following suggestion is made by the President of Main Committee I:

Article 5 *Filing Date*

(1) [*Elements of Application*] (a) Except as otherwise prescribed in the Regulations, and subject to paragraphs (2) to (8), a Contracting Party shall provide that the filing date of an application shall be the date on which its Office has received all of the following elements, filed, at the option of the applicant, on paper or as otherwise permitted by the Office for the purpose of according a filing date:

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

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

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

(b) A Contracting Party may, for the purposes of the filing date, accept an implicit indication as the indication referred to in subparagraph (a)(ii).

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

Rule 21

Requirement of Unanimity for Amending Certain Rules Under Article 14(3)

Amendment of the following Rules shall require unanimity:

- (iibis) any Rules established under Article 5(1);

PT/DC/29

May 23, 2000 (Original: Arabic)

ARTICLE 16

proposal by the Delegation of Sudan

The Delegation of Sudan proposes to amend Article 16(4)(b)(ii) as follows:

"(ii) any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty and which have not expressly expressed their position directly or through another such intergovernmental organization of which they are Member States. ~~No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this Treaty is a Member State of another such intergovernmental organization and that other intergovernmental organization participate in that vote.~~"

The present version could lead to a conflict between intergovernmental organizations which are party to this Treaty as to which would be entitled to vote first at the expense of the other. The same conflict would arise between an intergovernmental organization which is party to this Treaty and a State which is a Member State of that organization, wishing to express a position different from that of the Organization.

The proposed version, however, allows

- (i) opportunity for an intergovernmental organization to vote on behalf of its full membership or of any determined number having mandated it to vote on their behalf;
- (ii) opportunity for Member States of intergovernmental organizations to express their various interests where no consensus is reached, thereby other Member States of the same organization, having mandated that organization to vote on their behalf, would not be affected;
- (iii) avoidance of conflict between intergovernmental organizations of which one or more States are Members, where no consensus is reached as to which organization would be entitled to vote on behalf of its Member States, thereby preventing the other organization from voting, without having to request from each State to express its position separately.

PT/DC/30

May 23, 2000 (Original: Spanish)

ARTICLE 5 AND 22

proposal by the Latin American and Caribbean Group (GRULAC)

The Latin American and Caribbean Group (GRULAC) has submitted the following proposals:

Article 5

Filing Date

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

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

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

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

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

(c) For the purposes of the filing date, a Contracting Party may require both information allowing the identity of the applicant to be established and information allowing the applicant to be contacted by the Office, or it may accept evidence allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Office, as the element referred to in subparagraph (a)(ii).

(d) A Contracting Party may, for the purposes of the filing date, require payment of a fee within a month following receipt of the elements referred to in subparagraph (a).

Article 22

Reservations

(1) *[Reservation]* Any State or intergovernmental organization may declare through a reservation that the provisions of Article 6(1) shall not apply to any requirement relating to unity of invention applicable under the Patent Cooperation Treaty to an international application.

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

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

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

PT/DC/31
May 24, 2000 (Original: English)

ARTICLE 18

proposal by the Delegation of the United States of America

The Delegation of the United States of America made the following proposal concerning Article 18(3):

"(3) [*Amendment by the Assembly of Certain Provisions of the Treaty*] (a) Proposals for the amendment by the Assembly of Article 16(2)(i), (ii), (iv) and (v), and (6) may be initiated by any Contracting Party or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly."

Comments: This proposal seeks to exclude certain tasks of the Assembly under Article 16(2) from being amended by the Assembly. In particular, the proposal excludes Article 16(2)(iii), which provides the Assembly with the authority to amend the Regulations, and Article 16(2)(vi), which authorizes the Assembly to perform such other functions as are appropriate under the Treaty. The reason for these proposed exclusions from Article 18(3) is that the Assembly, by virtue of Article 16, already has the ability to modify the Regulations and perform other appropriate functions. That is Article 16, itself, provides the Assembly with broad authority and flexibility to respond accordingly to future issues and concerns.

PT/DC/32
May 25, 2000 (Original: Russian)

RULE 8

proposal by the Delegation of the Russian Federation

The Delegation of the Russian Federation made the following proposal concerning Rule (8)(1) :

Rule 8

Filing of Communications Under Article 8(1)

(1) [*Communications Filed on Paper*] (a) During a period of [10] [5] years from the date of the entry into force of the Treaty, a Contracting Party shall permit the filing of communications on paper.

(b) After that period has expired, any Contracting Party may, subject to Articles 5(1) and 8(1)(d), exclude the filing of communications on paper.

(cb) Subject to Article 8(3), a Contracting Party may require that a communication on paper be filed on a form, or in a format, prescribed by that Contracting Party.

(d) Where the receiving or processing of communications on paper, due to their character, is deemed impracticable, a Contracting Party may, notwithstanding paragraph (1)(a), require the filing of communications in another form or by other means of transmittal of such communications.

[(e) A Contracting Party may, notwithstanding paragraph (1)(a), require the filing of communications in another form or by other means of transmittal of such communications, where a communication is filed by a national of its State or by a national of another State which has a relevant agreement with such Contracting Party.]

PT/DC/33

May 25, 2000 (Original: English)

SECOND REPORT OF THE CREDENTIALS COMMITTEE

prepared by the Secretariat

1. The Credentials Committee ("the Committee"), established on May 11, 2000, by the Diplomatic Conference for the Adoption of the Patent Law Treaty, met for the second time on May 25, 2000.
2. The delegations of the following States, elected members of the Committee by the Diplomatic Conference, attended the meeting: France, Madagascar, Peru, Portugal, Slovakia, Uganda and United Kingdom.
3. The President of the Committee, elected by the Diplomatic Conference, was Ms. Joyce C. Banya (Uganda). The Vice-Presidents, elected by the Diplomatic Conference, were Ms. Michèle Weil-Guthmann (France) and Ms. Betty Berendson (Peru).
4. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on May 11, 2000 (document PT/DC/13; "the Rules of Procedure"), the Committee examined the credentials and full powers received since its first meeting on May 16, 2000.
5. The Committee found in order the following further communications:
 - (a) as far as *Ordinary Member Delegations* are concerned,
 - (i) the *credentials* and *full powers* (that is, credentials for participating in the Conference and signing the Final Act of the Conference, and full powers to sign the Patent Law Treaty to be adopted by the Diplomatic Conference) of the delegations of the following 12 States:

Croatia
Denmark
Gambia
Lebanon
Luxembourg
Malawi

Portugal
Senegal
Spain
Swaziland
Switzerland
United States of America

- (ii) the *credentials* without full powers (that is, credentials for participating in the Conference and signing the Final Act of the Conference) of the delegations of the following seven States:

Cambodia
Cameroon
Congo
Côte d'Ivoire

Democratic Republic of the Congo
South Africa
Trinidad and Tobago

(b) as far as *Observer Organizations* are concerned, the *letters or documents of appointment* of representatives of the following Observer Organization:

non-governmental organization: American Bar Association (ABA) (1).

6. The Committee recommends to the Conference, meeting in Plenary, to accept the credentials and full powers of the delegations mentioned in paragraph 5(a)(i), above, the credentials of the delegations mentioned in paragraph 5(a)(ii), above, and the letters or documents of appointment of the representatives of the organization mentioned in paragraph 5(b), above.

7. The Committee re-expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers"), 7 ("Letters of Appointment"), 8 ("Presentation of Credentials, etc.") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of Member Delegations or Observer Delegations not having presented credentials or full powers and of the representatives of Observer Organizations not having presented letters or other documents of appointment.

8. The Committee decided that a report on its meeting should be prepared by the Secretariat and issued as its report, to be presented by the President of the Committee to the Conference, meeting in Plenary.

9. The Committee authorized its President to examine any further communications concerning Ordinary Member Delegations, Special Member Delegations, Observer Delegations, or Observer Organizations which might be received by the Secretariat after the close of its meeting and to report thereon to the Conference, meeting in Plenary, unless the President deemed it necessary to convene the Committee to examine and report on those communications.

PT/DC/34
May 26, 2000 (Original: English)

NEW PROVISION

proposal by the Delegation of Indonesia

The Delegation of Indonesia would like to propose a new provision to be included in the Treaty which relates to the settlement of any dispute between the Contracting Parties which may occur in the implementation of the Treaty and its Regulations. Almost all international agreements, bilateral or multilateral, contain such kind of provision. This provision is also aimed at resolving any different interpretation which may arise from the divergence of the languages used in the authentic texts of this Treaty and its Regulations.

This new provision reads as follows:

"Article ... Settlement of Disputes

Any dispute arising between two or more Contracting Parties concerning the interpretation or the application of this Treaty and its Regulations shall be settled amicably through consultation or negotiation under the auspices of the Director General."

PT/DC/35

May 26, 2000 (Original: French)

ARTICLE 5

proposal by the Delegation of Burkina Faso

The Delegation of Burkina Faso proposes the following amendment to Article 5(1)(a)(iii):

"A part which, on the face of it, ~~appears to be~~ may be accepted by the Office as being a description."

PT/DC/36

May 26, 2000 (Original: English)

NOTE FOR AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE ON THE
AVAILABILITY OF PRIORITY DOCUMENTS

proposal by the Delegation of the United States of America

The Delegation of the United States of America proposed a Note for the Agreed Statement by the Diplomatic Conference on the Availability of Priority Documents as follows:

"The priority document in a digital library should be given the same legal effect as a certified copy of priority document on paper."

PT/DC/37

May 26, 2000 (Original: English)

RULES 4 AND 8

proposal by the Delegation of the United States of America

The Delegation of the United States of America made the following proposal concerning Rules 4 and 8:

Rule 4

Availability of Earlier Application Under Article 6(5) and Rule 2(4) or of Previously Filed Application Under Rule 2(5)(b)

.....

"(4)(b) Where the application as filed is an exact copy of an earlier application upon which priority is claimed, and is not in a language accepted by the Office, no Contracting Party shall require a translation

of the priority document where a translation of the application has been provided in accordance with Article 6(5)."

Rule 8

Filing of Communications Under Article 8(1)

"(1) [*Communications Filed on Paper*] (a) During a period of ~~40~~5 years from the date of the entry into force of the Treaty, the Office of a Contracting Party shall permit the filing of communications on paper. After that period has expired, any Contracting Party may, subject to Articles 5(1) and 8(1)(d), exclude the filing of communications on paper or continue to permit the filing of communications on paper."

PT/DC/38

May 29, 2000 (Original: Spanish)

AGREED STATEMENT BY THE DIPLOMATIC CONFERENCE

proposal by the Group of Latin American and Caribbean Countries (GRULAC)

With a view to facilitating the implementation and enforcement of this Treaty, the Diplomatic Conference requests the International Bureau and the Contracting Parties to provide the developing and least developed countries with additional technical and financial cooperation even before the entry into force of the Treaty.

The Diplomatic Conference requests the Assembly of the PLT, once the Treaty has entered into force, to monitor and evaluate that cooperation every year.

PT/DC/39

June 1, 2000 (Original: English)

REPORT OF THE PRESIDENT OF THE CREDENTIALS COMMITTEE

prepared by the Secretariat

Since the meetings of the Credentials Committee on May 16 and 25, 2000 (see documents PT/DC/17 and 33), the full powers of the Delegations of Belgium, Brazil, Hungary, Nigeria and Turkey, and the credentials of the Delegations of Germany, Guatemala and Rwanda have been received.

PT/DC/40

June 1, 2000 (Original: English)

DRAFT FINAL ACT

*submitted by the Steering Committee to the Conference,
meeting in Plenary*

In accordance with the decisions by the Assemblies of the World Intellectual Property Organization (WIPO) taken at their thirty-fourth series of meetings (September 1999) and following preparations carried out by WIPO, the Diplomatic Conference for the Adoption of the Patent Law Treaty was convened by WIPO and held in Geneva from May 11 to June 2, 2000.

The Diplomatic Conference adopted, on June 1, 2000, the Patent Law Treaty, which was opened for signature on June 2, 2000.

PT/DC/41

June 1, 2000 (Original: English)

DRAFT OF THE PATENT LAW TREATY

submitted to Main Committees I and II by the Drafting Committee

Draft Patent Law Treaty

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Article 1
Abbreviated Expressions

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

- (i) "Office" means the authority of a Contracting Party entrusted with the granting of patents or with other matters covered by this Treaty;
- (ii) "application" means an application for the grant of a patent, as referred to in Article 3;
- (iii) "patent" means a patent as referred to in Article 3;
- (iv) references to a "person" shall be construed as including, in particular, a natural person and a legal entity;
- (v) "communication" means any application, or any request, declaration, document, correspondence or other information relating to an application or patent, whether relating to a procedure under this Treaty or not, which is filed with the Office;
- (vi) "records of the Office" means the collection of information maintained by the Office, relating to and including the applications filed with, and the patents granted by, that Office or another authority with effect for the Contracting Party concerned, irrespective of the medium in which such information is maintained;
- (vii) "recordation" means any act of including information in the records of the Office;
- (viii) "applicant" means the person whom the records of the Office show, pursuant to the applicable law, as the person who is applying for the patent, or as another person who is filing or prosecuting the application;
- (ix) "owner" means the person whom the records of the Office show as the owner of the patent;
- (x) "representative" means a representative under the applicable law;
- (xi) "signature" means any means of self-identification;

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

(xiii) "translation" means a translation into a language or, where appropriate, a transliteration into an alphabet or character set, accepted by the Office;

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

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

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

(xvii) "Patent Cooperation Treaty" means the Patent Cooperation Treaty, signed on June 19, 1970, together with the Regulations and the Administrative Instructions under that Treaty, as revised, amended and modified;

(xviii) "Contracting Party" means any State or intergovernmental organization that is party to this Treaty;

(xix) "applicable law" means, where the Contracting Party is a State, the law of that State and, where the Contracting Party is an intergovernmental organization, the legal enactments under which that intergovernmental organization operates;

(xx) "instrument of ratification" shall be construed as including instruments of acceptance or approval;

(xxi) "Organization" means the World Intellectual Property Organization;

(xxii) "International Bureau" means the International Bureau of the Organization;

(xxiii) "Director General" means the Director General of the Organization.

Article 2 *General Principles*

(1) *[More Favorable Requirements]* A Contracting Party shall be free to provide for requirements which, from the viewpoint of applicants and owners, are more favorable than the requirements referred to in this Treaty and the Regulations, other than Article 5.

(2) *[No Regulation of Substantive Patent Law]* Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of the applicable substantive law relating to patents as it desires.

Article 3 *Applications and Patents to Which the Treaty Applies*

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

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

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

(b) Subject to the provisions of the Patent Cooperation Treaty, the provisions of this Treaty and the Regulations shall apply to international applications, for patents for invention and for patents of addition, under the Patent Cooperation Treaty:

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

(ii) in respect of any procedure commenced on or after the date on which processing or examination of the international application may start under Article 23 or 40 of that Treaty.

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

Article 4 *Security Exception*

Nothing in this Treaty and the Regulations shall limit the freedom of a Contracting Party to take any action it deems necessary for the preservation of essential security interests.

Article 5 *Filing Date*

(1) *[Elements of Application]* (a) Except as otherwise prescribed in the Regulations, and subject to paragraphs (2) to (8), a Contracting Party shall provide that the filing date of an application shall be the date on which its Office has received all of the following elements, filed, at the option of the applicant, on paper or as otherwise permitted by the Office for the purposes of the filing date:

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

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

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

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

(c) For the purposes of the filing date, a Contracting Party may require both information allowing the identity of the applicant to be established and information allowing the applicant to be contacted by the Office, or it may accept evidence allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Office, as the element referred to in subparagraph (a)(ii).

(2) *[Language]* (a) A Contracting Party may require that the indications referred to in paragraph (1)(a)(i) and (ii) be in a language accepted by the Office.

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

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

(4) *[Subsequent Compliance with Requirements]* (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) and (2) are not complied with in the application as initially filed, the filing date shall, subject to subparagraph (b) and paragraph (6), be the date on which all of the requirements applied by the Contracting Party under paragraphs (1) and (2) are subsequently complied with.

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

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

(6) *[Filing Date Where Missing Part of Description or Drawing Is Filed]* (a) Where a missing part of the description or a missing drawing is filed with the Office within the time limit prescribed in the Regulations, that part of the description or drawing shall be included in the application, and, subject to subparagraphs (b) and (c), the filing date shall be the date on which the Office has received that part of the description or that drawing, or the date on which all of the requirements applied by the Contracting Party under paragraphs (1) and (2) are complied with, whichever is later.

(b) Where the missing part of the description or the missing drawing is filed under subparagraph (a) to rectify its omission from an application which, at the date on which one or more elements referred to in paragraph (1)(a) were first received by the Office, claims the priority of an earlier application, the filing date shall, upon the request of the applicant filed within a time limit prescribed in the Regulations, and subject to the requirements prescribed in the Regulations, be the date on which all the requirements applied by the Contracting Party under paragraphs (1) and (2) are complied with.

(c) Where the missing part of the description or the missing drawing filed under subparagraph (a) is withdrawn within a time limit fixed by the Contracting Party, the filing date shall be the date on which the requirements applied by the Contracting Party under paragraphs (1) and (2) are complied with.

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

(b) Where the requirements referred to in subparagraph (a) are not complied with, the application may be deemed not to have been filed. Where the application is deemed not to have been filed, the Office shall notify the applicant accordingly, indicating the reasons therefor.

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

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

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

Article 6
Application

(1) [*Form or Contents of Application*] Except where otherwise provided for by this Treaty, no Contracting Party shall require compliance with any requirement relating to the form or contents of an application different from or additional to:

(i) the requirements relating to form or contents which are provided for in respect of international applications under the Patent Cooperation Treaty;

(ii) the requirements relating to form or contents compliance with which, under the Patent Cooperation Treaty, may be required by the Office of, or acting for, any State party to that Treaty once the processing or examination of an international application, as referred to in Article 23 or 40 of the said Treaty, has started;

(iii) any further requirements prescribed in the Regulations.

(2) [*Request Form*] (a) A Contracting Party may require that the contents of an application which correspond to the contents of the request of an international application under the Patent Cooperation Treaty be presented on a request Form prescribed by that Contracting Party. A Contracting Party may also require that any further contents allowed under paragraph (1)(ii) or prescribed in the Regulations pursuant to paragraph (1)(iii) be contained in that request Form.

(b) Notwithstanding subparagraph (a), and subject to Article 8(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) on a request Form provided for in the Regulations.

(3) [*Translation*] A Contracting Party may require a translation of any part of the application that is not in a language accepted by its Office. A Contracting Party may also require a translation of the parts of the application, as prescribed in the Regulations, that are in a language accepted by the Office, into any other languages accepted by that Office.

(4) [*Fees*] A Contracting Party may require that fees be paid in respect of the application. A Contracting Party may apply the provisions of the Patent Cooperation Treaty relating to payment of application fees.

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

(6) [*Evidence*] A Contracting Party may require that evidence in respect of any matter referred to in paragraph (1) or (2) or in a declaration of priority, or any translation referred to in paragraph (3) or (5), be filed with its Office in the course of the processing of the application only where that Office may reasonably doubt the veracity of that matter or the accuracy of that translation.

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

(8) [*Non-Compliance with Requirements*] (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to subparagraph (b) and Articles 5 and 10, apply such sanction as is provided for in its law.

(b) Where any requirement applied by the Contracting Party under paragraph (1), (5) or (6) in respect of a priority claim is not complied with within the time limit prescribed in the Regulations, the priority claim may, subject to Article 13, be deemed non-existent. Subject to Article 5(7)(b), no other sanctions may be applied.

Article 7
Representation

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

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

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

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

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

(2) *[Mandatory Representation]* (a) A Contracting Party may require that an applicant, owner or other interested person appoint a representative for the purposes of any procedure before the Office, except that an assignee of an application, an applicant, owner or other interested person may act himself before the Office for the following procedures:

(i) the filing of an application for the purposes of the filing date;

(ii) the mere payment of a fee;

(iii) any other procedure as prescribed in the Regulations;

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

(b) A maintenance fee may be paid by any person.

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

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

(5) *[Notification]* Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (3) are not complied with, the Office shall notify the assignee of the application, applicant, owner or other interested person, giving the opportunity to comply with any such requirement, and to make observations, within the time limit prescribed in the Regulations.

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

Article 8
Communications; Addresses

(1) *[Form and Means of Transmittal of Communications]* (a) Except for the establishment of a filing date under Article 5(1), and subject to Article 6(1), the Regulations shall, subject to

subparagraphs (b) to (d), set out the requirements which a Contracting Party shall be permitted to apply as regards the form and means of transmittal of communications.

(b) No Contracting Party shall be obliged to accept the filing of communications other than on paper.

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

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

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

(3) [*Model International Forms*] Notwithstanding paragraph (1)(a), and subject to paragraph (1)(b) and Article 6(2)(b), a Contracting Party shall accept the presentation of the contents of a communication on a Form which corresponds to a Model International Form in respect of such a communication provided for in the Regulations, if any.

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

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

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

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

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

- (i) an address for correspondence;
- (ii) an address for legal service;
- (iii) any other address provided for in the Regulations.

(7) [*Notification*] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with in respect of communications, the Office shall notify the applicant, owner or other interested person giving the opportunity to comply with any such requirement, and to make observations, within the time limit prescribed in the Regulations.

(8) [*Non-Compliance with Requirements*] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with within the time limit prescribed in the Regulations, the Contracting Party may, subject to Articles 5 and 10 and to any exceptions prescribed in the Regulations, apply such sanction as is provided for in its law.

Article 9
Notifications

(1) *[Sufficient Notification]* Any notification under this Treaty or the Regulations which is sent by the Office to an address for correspondence or address for legal service indicated under Article 8(6), or any other address provided for in the Regulations for the purpose of this provision, and which complies with the provisions with respect to that notification, shall constitute a sufficient notification for the purposes of this Treaty and the Regulations.

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

(3) *[Failure to Notify]* Subject to Article 10(1), where an Office does not notify an applicant, owner or other interested person of a failure to comply with any requirement under this Treaty or the Regulations, that absence of notification does not relieve that applicant, owner or other interested person of the obligation to comply with that requirement.

Article 10
Validity of Patent; Revocation

(1) *[Validity of Patent Not Affected by Non-Compliance with Certain Formal Requirements]* Non-compliance with one or more of the formal requirements referred to in Articles 6(1), (2), (4) and (5) and 8(1) to (4) with respect to an application may not be a ground for revocation or invalidation of a patent, either totally or in part, except where the non-compliance with the formal requirement occurred as a result of a fraudulent intention.

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

(3) *[No Obligation for Special Procedures]* Paragraphs (1) and (2) do not create any obligation to put in place judicial procedures for the enforcement of patent rights distinct from those for the enforcement of law in general.

Article 11
Relief in Respect of Time Limits

(1) *[Extension of Time Limits]* A Contracting Party may provide for the extension, for the period prescribed in the Regulations, of a time limit fixed by the Office for an action in a procedure before the Office in respect of an application or a patent, if a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations, and the request is filed, at the option of the Contracting Party:

- (i) prior to the expiration of the time limit; or
- (ii) after the expiration of the time limit, and within the time limit prescribed in the Regulations.

(2) *[Continued Processing]* Where an applicant or owner has failed to comply with a time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office in respect of an application or a patent, and that Contracting Party does not provide for extension of a time limit under paragraph (1)(ii), the Contracting Party shall provide for continued processing with respect to the

application or patent and, if necessary, reinstatement of the rights of the applicant or owner with respect to that application or patent, if:

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

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

(3) *[Exceptions]* No Contracting Party shall be required to provide for the relief referred to in paragraph (1) or (2) with respect to the exceptions prescribed in the Regulations.

(4) *[Fees]* A Contracting Party may require that a fee be paid in respect of a request under paragraph (1) or (2).

(5) *[Prohibition of Other Requirements]* No Contracting Party may require that requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the relief provided for under paragraph (1) or (2), except where otherwise provided for by this Treaty or prescribed in the Regulations.

(6) *[Opportunity to Make Observations in Case of Intended Refusal]* A request under paragraph (1) or (2) may not be refused without the applicant or owner being given the opportunity to make observations on the intended refusal within a reasonable time limit.

Article 12

Reinstatement of Rights After a Finding of Due Care or Unintentionality by the Office

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

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

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

(iii) the request states the reasons for the failure to comply with the time limit; and

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

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

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

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

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

Article 13

Correction or Addition of Priority Claim; Restoration of Priority Right

(1) [*Correction or Addition of Priority Claim*] Except where otherwise prescribed in the Regulations, a Contracting Party shall provide for the correction or addition of a priority claim with respect to an application ("the subsequent application"), if:

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

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

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

(2) [*Delayed Filing of the Subsequent Application*] Taking into consideration Article 15, a Contracting Party shall provide that, where an application ("the subsequent application") which claims or could have claimed the priority of an earlier application has a filing date which is later than the date on which the priority period expired, but within the time limit prescribed in the Regulations, the Office shall restore the right of priority, if:

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

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

(iii) the request states the reasons for the failure to comply with the priority period;
and

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

(3) [*Failure to File a Copy of Earlier Application*] A Contracting Party shall provide that, where a copy of an earlier application required under Article 6(5) is not filed with the Office within the time limit prescribed in the Regulations pursuant to Article 6, the Office shall restore the right of priority, if:

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

(ii) the request is filed within the time limit for filing the copy of the earlier application prescribed in the Regulations pursuant to Article 6(5);

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

(iv) a copy of the earlier application is filed within the time limit prescribed in the Regulations.

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

(5) [*Evidence*] A Contracting Party may require that a declaration or other evidence in support of the reasons referred to in paragraph (2)(iii) be filed with the Office within a time limit fixed by the Office.

(6) [*Opportunity to Make Observations in Case of Intended Refusal*] A request under paragraphs (1) to (3) may not be refused, totally or in part, without the requesting party being given the opportunity to make observations on the intended refusal within a reasonable time limit.

Article 14 *Regulations*

- (1) [*Content*] (a) The Regulations annexed to this Treaty provide rules concerning:
- (i) matters which this Treaty expressly provides are to be "prescribed in the Regulations";
 - (ii) details useful in the implementation of the provisions of this Treaty;
 - (iii) administrative requirements, matters or procedures.
- (b) The Regulations also provide rules concerning the formal requirements which a Contracting Party shall be permitted to apply in respect of requests for:
- (i) recordation of change in name or address;
 - (ii) recordation of change in applicant or owner;
 - (iii) recordation of a license or a security interest;
 - (iv) correction of a mistake.
- (c) The Regulations also provide for the establishment of Model International Forms, and for the establishment of a request Form for the purposes of Article 6(2)(b), by the Assembly, with the assistance of the International Bureau.
- (2) [*Amending the Regulations*] Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.
- (3) [*Requirement of Unanimity*] (a) The Regulations may specify provisions of the Regulations which may be amended only by unanimity.
- (b) Any amendment of the Regulations resulting in the addition of provisions to, or the deletion of provisions from, the provisions specified in the Regulations pursuant to subparagraph (a) shall require unanimity.
- (c) In determining whether unanimity is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.
- (4) [*Conflict Between the Treaty and the Regulations*] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

Article 15 *Relation to the Paris Convention*

- (1) [*Obligation to Comply with the Paris Convention*] Each Contracting Party shall comply with the provisions of the Paris Convention which concern patents.
- (2) [*Obligations and Rights Under the Paris Convention*] (a) Nothing in this Treaty shall derogate from obligations that Contracting Parties have to each other under the Paris Convention.
- (b) Nothing in this Treaty shall derogate from rights that applicants and owners enjoy under the Paris Convention.

Article 16

Effect of Revisions, Amendments and Modifications of the Patent Cooperation Treaty

(1) [*Applicability of Revisions, Amendments and Modifications of the Patent Cooperation Treaty*] Subject to paragraph (2), any revision, amendment or modification of the Patent Cooperation Treaty made after June 2, 2000, which is consistent with the Articles of this Treaty, shall apply for the purposes of this Treaty and the Regulations if the Assembly so decides, in the particular case, by three-fourths of the votes cast.

(2) [*Non-Applicability of Transitional Provisions of the Patent Cooperation Treaty*] Any provision of the Patent Cooperation Treaty, by virtue of which a revised, amended or modified provision of that Treaty does not apply to a State party to it, or to the Office of or acting for such a State, for as long as the latter provision is incompatible with the law applied by that State or Office, shall not apply for the purposes of this Treaty and the Regulations.

Article 17

Assembly

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

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

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

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

(ii) establish Model International Forms, and the request Form, referred to in Article 14(1)(c), with the assistance of the International Bureau;

(iii) amend the Regulations;

(iv) determine the conditions for the date of application of each Model International Form, and the request Form, referred to in item (ii), and each amendment referred to in item (iii);

(v) decide, pursuant to Article 16(1), whether any revision, amendment or modification of the Patent Cooperation Treaty shall apply for the purposes of this Treaty and the Regulations;

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

(3) [*Quorum*] (a) One-half of the members of the Assembly which are States shall constitute a quorum.

(b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case:

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

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

(5) [*Majorities*] (a) Subject to Articles 14(2) and (3) and 19(3), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

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

(7) [*Rules of Procedure*] The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

Article 18 *International Bureau*

(1) [*Administrative Tasks*] (a) The International Bureau shall perform the administrative tasks concerning this Treaty.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) [*Meetings Other than Sessions of the Assembly*] The Director General shall convene any committee and working group established by the Assembly.

(3) [*Role of the International Bureau in the Assembly and Other Meetings*] (a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly.

(b) The Director General or a staff member designated by the Director General shall be *ex officio* secretary of the Assembly, and of the committees and working groups referred to in subparagraph (a).

(4) [*Conferences*] (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with member States of the Organization, intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(5) [Other Tasks] The International Bureau shall carry out any other tasks assigned to it in relation to this Treaty.

Article 19 *Revisions*

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

(2) [Revision or Amendment of Certain Provisions of the Treaty] Article 17(2) and (6) may be amended either by a revision conference, or by the Assembly according to the provisions of paragraph (3).

(3) [Amendment by the Assembly of Certain Provisions of the Treaty] (a) Proposals for the amendment by the Assembly of Article 17(2) and (6) may be initiated by any Contracting Party or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(b) Adoption of any amendment to the provisions referred to in subparagraph (a) shall require three-fourths of the votes cast.

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

Article 20 *Becoming Party to the Treaty*

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

(2) [Intergovernmental Organizations] Any intergovernmental organization may become party to this Treaty if at least one member State of that intergovernmental organization is party to the Paris Convention or a member of the Organization, and the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty, and declares that:

(i) it is competent to grant patents with effect for its member States; or

(ii) it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by this Treaty, and it has, or has charged, a regional Office for the purpose of granting patents with effect in its territory in accordance with that legislation.

Subject to paragraph (3), any such declaration shall be made at the time of the deposit of the instrument of ratification or accession.

(3) [Regional Patent Organizations] [The European Patent Organization][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][and the African Intellectual Property Organization], having made the declaration referred to in paragraph (2)(i) or (ii) in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty as an intergovernmental organization, if it declares, at the time of the deposit of the instrument of ratification or accession that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(4) [*Ratification or Accession*] Any State or intergovernmental organization satisfying the requirements in paragraph (1), (2) or (3) may deposit:

- (i) an instrument of ratification if it has signed this Treaty; or
- (ii) an instrument of accession if it has not signed this Treaty.

Article 21

Entry into Force; Effective Dates of Ratifications and Accessions

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

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

- (i) the ten States referred to in paragraph (1), from the date on which this Treaty has entered into force;
- (ii) each other State, from the expiration of three months after the date on which the State has deposited its instrument of ratification or accession with the Director General, or from any later date indicated in that instrument, but no later than six months after the date of such deposit;
- (iii) each of [the European Patent Organization][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][and the African Intellectual Property Organization], from the expiration of three months after the deposit of its instrument of ratification or accession, or from any later date indicated in that instrument, but no later than six months after the date of such deposit, if such instrument has been deposited after the entry into force of this Treaty according to paragraph (1), or three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (iv) any other intergovernmental organization that is eligible to become party to this Treaty, from the expiration of three months after the deposit of its instrument of ratification or accession, or from any later date indicated in that instrument, but no later than six months after the date of such deposit.

Article 22

Application of the Treaty to Existing and Future Applications and Patents

(1) [*Principle*] Subject to paragraph (2), a Contracting Party shall apply the provisions of this Treaty and the Regulations, other than Articles 5 and 6(1) and (2) and related Regulations, to applications which are filed or pending, and to patents which are granted or in force, on or after the date on which this Treaty binds that Contracting Party under Article 21.

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

Article 23

Reservations

(1) [*Reservation*] Any State or intergovernmental organization may declare through a reservation that the provisions of Article 6(1) shall not apply to any requirement relating to unity of invention applicable under the Patent Cooperation Treaty to an international application.

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

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

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

Article 24
Denunciation of the Treaty

(1) *[Notification]* Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

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

Article 25
Languages of the Treaty

(1) *[Authentic Texts]* This Treaty is signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally and exclusively authentic.

(2) *[Official Texts]* An official text in any language other than those referred to in paragraph (1) shall be established by the Director General, after consultation with the interested parties. For the purposes of this paragraph, interested party means any State which is party to the Treaty, or is eligible to become party to the Treaty under Article 20(1), whose official language, or one of whose official languages, is involved, and [the European Patent Organization][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][and the African Intellectual Property Organization] and any other intergovernmental organization that is party to the Treaty, or may become party to the Treaty, if one of its official languages is involved.

(3) *[Authentic Texts to Prevail]* In case of differences of opinion on interpretation between authentic and official texts, the authentic texts shall prevail.

Article 26
Signature of the Treaty

The Treaty shall remain open for signature by any State that is eligible for becoming party to the Treaty under Article 20(1) and by [the European Patent Organization][, the Eurasian Patent Organization][, the African Regional Industrial Property Organization][and the African Intellectual Property Organization] at the headquarters of the Organization for one year after its adoption.

Article 27
Depositary; Registration

(1) *[Depositary]* The Director General is the depositary of this Treaty.

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

PT/DC/42

June 1, 2000 (Original: English)

DRAFT OF THE REGULATIONS UNDER THE PATENT LAW TREATY

submitted to Main Committee I by the Drafting Committee

Regulations under the Patent Law Treaty

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Rule 1
Abbreviated Expressions

(1) [*"Treaty"; "Article"*] (a) In these Regulations, the word "Treaty" means the Patent Law Treaty.

(b) In these Regulations, the word "Article" refers to the specified Article of the Treaty.

(2) [*Abbreviated Expressions Defined in the Treaty*] The abbreviated expressions defined in Article 1 for the purposes of the Treaty shall have the same meaning for the purposes of the Regulations.

Rule 2
Details Concerning Filing Date Under Article 5

(1) [*Time Limits Under Article 5(3) and (4)(b)*] Subject to paragraph (2), the time limits referred to in Article 5(3) and (4)(b) shall be not less than two months from the date of the notification referred to in Article 5(3).

(2) [*Exception to Time Limit Under Article 5(4)(b)*] Where a notification under Article 5(3) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, the time limit referred to in Article 5(4)(b) shall be not less than two months from the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office.

(3) [*Time Limits Under Article 5(6)(a) and (b)*] The time limits referred to in Article 5(6)(a) and (b) shall be:

(i) where a notification has been made under Article 5(5), not less than two months from the date of the notification;

(ii) where a notification has not been made, not less than two months from the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office.

(4) [*Requirements Under Article 5(6)(b)*] Any Contracting Party may, subject to Rule 4(3), require that, for the filing date to be determined under Article 5(6)(b):

(i) a copy of the earlier application be filed within the time limit applicable under paragraph (3);

(ii) a copy of the earlier application, and the date of filing of the earlier application, certified as correct by the Office with which the earlier application was filed, be filed upon invitation by the Office, within a time limit which shall be not less than four months from the date of that invitation, or the time limit applicable under Rule 4(1), whichever expires earlier;

(iii) where the earlier application is not in a language accepted by the Office, a translation of the earlier application be filed within the time limit applicable under paragraph (3);

(iv) the missing part of the description or missing drawing be completely contained in the earlier application;

(v) the application, at the date on which one or more elements referred to in Article 5(1)(a) were first received by the Office, contained an indication that the contents of the earlier application were incorporated by reference in the application;

(vi) an indication be filed within the time limit applicable under paragraph (3) as to where, in the earlier application or in the translation referred to in item (iii), the missing part of the description or the missing drawing is contained.

(5) [*Requirements Under Article 5(7)(a)*] (a) The reference to the previously filed application referred to in Article 5(7)(a) shall indicate that, for the purposes of the filing date, the description and any drawings are replaced by the reference to the previously filed application; the reference shall also indicate

the number of that application, and the Office with which that application was filed. A Contracting Party may require that the reference also indicate the filing date of the previously filed application.

(b) A Contracting Party may, subject to Rule 4(3), require that:

(i) a copy of the previously filed application and, where the previously filed application is not in a language accepted by the Office, a translation of that previously filed application, be filed with the Office within a time limit which shall be not less than two months from the date on which the application containing the reference referred to in Article 5(7)(a) was received by the Office;

(ii) a certified copy of the previously filed application be filed with the Office within a time limit which shall be not less than four months from the date of the receipt of the application containing the reference referred to in Article 5(7)(a).

(c) A Contracting Party may require that the reference referred to in Article 5(7)(a) be to a previously filed application that had been filed by the applicant or his predecessor or successor in title.

(6) *[Exceptions Under Article 5(8)(ii)]* The types of applications referred to in Article 5(8)(ii) shall be:

(i) divisional applications;

(ii) applications for continuation or continuation-in-part;

(iii) applications by new applicants determined to be entitled to an invention contained in an earlier application.

Rule 3

Details Concerning the Application Under Article 6(1), (2) and (3)

(1) *[Further Requirements Under Article 6(1)(iii)]* (a) A Contracting Party may require that an applicant who wishes an application to be treated as a divisional application under Rule 2(6)(i) indicate:

(i) that he wishes the application to be so treated;

(ii) the number and filing date of the application from which the application is divided.

(b) A Contracting Party may require that an applicant who wishes an application to be treated as an application under Rule 2(6)(iii) indicate:

(i) that he wishes the application to be so treated;

(ii) the number and filing date of the earlier application.

(2) *[Request Form Under Article 6(2)(b)]* A Contracting Party shall accept the presentation of the contents referred to in Article 6(2)(a):

(i) on a request Form, if that request Form corresponds to the Patent Cooperation Treaty request Form with any modifications under Rule 20(2);

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

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

(3) [*Requirement Under Article 6(3)*] A Contracting Party may require, under Article 6(3), a translation of the title, claims and abstract of an application that is in a language accepted by the Office, into any other languages accepted by that Office.

Rule 4

Availability of Earlier Application Under Article 6(5) and Rule 2(4) or of Previously Filed Application Under Rule 2(5)(b)

(1) [*Copy of Earlier Application Under Article 6(5)*] Subject to paragraph (3), a Contracting Party may require that a copy of the earlier application referred to in Article 6(5) be filed with the Office within a time limit which shall be not less than 16 months from the filing date of that earlier application or, where there is more than one such earlier application, from the earliest filing date of those earlier applications.

(2) [*Certification*] Subject to paragraph (3), a Contracting Party may require that the copy referred to in paragraph (1) and the date of filing of the earlier application be certified as correct by the Office with which the earlier application was filed.

(3) [*Availability of Earlier Application or of Previously Filed Application*] No Contracting Party shall require the filing of a copy or a certified copy of the earlier application or a certification of the filing date, as referred to in paragraphs (1) and (2), and Rule 2(4), or a copy or a certified copy of the previously filed application as referred to in Rule 2(5)(b), where the earlier application or the previously filed application was filed with its Office, or is available to that Office from a digital library which is accepted by the Office for that purpose.

(4) [*Translation*] Where the earlier application is not in a language accepted by the Office and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable, the Contracting Party may require that a translation of the earlier application referred to in paragraph (1) be filed by the applicant, upon invitation by the Office or other competent authority, within a time limit which shall be not less than two months from the date of that invitation, and not less than the time limit, if any, applied under that paragraph.

Rule 5

Evidence Under Articles 6(6) and 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6) and 18(4)

Where the Office notifies the applicant, owner or other person that evidence is required under Article 6(6) or 8(4)(c), or Rule 7(4), 15(4), 16(6), 17(6) or 18(4), the notification shall state the reason of the Office for doubting the veracity of the matter, indication or signature, or the accuracy of the translation, as the case may be.

Rule 6

Time Limits Concerning the Application Under Article 6(7) and (8)

(1) [*Time Limits Under Article 6(7) and (8)*] Subject to paragraphs (2) and (3), the time limits referred to in Article 6(7) and (8) shall be not less than two months from the date of the notification referred to in Article 6(7).

(2) [*Exception to Time Limit Under Article 6(8)*] Subject to paragraph (3), where a notification under Article 6(7) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, the time limit referred to in Article 6(8) shall be not less than three months from the date on which one or more of the elements referred to in Article 5(1)(a) were first received by the Office.

(3) [*Time Limits Under Article 6(7) and (8) Relating to Payment of Application Fee in Accordance with the Patent Cooperation Treaty*] Where any fees required to be paid under Article 6(4) in respect of the filing of the application are not paid, a Contracting Party may, under Article 6(7) and (8), apply time

limits for payment, including late payment, which are the same as those applicable under the Patent Cooperation Treaty in relation to the basic fee component of the international fee.

Rule 7

Details Concerning Representation Under Article 7

(1) [*Other Procedures Under Article 7(2)(a)(iii)*] The other procedures referred to in Article 7(2)(a)(iii) for which a Contracting Party may not require appointment of a representative are:

- (i) the filing of a copy of an earlier application under Rule 2(4);
- (ii) the filing of a copy of a previously filed application under Rule 2(5)(b).

(2) [*Appointment of Representative Under Article 7(3)*] (a) A Contracting Party shall accept that the appointment of a representative be filed with the Office in:

- (i) a separate communication (hereinafter referred to as a "power of attorney") signed by the applicant, owner or other interested person and indicating the name and address of the representative; or, at the applicant's option,
- (ii) the request Form referred to in Article 6(2), signed by the applicant.

(b) A single power of attorney shall be sufficient even where it relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that all applications and patents concerned are identified in the single power of attorney. A single power of attorney shall also be sufficient even where it relates, subject to any exception indicated by the appointing person, to all existing and future applications or patents of that person. The Office may require that, where that single power of attorney is filed on paper or as otherwise permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(3) [*Translation of Power of Attorney*] A Contracting Party may require that, if a power of attorney is not in a language accepted by the Office, it be accompanied by a translation.

(4) [*Evidence*] A Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraph (2)(a).

(5) [*Time Limits Under Article 7(5) and (6)*] Subject to paragraph (6), the time limits referred to in Article 7(5) and (6) shall be not less than two months from the date of the notification referred to in Article 7(5).

(6) [*Exception to Time Limit Under Article 7(6)*] Where a notification referred to in Article 7(5) has not been made because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been filed, the time limit referred to in Article 7(6) shall be not less than three months from the date on which the procedure referred to in Article 7(5) was commenced.

Rule 8

Filing of Communications Under Article 8(1)

(1) [*Communications Filed on Paper*] (a) After June 2, 2005, any Contracting Party may, subject to Articles 5(1) and 8(1)(d), exclude the filing of communications on paper or may continue to permit the filing of communications on paper. Until that date, all Contracting Parties shall permit the filing of communications on paper.

(b) Subject to Article 8(3) and subparagraph (c), a Contracting Party may prescribe the requirements relating to the form of communications on paper.

(c) Where a Contracting Party permits the filing of communications on paper, the Office shall permit the filing of communications on paper in accordance with the requirements under the Patent Cooperation Treaty relating to the form of communications on paper.

(d) Notwithstanding subparagraph (a), where the receiving or processing of a communication on paper, due to its character or its size, is deemed not practicable, a Contracting Party may require the filing of that communication in another form or by other means of transmittal.

(2) [*Communications Filed in Electronic Form or by Electronic Means of Transmittal*] (a) Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal with its Office in a particular language, including the filing of communications by telegraph, teleprinter, telefacsimile or other like means of transmittal, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to communications filed in electronic form or by electronic means of transmittal in that language, the Office shall permit the filing of communications in electronic form or by electronic means of transmittal in the said language in accordance with those requirements.

(b) A Contracting Party which permits the filing of communications in electronic form or by electronic means of transmittal with its Office shall notify the International Bureau of the requirements under its applicable law relating to such filing. Any such notification shall be published by the International Bureau in the language in which it is notified and in the languages in which authentic and official texts of the Treaty are established under Article 25.

(c) Where, under subparagraph (a), a Contracting Party permits the filing of communications by telegraph, teleprinter, telefacsimile or other like means of transmittal, it may require that the original of any document which was transmitted by such means of transmittal, accompanied by a letter identifying that earlier transmission, be filed on paper with the Office within a time limit which shall be not less than one month from the date of the transmission.

(3) [*Copies, Filed in Electronic Form or by Electronic Means of Transmittal, of Communications Filed on Paper*] (a) Where a Contracting Party permits the filing of a copy, in electronic form or by electronic means of transmittal, of a communication filed on paper in a language accepted by the Office, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to the filing of such copies of communications, the Office shall permit the filing of copies of communications in electronic form or by electronic means of transmittal, in accordance with those requirements.

(b) Paragraph (2)(b) shall apply, *mutatis mutandis*, to copies, in electronic form or by electronic means of transmittal, of communications filed on paper.

Rule 9

Details Concerning the Signature Under Article 8(4)

(1) [*Indications Accompanying Signature*] A Contracting Party may require that the signature of the natural person who signs be accompanied by:

(i) an indication in letters of the family or principal name and the given or secondary name or names of that person or, at the option of that person, of the name or names customarily used by the said person;

(ii) an indication of the capacity in which that person signed, where such capacity is not obvious from reading the communication.

(2) [*Date of Signing*] A Contracting Party may require that a signature be accompanied by an indication of the date on which the signing was effected. Where that indication is required but is not supplied, the date on which the signing is deemed to have been effected shall be the date on which the communication bearing the signature was received by the Office or, if the Contracting Party so permits, a date earlier than the latter date.

(3) [*Signature of Communication on Paper*] Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party:

- (i) shall, subject to item (iii), accept a handwritten signature;
- (ii) may permit, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal or of a bar-coded label;
- (iii) may, where the natural person who signs the communication is a national of the Contracting Party and such person's address is on its territory, or where the legal entity on behalf of which the communication is signed is organized under its law and has either a domicile or a real and effective industrial or commercial establishment on its territory, require that a seal be used instead of a handwritten signature.

(4) [*Signature of Communications Filed in Electronic Form or by Electronic Means of Transmittal Resulting in Graphic Representation*] Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal, it shall consider such a communication signed if a graphic representation of a signature accepted by that Contracting Party under paragraph (3) appears on that communication as received by the Office of that Contracting Party.

(5) [*Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature*] (a) Where a Contracting Party permits the filing of communications in electronic form, and a graphic representation of a signature accepted by that Contracting Party under paragraph (3) does not appear on such a communication as received by the Office of that Contracting Party, the Contracting Party may require that the communication be signed using a signature in electronic form as prescribed by that Contracting Party.

(b) Notwithstanding subparagraph (a), where a Contracting Party permits the filing of communications in electronic form in a particular language, and there are requirements applicable to that Contracting Party under the Patent Cooperation Treaty in relation to signatures in electronic form of communications filed in electronic form in that language which do not result in a graphic representation of the signature, the Office of that Contracting Party shall accept a signature in electronic form in accordance with those requirements.

(c) Rule 8(2)(b) shall apply *mutatis mutandis*.

(6) [*Exception to Certification of Signature Under Article 8(4)(b)*] A Contracting Party may require that any signature referred to in paragraph (5) be confirmed by a process for certifying signatures in electronic form specified by that Contracting Party.

Rule 10

Details Concerning Indications Under Article 8(5), (6) and (8)

(1) [*Indications Under Article 8(5)*] (a) A Contracting Party may require that any communication:

- (i) indicate the name and address of the applicant, owner or other interested person;
- (ii) indicate the number of the application or patent to which it relates;
- (iii) contain, where the applicant, owner or other interested person is registered with the Office, the number or other indication under which he is so registered.

(b) A Contracting Party may require that any communication by a representative for the purposes of a procedure before the Office contain:

- (i) the name and address of the representative;

(ii) a reference to the power of attorney, or other communication in which the appointment of that representative is or was effected, on the basis of which the said representative acts;

(iii) where the representative is registered with the Office, the number or other indication under which he is registered.

(2) [*Address for Correspondence and Address for Legal Service*] A Contracting Party may require that the address for correspondence referred to in Article 8(6)(i) and the address for legal service referred to in Article 8(6)(ii) be on a territory prescribed by that Contracting Party.

(3) [*Address Where No Representative Is Appointed*] Where no representative is appointed and an applicant, owner or other interested person has provided, as his address, an address on a territory prescribed by the Contracting Party under paragraph (2), that Contracting Party shall consider that address to be the address for correspondence referred to in Article 8(6)(i) or the address for legal service referred to in Article 8(6)(ii), as required by the Contracting Party, unless that applicant, owner or other interested person expressly indicates another such address under Article 8(6).

(4) [*Address Where Representative Is Appointed*] Where a representative is appointed, a Contracting Party shall consider the address of that representative to be the address for correspondence referred to in Article 8(6)(i) or the address for legal service referred to in Article 8(6)(ii), as required by the Contracting Party, unless that applicant, owner or other interested person expressly indicates another such address under Article 8(6).

(5) [*Sanctions for Non-Compliance With Requirements Under Article 8(8)*] No Contracting Party may provide for the refusal of an application for failure to comply with any requirement to file a registration number or other indication under paragraph (1)(a)(iii) and (b)(iii).

Rule 11

Time Limits Concerning Communications Under Article 8(7) and (8)

(1) [*Time Limits Under Article 8(7) and (8)*] Subject to paragraph (2), the time limits referred to in Article 8(7) and (8) shall be not less than two months from the date of the notification referred to in Article 8(7).

(2) [*Exception to Time Limit Under Article 8(8)*] Where a notification under Article 8(7) has not been made because indications allowing the applicant, owner or other interested person to be contacted by the Office have not been filed, the time limit referred to in Article 8(8) shall be not less than three months from the date on which the communication referred to in Article 8(7) was received by the Office.

Rule 12

Details Concerning Relief in Respect of Time Limits Under Article 11

(1) [*Requirements Under Article 11(1)*] (a) A Contracting Party may require that a request referred to in Article 11(1):

(i) be signed by the applicant or owner;

(ii) contain an indication to the effect that extension of a time limit is requested, and an identification of the time limit in question.

(b) Where a request for extension of a time limit is filed after the expiration of the time limit, a Contracting Party may require that all of the requirements in respect of which the time limit for the action concerned applied be complied with at the same time as the request is filed.

(2) [*Period and Time Limit Under Article 11(1)*] (a) The period of extension of a time limit referred to in Article 11(1) shall be not less than two months from the date of the expiration of the unextended time limit.

(b) The time limit referred to in Article 11(1)(ii) shall expire not earlier than two months from the date of the expiration of the unextended time limit.

(3) [*Requirements Under Article 11(2)(i)*] A Contracting Party may require that a request referred to in Article 11(2):

(i) be signed by the applicant or owner;

(ii) contain an indication to the effect that relief in respect of non-compliance with a time limit is requested, and an identification of the time limit in question.

(4) [*Time Limit for Filing a Request Under Article 11(2)(ii)*] The time limit referred to in Article 11(2)(ii) shall expire not earlier than two months after a notification by the Office that the applicant or owner did not comply with the time limit fixed by the Office.

(5) [*Exceptions Under Article 11(3)*] (a) No Contracting Party shall be required under Article 11(1) or (2) to grant:

(i) a second, or any subsequent, relief in respect of a time limit for which relief has already been granted under Article 11(1) or (2);

(ii) relief for filing a request for relief under Article 11(1) or (2) or a request for reinstatement under Article 12(1);

(iii) relief in respect of a time limit for the payment of maintenance fees;

(iv) relief in respect of a time limit referred to in Article 13(1), (2) or (3);

(v) relief in respect of a time limit for an action before a board of appeal or other review body constituted in the framework of the Office;

(vi) relief in respect of a time limit for an action in *inter partes* proceedings.

(b) No Contracting Party which provides a maximum time limit for compliance with all of the requirements of a procedure before the Office shall be required under Article 11(1) or (2) to grant relief in respect of a time limit for an action in that procedure in respect of any of those requirements beyond that maximum time limit.

Rule 13

Details Concerning Reinstatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12

(1) [*Requirements Under Article 12(1)(i)*] A Contracting Party may require that a request referred to in Article 12(1)(i) be signed by the applicant or owner.

(2) [*Time Limit Under Article 12(1)(ii)*] The time limit for making a request, and for complying with the requirements, under Article 12(1)(ii), shall be the earlier to expire of the following:

(i) not less than two months from the date of the removal of the cause of failure to comply with the time limit for the action in question;

(ii) not less than 12 months from the date of expiration of the time limit for the action in question, or, where a request relates to non-payment of a maintenance fee, not less than 12 months from the date of expiration of the period of grace provided under Article 5*bis* of the Paris Convention.

(3) [*Exceptions Under Article 12(2)*] The exceptions referred to in Article 12(2) are failure to comply with a time limit:

- (i) for an action before a board of appeal or other review body constituted in the framework of the Office;
- (ii) for making a request for relief under Article 11(1) or (2) or a request for reinstatement under Article 12(1);
- (iii) referred to in Article 13(1), (2) or (3);
- (iv) for an action in *inter partes* proceedings.

Rule 14

Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13

(1) [Exception Under Article 13(1)] No Contracting Party shall be obliged to provide for the correction or addition of a priority claim under Article 13(1), where the request referred to in Article 13(1)(i) is received after the applicant has made a request for early publication or for expedited or accelerated processing, unless that request for early publication or for expedited or accelerated processing is withdrawn before the technical preparations for publication of the application have been completed.

(2) [Requirements Under Article 13(1)(i)] A Contracting Party may require that a request referred to in Article 13(1)(i) be signed by the applicant.

(3) [Time Limit Under Article 13(1)(ii)] The time limit referred to in Article 13(1)(ii) shall be not less than the time limit applicable under the Patent Cooperation Treaty to an international application for the submission of a priority claim after the filing of an international application.

(4) [Time Limits Under Article 13(2)] (a) The time limit referred to in Article 13(2), introductory part, shall expire not less than two months from the date on which the priority period expired.

(b) The time limit referred to in Article 13(2)(ii) shall be the time limit applied under subparagraph (a), or the time that any technical preparations for publication of the subsequent application have been completed, whichever expires earlier.

(5) [Requirements Under Article 13(2)(i)] A Contracting Party may require that a request referred to in Article 13(2)(i):

- (i) be signed by the applicant; and
- (ii) be accompanied, where the application did not claim the priority of the earlier application, by the priority claim.

(6) [Requirements Under Article 13(3)] (a) A Contracting Party may require that a request referred to in Article 13(3)(i):

- (i) be signed by the applicant; and
- (ii) indicate the Office to which the request for a copy of the earlier application had been made and the date of that request.

(b) A Contracting Party may require that:

- (i) a declaration or other evidence in support of the request referred to in Article 13(3) be filed with the Office within a time limit fixed by the Office;
- (ii) the copy of the earlier application referred to in Article 13(3)(iv) be filed with the Office within a time limit which shall be not less than one month from the date on which the applicant is provided with that copy by the Office with which the earlier application was filed.

(7) [Time Limit Under Article 13(3)(iii)] The time limit referred to in Article 13(3)(iii) shall expire two months before the expiration of the time limit prescribed in Rule 4(1).

Rule 15

Request for Recordation of Change in Name or Address

(1) [Request] Where there is no change in the person of the applicant or owner but there is a change in his name or address, a Contracting Party shall accept that a request for recordation of the change be made in a communication signed by the applicant or owner and containing the following indications:

- (i) an indication to the effect that recordation of a change in name or address is requested;
- (ii) the number of the application or patent concerned;
- (iii) the change to be recorded;
- (iv) the name and address of the applicant or the owner prior to the change.

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

(3) [Single Request] (a) A single request shall be sufficient even where the change relates to both the name and address of the applicant or the owner.

(b) A single request shall be sufficient even where the change relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that the numbers of all applications and patents concerned are indicated in the request. A Contracting Party may require that, where that single request is filed on paper or as otherwise permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(4) [Evidence] A Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the veracity of any indication contained in the request.

(5) [Prohibition of Other Requirements] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the request referred to in paragraph (1), except where otherwise provided for by the Treaty or prescribed in these Regulations. In particular, the filing of any certificate concerning the change may not be required.

(6) [Notification] Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (4) are not complied with, the Office shall notify the applicant or owner, giving the opportunity to comply with any such requirement, and to make observations, within not less than two months from the date of the notification.

(7) [Non-Compliance with Requirements] (a) Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (4) are not complied with within the time limit under subparagraph (b), the Contracting Party may provide that the request shall be refused, but no more severe sanction may be applied.

(b) The time limit referred to in subparagraph (a) shall be:

- (i) subject to item (ii), not less than two months from the date of the notification;
- (ii) where indications allowing the Office to contact the person who made the request referred to in paragraph (1) have not been filed, not less than three months from the date on which that request was received by the Office.

(8) [*Change in the Name or Address of the Representative, or in the Address for Correspondence or Address for Legal Service*] Paragraphs (1) to (7) shall apply, *mutatis mutandis*, to any change in the name or address of the representative, and to any change relating to the address for correspondence or address for legal service.

Rule 16

Request for Recordation of Change in Applicant or Owner

(1) [*Request for Recordation of a Change in Applicant or Owner*] (a) Where there is a change in the person of the applicant or owner, a Contracting Party shall accept that a request for recordation of the change be made in a communication signed by the applicant or owner, or by the new applicant or new owner, and containing the following indications:

- (i) an indication to the effect that a recordation of change in applicant or owner is requested;
 - (ii) the number of the application or patent concerned;
 - (iii) the name and address of the applicant or owner;
 - (iv) the name and address of the new applicant or new owner;
 - (v) the date of the change in the person of the applicant or owner;
 - (vi) the name of a State of which the new applicant or new owner is a national if he is the national of any State, the name of a State in which the new applicant or new owner has his domicile, if any, and the name of a State in which the new applicant or new owner has a real and effective industrial or commercial establishment, if any;
 - (vii) the basis for the change requested.
- (b) A Contracting Party may require that the request contain:
- (i) a statement that the information contained in the request is true and correct;
 - (ii) information relating to any government interest by that Contracting Party.

(2) [*Documentation of the Basis of the Change in Applicant or Owner*] (a) Where the change in applicant or owner results from a contract, a Contracting Party may require that the request include information relating to the registration of the contract, where registration is compulsory under the applicable law, and that it be accompanied, at the option of the requesting party, by one of the following:

- (i) a copy of the contract, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original contract;
- (ii) an extract of the contract showing the change, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the contract;
- (iii) an uncertified certificate of transfer of ownership by contract drawn up with the content as prescribed in the Model International Form in respect of a certificate of transfer and signed by both the applicant and the new applicant, or by both the owner and the new owner.

(b) Where the change in applicant or owner results from a merger, or from the reorganization or division of a legal entity, a Contracting Party may require that the request be accompanied by a copy of a document, which document originates from a competent authority and evidences the merger, or the reorganization or division of the legal entity, and any attribution of rights

involved, such as a copy of an extract from a register of commerce. A Contracting Party may also require that the copy be certified, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original document.

(c) Where the change in applicant or owner does not result from a contract, a merger, or the reorganization or division of a legal entity, but results from another ground, for example, by operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the change. A Contracting Party may also require that the copy be certified as being in conformity with the original document, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office.

(d) Where the change is in the person of one or more but not all of several co-applicants or co-owners, a Contracting Party may require that evidence of the consent to the change of any co-applicant or co-owner in respect of whom there is no change be provided to the Office.

(3) [*Translation*] A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office.

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

(5) [*Single Request*] A single request shall be sufficient even where the change relates to more than one application or patent of the same person, or to one or more applications and one or more patents of the same person, provided that the change in applicant or owner is the same for all applications and patents concerned, and the numbers of all applications and patents concerned are indicated in the request. A Contracting Party may require that, where that single request is filed on paper or as otherwise permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates.

(6) [*Evidence*] A Contracting Party may require that evidence, or further evidence in the case of paragraph (2), be filed with the Office only where that Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the present Rule, or the accuracy of any translation referred to in paragraph (3).

(7) [*Prohibition of Other Requirements*] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (6) be complied with in respect of the request referred to in this Rule, except where otherwise provided for by the Treaty or prescribed in these Regulations.

(8) [*Notification; Non-Compliance with Requirements*] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (5) are not complied with, or where evidence, or further evidence, is required under paragraph (6).

(9) [*Exclusion with Respect to Inventorship*] A Contracting Party may exclude the application of this Rule in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law.

(b) as far as *Special Member Delegations* are concerned, the *credentials* and *full powers* of the European Patent Organization (1), and the *credentials* of the African Regional Industrial Property Organization and the Eurasian Patent Organization (2);

(c) as far as *Observer Organizations* are concerned, the *letters or documents of appointment* of representatives of the following Observer Organizations (listed in the alphabetical order of the name of the organization according to its name in French if it exists or, if it does not exist, according to its name in another language):

Rule 17

Request for Recordation of a License or a Security Interest

(1) [*Request for Recordation of a License*] (a) Where a license in respect of an application or patent may be recorded under the applicable law, the Contracting Party shall accept that a request for recordation of that license be made in a communication signed by the licensor or the licensee and containing the following indications:

- (i) an indication to the effect that a recordation of a license is requested;
- (ii) the number of the application or patent concerned;
- (iii) the name and address of the licensor;
- (iv) the name and address of the licensee;
- (v) an indication of whether the license is an exclusive license or a non-exclusive license;
- (vi) the name of a State of which the licensee is a national if he is the national of any State, the name of a State in which the licensee has his domicile, if any, and the name of a State in which the licensee has a real and effective industrial or commercial establishment, if any.

(b) A Contracting Party may require that the request contain:

- (i) a statement that the information contained in the request is true and correct;
- (ii) information relating to any government interest by that Contracting Party;
- (iii) information relating to the registration of the license, where registration is compulsory under the applicable law;
- (iv) the date of the license and its duration.

(2) [*Documentation of the Basis of the License*] (a) Where the license is a freely concluded agreement, a Contracting Party may require that the request be accompanied, at the option of the requesting party, by one of the following:

- (i) a copy of the agreement, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original agreement;
- (ii) an extract of the agreement consisting of those portions of that agreement which show the rights licensed and their extent, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the agreement.

(b) A Contracting Party may require, where the license is a freely concluded agreement, that any applicant, owner, exclusive licensee, co-applicant, co-owner or co-exclusive licensee who is not party to that agreement give his consent to the recordation of the agreement in a communication to the Office.

(c) Where the license is not a freely concluded agreement, for example, it results from operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the license. A Contracting Party may also require that the copy be certified as being in conformity with the original document, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office.

(3) [Translation] A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office.

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

(5) [Single Request] Rule 16(5) shall apply, *mutatis mutandis*, to requests for recordation of a license.

(6) [Evidence] Rule 16(6) shall apply, *mutatis mutandis*, to requests for recordation of a license.

(7) [Prohibition of Other Requirements] No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (6) be complied with in respect of the request referred to in paragraph (1), except where otherwise provided for by the Treaty or prescribed in these Regulations.

(8) [Notification; Non-Compliance with Requirements] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (5) are not complied with, or where evidence, or further evidence, is required under paragraph (6).

(9) [Request for Recordation of a Security Interest or Cancellation of the Recordation of a License or a Security Interest] Paragraphs (1) to (8) shall apply, *mutatis mutandis*, to requests for:

- (i) recordation of a security interest in respect of an application or patent;
- (ii) cancellation of the recordation of a license or a security interest in respect of an application or patent.

Rule 18

Request for Correction of a Mistake

(1) [Request] (a) Where an application, a patent or any request communicated to the Office in respect of an application or a patent contains a mistake, not related to search or substantive examination, which is correctable by the Office under the applicable law, the Office shall accept that a request for correction of that mistake in the records and publications of the Office be made in a communication to the Office signed by the applicant or owner and containing the following indications:

- (i) an indication to the effect that a correction of mistake is requested;
- (ii) the number of the application or patent concerned;
- (iii) the mistake to be corrected;
- (iv) the correction to be made;
- (v) the name and address of the requesting party.

(b) A Contracting Party may require that the request be accompanied by a replacement part or part incorporating the correction or, where paragraph (3) applies, by such a replacement part or part incorporating the correction for each application and patent to which the request relates.

(c) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the mistake was made in good faith.

(d) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the said request was made without undue delay or, at the option of the Contracting Party, that it was made without intentional delay, following the discovery of the mistake.

(2) [Fees] (a) Subject to subparagraph (b), a Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(b) The Office shall correct its own mistakes, *ex officio* or upon request, for no fee.

(3) [Single Request] Rule 16(5) shall apply, *mutatis mutandis*, to requests for correction of a mistake, provided that the mistake and the requested correction are the same for all applications and patents concerned.

(4) [Evidence] A Contracting Party may only require that evidence in support of the request be filed with the Office where the Office may reasonably doubt that the alleged mistake is in fact a mistake, or where it may reasonably doubt the veracity of any matter contained in, or of any document filed in connection with, the request for correction of a mistake.

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

(6) [Notification; Non-Compliance with Requirements] Rule 15(6) and (7) shall apply, *mutatis mutandis*, where one or more of the requirements applied under paragraphs (1) to (3) are not complied with, or where evidence is required under paragraph (4).

(7) [Exclusions] (a) A Contracting Party may exclude the application of this Rule in respect of changes in inventorship. What constitutes inventorship shall be determined under the applicable law.

(b) A Contracting Party may exclude the application of this Rule in respect of any mistake which must be corrected in that Contracting Party under a procedure for reissue of the patent.

Rule 19

Manner of Identification of an Application Without Its Application Number

(1) [Manner of Identification] Where it is required that an application be identified by its application number, but such a number has not yet been issued or is not known to the person concerned or his representative, the application shall be considered identified if one of the following is supplied, at that person's option:

(i) a provisional number for the application, if any, given by the Office;

(ii) a copy of the request part of the application along with the date on which the application was sent to the Office;

(iii) a reference number given to the application by the applicant or his representative and indicated in the application, along with the name and address of the applicant, the title of the invention and the date on which the application was sent to the Office.

(2) [Prohibition of Other Requirements] No Contracting Party may require that identification means other than those referred to in paragraph (1) be supplied in order for an application to be identified where its application number has not yet been issued or is not known to the person concerned or his representative.

Rule 20

Establishment of Model International Forms

(1) [Model International Forms] The Assembly shall, under Article 14(1)(c), establish Model International Forms, in each of the languages referred to in Article 25(1), in respect of:

- (i) a power of attorney;
- (ii) a request for recordation of change in name or address;
- (iii) a request for recordation of change in applicant or owner;
- (iv) a certificate of transfer;
- (v) a request for recordation, or cancellation of recordation, of a license;
- (vi) a request for recordation, or cancellation of recordation, of a security interest;
- (vii) a request for correction of a mistake.

(2) [*Modifications referred to in Rule 3(2)(i)*] The Assembly shall establish the modifications of the Patent Cooperation Treaty request Form referred to in Rule 3(2)(i).

(3) [*Proposals by the International Bureau*] The International Bureau shall present proposals to the Assembly concerning:

- (i) the establishment of Model International Forms referred to in paragraph (1);
- (ii) the modifications of the Patent Cooperation Treaty request Form referred to in paragraph (2).

Rule 21
Requirement of Unanimity Under Article 14(3)

Establishment or amendment of the following Rules shall require unanimity:

- (i) any Rules under Article 5(1)(a);
 - (ii) any Rules under Article 6(1)(iii);
 - (iii) any Rules under Article 6(3);
 - (iv) any Rules under Article 7(2)(a)(iii);
 - (v) Rule 8(1)(a);
 - (vi) the present Rule.
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PT/DC/43

June 1, 2000 (Original: English)

DRAFT AGREED STATEMENTS BY THE DIPLOMATIC CONFERENCE REGARDING THE PATENT LAW TREATY
AND THE REGULATIONS UNDER THE PATENT LAW TREATY

submitted to Main Committee I by the Drafting Committee

1. When adopting Article 1(xiv), the Diplomatic Conference understood that the words "procedure before the Office" would not cover judicial procedures under the applicable law.

2. When adopting Articles 1(xvii), 16 and 17(2)(v), the Diplomatic Conference understood that:

(1) The PLT Assembly would, when appropriate, be convened in conjunction with meetings of the PCT Assembly.

(2) Contracting Parties of the PLT would be consulted, when appropriate, in addition to States party to the PCT, in relation to proposed modifications of the PCT Administrative Instructions.

(3) The Director General shall propose, for the determination of the PCT Assembly, that Contracting Parties of the PLT which are not party to the PCT be invited as observers to PCT Assembly meetings and to meetings of other PCT bodies, when appropriate.

(4) When the PLT Assembly decides, under Article 16, that a revision, amendment or modification of the PCT shall apply for the purposes of the PLT, the Assembly may provide for transitional provisions under the PLT in the particular case.

3. When adopting Articles 6(5) and 13(3), and Rules 4 and 14, the Diplomatic Conference urged the World Intellectual Property Organization to expedite the creation of a digital library system for priority documents. Such a system would be of benefit to patent owners and others wanting access to priority documents.

4. With a view to facilitating the implementation of Rule 8(1)(a) of this Treaty, the Diplomatic Conference requests the General Assembly of the World Intellectual Property Organization (WIPO) and the Contracting Parties to provide the developing and least developed countries and countries in transition with additional technical assistance to meet their obligations under this Treaty, even before the entry into force of the Treaty.

The Diplomatic Conference further urges industrialized market economy countries to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least developed countries and countries in transition.

The Diplomatic Conference requests the WIPO General Assembly, once the Treaty has entered into force, to monitor and evaluate the progress of that cooperation every ordinary session.

5. When adopting Rules 12(5)(vi) and 13(3)(iv), the Diplomatic Conference understood that, while it was appropriate to exclude actions in relation to *inter partes* proceedings from the relief provided by Articles 11 and 12, it was desirable that the applicable law of Contracting Parties provide appropriate relief in those circumstances which takes into account the competing interests of third parties, as well as those interests of others who are not parties to the proceedings.

PT/DC/44

June 1, 2000 (Original: English)

AGREED STATEMENT

It was agreed that any dispute arising between two or more Contracting Parties concerning the interpretation or the application of this Treaty and its Regulations may be settled amicably through consultation or mediation under the auspices of the Director General.

PT/DC/45

June 1, 2000 (Original: English)

DRAFT OF THE PATENT LAW TREATY DRAFT OF THE REGULATIONS
UNDER THE PATENT LAW TREATY

*proposed to the Conference, meeting in Plenary,
by Main Committees I and II*

1. The texts of the Draft of the Patent Law Treaty, of the Draft of the Regulations thereunder and of the Draft Agreed Statements by the Diplomatic Conference, proposed to the Conference, meeting in Plenary, by Main Committees I and II, are those that appear in documents PT/DC/41, 42 and 43, subject to the following amendments:

Document PT/DC/41

- (1) In the table of contents, Article 22, the words "and Future" was deleted.
- (2) In Article 6(5), third line, the words "with the Office" were deleted.
- (3) In Article 8(7), third line, a comma was added after the words "or other interested person".
- (4) In the Arabic version of Article 17(4)(b)(ii), the words "and vice versa" are added after the words "its right to vote and".
- (5) In Article 17(5), ", 16(1)" was added after the words "Articles 14(2) and (3)".
- (6) In Articles 20(3), 21(2), 25(2) and 26, the square brackets surrounding the words "The European Patent Organization", "the Eurasian Patent Organization" and "the African Regional Industrial Property Organization" were removed.
- (7) In Article 22, the words "and Future" were deleted from the title. In addition, in paragraph (1), the words "filed or" in the third line and the words "granted or" and "or after" in the fourth line were deleted.

Document PT/DC/43

- (1) In the Spanish version, the word "remedio" in the fourth line of paragraph (5) was replaced by the word "medida".
- (2) The following text was added as paragraph 6:

"It was agreed that any dispute arising between two or more Contracting Parties concerning the interpretation or the application of this Treaty and its Regulations may be settled amicably through consultation or mediation under the auspices of the Director General."

2. Further, in the Arabic version of documents PT/DC/41 and 42, the words corresponding to "subject to" are amended without any substantive modification.

PT/DC/46
June 1, 2000 (Original: English)

FINAL ACT

adopted by the Diplomatic Conference on June 1, 2000

[The text of this document is reproduced on page 113.]

PT/DC/47
June 2, 2000 (Original: English)

PATENT LAW TREATY, REGULATIONS UNDER THE PATENT LAW TREATY AND AGREED STATEMENTS BY
THE DIPLOMATIC CONFERENCE

adopted by the Diplomatic Conference on June 1, 2000

[The text of this document is reproduced from page 8 to page 41.]

PT/DC/INF/1
June 2, 2000 (Original: French/English)

LIST OF PARTICIPANTS

Prepared by the Secretariat

[The information contained in this document can be found from page 569 to 605.]

PT/DC/INF/2

May 10, 2000 (Original: English)

GENERAL INFORMATION

Document prepared by the International Bureau

[This document contained practical information concerning the venue and conference facilities of the Diplomatic Conference.]

PT/DC/INF/3

May 15, 2000 (Original: French/English)

OFFICERS AND COMMITTEES

[The text of this document is reproduced from page 606 to 608.]

PT/DC/INF/4

June 2, 2000 (Original: English)

SIGNATURES

Memorandum by the Secretariat

[The text of this document is reproduced on page 112.]

SUMMARY MINUTES OF THE CONFERENCE

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SUMMARY MINUTES OF THE PLENARY

prepared by the International Bureau

President: H.E. N. Benjelloun-Touimi (Morocco)
Secretary: Mr. S. Uemura (WIPO)

First Session
Thursday, May 11, 2000
Afternoon

Opening of the Conference by the Director General of WIPO

1. Mr. IDRIS (Director General of WIPO) welcomed the participants to the Diplomatic Conference. He recalled that the main purpose of the Conference was to negotiate and adopt the Patent Law Treaty (PLT). The proposed Treaty, if adopted, would first simplify and streamline procedures for obtaining and maintaining patents, and provide for a reduction of the cost of patent protection. Second, the Treaty would enable Offices to continue to efficiently and effectively move towards a simplification and harmonization of patent documentation. Third, the Treaty would have an impact on international simplification by incorporating the requirements currently applicable for international applications under the Patent Cooperation Treaty (PCT) into national and regional laws. Fourth, the Treaty would carefully establish a balance between paper applications and applications filed with the use of advanced technologies.

2. The Director General pointed out that one factor of critical importance for the success of the Diplomatic Conference was the goodwill, cooperation and understanding between various legal systems, cultures and economic disciplines throughout the world. The successful conclusion of the PLT would also enable the International Bureau of the World Intellectual Property Organization (WIPO) to continue its program of work for further development of the international patent system, including substantive harmonization of patent law.

3. He declared open the Diplomatic Conference for the adoption of the PLT.

Consideration and adoption of the Rules of Procedure

4. Mr. IDRIS (Director General of WIPO) submitted the draft Rules of Procedure of the Conference (document PT/DC/2) for approval, subject to a change, in Rule 29(1)(a), of the words "Document PT/DC/3" to "Documents PT/DC/3 and 4."

The Rules of Procedure of the Diplomatic Conference were adopted as proposed in document PT/DC/2, with the modification to change, in Rule 29(1)(a), the words "Document PT/DC/3" to "Documents PT/DC/3 and 4."

Election of the President of the Conference

5. Mr. IDRIS (Director General of WIPO) asked for a proposal in respect of item 3, "Election of the President of the Conference," of the draft agenda.

6. Mr. SUMI (Japan) proposed Ambassador Nacer Benjelloun-Touimi (Morocco) for the Office of the President of the Diplomatic Conference. The Delegation pointed out the diplomatic skills of Ambassador Benjelloun-Touimi, and his great experience acquired in New York and as the Permanent Representative of Morocco in Geneva. The Delegation expressed its confidence in the nominee's qualifications and experience, and expressed its conviction that, under his diplomatic guidance, the Diplomatic Conference would be led to a successful conclusion.

7. Mr. BAHARVAND (Islamic Republic of Iran), speaking on behalf of the Asian Group, expressed support for the proposal made by the Delegation of Japan.

8. Mr. IDRIS (Director General of WIPO) noted that no other delegation wished to make a proposal.

The Conference adopted by acclamation the proposal of Japan to have H.E. Ambassador Benjelloun-Touimi of Morocco elected as President of the Diplomatic Conference.

9. Mr. IDRIS (Director General of WIPO) asked H.E. Mr. Benjelloun-Touimi to take his seat on the podium.

10. The PRESIDENT thanked the participants at the Conference for the confidence it had shown in him by entrusting him with the Presidency. He declared that it was a special honor for him to chair that Conference, since it was the first time that he was entrusted with the Chair of a meeting held under the aegis of WIPO. The President expressed the hope that he would deserve all the confidence that was placed in him.

Consideration and Adoption of the Agenda

11. The PRESIDENT opened discussion on draft Agenda item 4 (Consideration and adoption of the agenda).

The agenda of the Diplomatic Conference was adopted as proposed in document PT/DC/1.

Election of the Vice Presidents of the Conference

Election of the Members of the Credentials Committee

Election of the Officers of the Credentials Committee

Election of the Officers of Main Committee I

12. The PRESIDENT asked the Secretariat to announce the outcome of the informal consultations, which had taken place concerning the various elections.

13. Mr. GURRY (WIPO) announced that the results of such consultations were the following:

For Vice-Presidents of the Conference: Mr. Ma Lianyu (China), Mr. Nikola Kopčić (Croatia), Mr. Iwan Wiranata-Atmadja (Indonesia), Mr. Sabah Zangeneh (Iran (Islamic Republic of)), Mr. Shigeki Sumi (Japan), Mr. Tolesh E. Kaudyrov (Kazakhstan), Mr. Zigrds Aumeisters (Latvia), Mr. Eun-Woo Lee (Republic of Korea), Mr. Jang Chun Sik (Democratic People's Republic of Korea) and Mr. Eugen M. Stashkov (Republic of Moldova).

For the Credentials Committee, the proposed members were the following delegations (in alphabetical order): France, Madagascar, Peru, Portugal, Slovakia, Uganda and United Kingdom.

For the Officers of the Credentials Committee: For President Ms. Joyce C. Banya (Uganda), and for Vice-Presidents: Mrs. Michèle Weil-Guthmann (France) and Mrs. Betty Berendson (Peru).

For the Officers of Main Committee I: For President Mr. Alan Troicuk (Canada), and for Vice-Presidents Mr. Koakou Ata Kato (Togo) and Mr. Hans Georg Bartels (Germany).

14. Mr. GURRY (WIPO) indicated that the coordinators had not finished their consultations on the composition of the Drafting Committee and Main Committee II, and proposed to come back to that at another plenary meeting of the Conference.

15. *The PRESIDENT declared the proposals adopted by acclamation.*

16. Mr. IDRIS (Director General of WIPO) read out the following statement, which was agreed upon with the various group coordinators as the outcome of the informal consultations, which had taken place during the first day of the Conference:

"Following informal consultations conducted by the Director General concerning formalities in relation to the question of genetic resources, the following commitment was reached among the groups:

1. No formal proposals or agreed statements will be submitted at the Diplomatic Conference. However, delegations can make any statement they wish for inclusion in the records.

2. Member State discussions concerning genetic resources will continue at WIPO. The format of such discussions will be left to the Director General's discretion, in consultation with WIPO Member States."

17. Mr. HAFEZ ABDELAZIZ (Egypt) expressed congratulations to the President for his election and wished all the success in his work. He said that his Delegation was seeking clarification from the Secretariat regarding the statement which was read out by the Director General. In particular, the Delegation referred to point 1 of that statement and asked for further elaboration as to the meaning of the term "agreed statements."

18. Mr. IDRIS (Director General of WIPO) recalled that this question had been discussed extensively and intensively at an informal level. He stated that paragraphs 1 and 2 of the statement had to be read very closely with the preamble to those paragraphs. As the statement referred to the question of genetic resources, the "agreed statements" referred to that particular question. Although unilateral statements or group statements could of course be made at any time, no agreed statement by the Conference as a whole would be made on this subject.

19. Mrs. OVIEDO ARBELAEZ (Colombia) read out the following statement:

"Mr. President,

"The Delegation of Colombia congratulates you on your election and wishes you success with the results of this Diplomatic Conference. Allow me to assure you of our entire support in the work that we are embarking on today, and our commitment to a constant search for consensus in the decision-making process of the Conference.

"As we know, Colombia proposed an article for consideration at the Third Session of the Standing Committee on Patent Law which had been debated in the Meeting of Experts on Biotechnology, held in November of the previous year, and also at the WIPO Intergovernmental Meeting on Intellectual Property and Genetic Resources last April, at which time the final text to be negotiated at this Conference was presented in the following terms:

'Where appropriate and where the invention is made on the basis of genetic and/or biological resources, a Contracting Party may demand that a copy be submitted to the office of the document issued by the Competent National Authority accrediting the legality of access. (Proposal to be included in Article 6, as *6bis*, of the Draft Patent Law Treaty to be adopted at the Diplomatic Conference)'

"The aim of the proposal is to guarantee the legitimate right of States to verify the origin of genetic and/or biological resources and the legality of access thereto where they are responsible for the making or development of an invention filed for patent purposes. This is an initiative that owes its origin to the Convention on Biological Diversity, by virtue of the sovereignty of States over their biological and genetic resources, and their responsibility for the conservation and sustainable use thereof.

"This right, enshrined in the Convention on Biological Diversity, cannot be allowed to be discredited in the international treaty that seeks to standardize the formal requirements for the processing of patent registration. We have a duty to give precedence to substantive law over matters of form.

"To repeat what was said by Colombia at the last meeting on intellectual property and genetic resources, our proposal aims to harmonize two international undertakings that we have made which are at the same level of importance and relate to subjects as fundamental as biological diversity and intellectual property.

"We are a country that promotes and fosters research on genetic and biological resources. There is no question that proper management of those resources has to involve guarantees of lawful access, the transfer of technology, equitable distribution of benefits and fair and transparent trade. In the for a mentioned, in November and April, at which we, the Member States of this Organization, agreed to debate the Colombian proposal, it was recognized that the subject was one of great importance which concerned all Member States of the Organization. We need only read the reports of the meetings in question and the conclusions of the Chairman of the meeting on intellectual property and genetic resources, all of which reflect in addition the breadth of the support given to our initiative by a substantial number of States.

"The Colombian proposal has enabled us to show that, over and above the formal requirement of the legality of access to genetic resources, there is the need to consider the matter in an integrated fashion, incorporating all its aspects and other related issues, with a view to guaranteeing their protection.

"When we approved the Program and Budget for this biennium we made the undertaking to consider the role of intellectual property in the promotion of access to genetic resources and the distribution of the benefits deriving from the use of those resources in biotechnological inventions; likewise, the need to achieve a clearer understanding of the social, economic and ethical dimensions of the intellectual property protection accorded to biotechnological genetic inventions; and lastly the general validity of the subjects of biological diversity, traditional knowledge and folklore in terms of intellectual property.

"Mr. President,

"Considering the great importance of the subject and the need to deal with it in its entirety, Colombia will not insist on its proposal for an article in the Patent Law Treaty, contained in Article 6 (6bis), and recognizes that the adoption of the Patent Law Treaty (PLT) does not preclude the subject which could also be reconsidered in terms of the Patent Cooperation Treaty (PCT).

"We shall continue to work in the World Intellectual Property Organization (WIPO) toward achieving an international consensus in which the subject is considered in its entirety from the perspective of intellectual property. We are confident that the Director General will submit to the forthcoming General Assemblies of the Organization the terms of reference, the agenda and the schedule of meetings for this intergovernmental forum of debate and negotiation, in which the subject of genetic and/or biological resources and all related aspects will be included.

"On this understanding, my country accepts the agreement reached by all the Members of this Organization and submitted today to this Diplomatic Conference.

"At the national and regional level we shall study with due care the harmonization of the PLT, which we are negotiating at this Conference, with the other international treaties that we have accumulated, especially the Convention on Biological Diversity, the TRIPS Agreement, the decisions of the Andean Community and the PCT.

"Finally, Mr. President, the Delegation of Colombia wishes to have the agreement reached here and the whole of this statement set down in the records of this Diplomatic Conference, for which purpose it places the text thereof at your disposal."

20. Mr. BAECTOLD (WIPO) announced that during the Conference, as provided for in Rule 42 of the Rules of Procedure, the Secretariat would prepare provisional summary minutes of the discussions in the Conference and in Main Committees I and II. These provisional summary minutes would be produced as a series of informal documents, each relating to a period of the discussion, probably half a day. These documents would have a yellow cover page, in order to distinguish them from the formal Conference documents. The cover sheet would list the speakers whose interventions featured in the document concerned and would be distributed to those speakers. He asked those participants to check the record of their interventions and to pass any comments they may have to the Secretariat. These comments would preferentially take the form of manuscript suggestions on the document, but may also be given orally. Any such comments should be given to the Secretariat as soon as possible, and in any case before the end of the Conference. If no comments were received on a given intervention, it would be assumed

that the speaker concerned was satisfied that the summary be used as the basis for the provisional summary minutes that were going to be distributed after the Conference was concluded. Although Rule 42 allowed a further two months for speakers to inform the Secretariat of any suggestions for changes in the minutes of their own interventions, he expressed confidence that it was desirable that speakers review these summaries while the discussions were still fresh in their minds. As regards the languages used in the provisional summary minutes, and in accordance with paragraph (3)(a) of Rule 43 of the Rules of Procedure, if an intervention has been made in English, French or Spanish, the summary in the provisional minutes would be in the language used by the speaker. If on the other hand the intervention was made in Arabic, Chinese or Russian, the Rule provided that the summary be made in English or in French, at the choice of the Secretariat. The practice that would be followed by the Secretariat would be that all summaries of interventions made in Arabic, Chinese or Russian would be written in English, unless the Delegation concerned had expressed a preference for French. He therefore invited anyone who intended to speak in Arabic, Chinese or Russian and who preferred the summary of the intervention to be recorded in French rather than English either to so indicate when taking the floor for the first time or to inform the Secretariat of that preference.

21. Mrs. OVIEDO ARBELAEZ (Colombia) said that her Delegation had asked for the whole of her statement to be included in the records of the Conference, together with the agreement reached, and asked whether that would be the case.

22. The PRESIDENT confirmed that the whole declaration of the Delegation of Colombia will appear in the Summary Minutes, and adjourned the meeting until 10.00 a.m. of the next day.

Second Session
Friday, May 12, 2000
Morning

23. The PRESIDENT opened the second session of the Plenary of the Diplomatic Conference, and turned to item 10 of the agenda (Opening declarations by Delegations and by representatives of Observer Organizations).

24. All delegations and representatives of Observer Organizations which took the floor expressed their warm congratulations to Mr. Benjelloun-Touimi of Morocco for his unanimous election as President of the Diplomatic Conference, and their confidence that, thanks to his competence and experience, he would lead the Conference to a successful result. In addition, they congratulated Dr. Kamil Idris, Director General of WIPO, and the staff of the International Bureau for the excellence of the preparatory documents and of the conference services.

25. Mr. MOTA MAIA (Portugal), speaking on behalf of the Member States of the European Union, mentioned that the draft treaty was the result of five sessions of the Committee of Experts on Patent Law and three sessions of the Standing Committee on Patent Law (SCP). He congratulated WIPO on an initiative whose objective was to facilitate the processing of patent applications at the world level and at the same time to standardize the conditions of form. The adoption of the Treaty was paralleled by intense work on the modernization of the European patent system with a view to simplifying its regulatory environment and reducing the cost of corporate research and development work. He added that a number of items in the draft treaty required additional discussion, and that the Member States of the European Union would make proposals in that respect, which he hoped would achieve a sufficient consensus to win the support of the other Delegations.

26. Mrs. BANYA (Uganda), speaking on behalf of the African Group, commended the efforts which had been undertaken since 1995 and leading up to the Diplomatic Conference. The debates had been honest and frank and the genuine spirit of compromise governing them was now reflected in the draft Basic Proposal. She expressed her conviction that the PLT, when adopted, would benefit all its Contracting Parties since it harmonized procedures for patent applications on a global scale, facilitated the operations of Patent Offices and rendered them more efficient, and, most importantly, simplified the procedures for patentees and reduced their costs.

27. The delegate noted that some concerns of developing countries had been taken into account in the draft PLT and mentioned in particular Article 8 of the draft PLT which allowed applicants to file communications on paper even when an Office had introduced a system of electronic filing.

28. She pointed out that, due to its poor infrastructure and the high cost of connectivity, Africa was the continent least integrated into the intellectual property systems. She stressed the need for capacity building and for improving connectivity if Africa was to become an active participant in the evolving intellectual property systems. WIPO should be a forum to create and harmonize rules and practices for the protection of intellectual property rights for the benefit of all. With the rapid globalization of trade, WIPO had a key role to play in the evolution of these new systems. She noted that, since the Information Technology revolution depended on intellectual capital, developing countries needed the requisite human resources if they were to benefit from it. Some developing countries had a comparative disadvantage in this respect. She urged WIPO to play an active role in this instance by providing capacity building for Member States and the computerization of the various national Offices.

29. The delegate noted that the interface between intellectual property and global issues such as traditional knowledge, biotechnology, biological diversity, folklore and environmental protection required active exploration and intensive study. Since Africa was rich in folklore and traditional knowledge, the African Group fully supported the proposal made by the Delegation of Colombia during the discussions of the WIPO Intergovernmental Meeting on Intellectual Property and Genetic Resources, which was held in Geneva in April 2000, and shared the view that it was the legitimate right of States to verify the origin of genetic and biological resources and the legality of its access when these resources had resulted in the development of a creation, subject to a patent. It was time to offer creative responses to the challenges posed by these new global issues to the existing intellectual property systems. The delegate went on to say that the African Group had taken careful note of the statement by the Director General of WIPO at the opening of the Diplomatic Conference, and pointed out that the African Group had joined the consensus for purposes of advancing the process of adopting the PLT, even though it had hoped to address the Colombian proposal within the context of this Diplomatic Conference. The African Group urged the Director General to give this issue the importance and urgency it deserved, and called for the institution of a forum which would allow the debates on these issues to continue within WIPO.

30. Mr. BAHARVAND (Islamic Republic of Iran), speaking on behalf of the Asian Group, supported the statement made by the Delegation of Colombia and the intervention of the Delegation of Uganda. He stressed that the Asian Group held the view that WIPO should deal with issues of genetic resources and aspects of traditional knowledge such as folklore, and suggested to establish a forum, such as a standing committee, to discuss these issues.

31. Mrs. BERENDSON (Peru), speaking on behalf of the Group of Latin American and Caribbean Countries, said that the Group, like other regional groups, had shown particular interest in engaging in in-depth studies and starting negotiations on subjects as important as biological diversity, access to genetic resources and traditional knowledge. The Group was confident that the consultations that the Director General would be conducting in the forum for the deliberation of those subjects would lead to the establishment of a dedicated standing committee, as proposed by the Group, with the support of other country groups at earlier WIPO meetings during 1999.

32. Mr. CHAOUCH (Tunisia), subscribing to the statement made by the Delegation of Uganda on behalf of the African States, emphasized the importance of the economic value of industrial property rights, at the center of which lay the patent system and the marketing of inventions, and noted that the harmonization of patent legislation and the rationalization of the administrative conditions set by national offices would contribute to the making of the legal framework within which to promote innovation and encourage investment in the development of national technical capacity. Such a national effort would call for legal and technical assistance from WIPO for the benefit of developing countries, in particular with the introduction of a partnership for the transfer of technology and research findings, affording better access to collections of patent knowledge. There were three reasons with which to justify that assistance: making the patent system into an instrument of industrial planning and strategic decision-making in developing countries, ensuring that researchers and inventors from developing countries were aware of the state of the art, and finding appropriate solutions to the problems raised by the cost of protecting intellectual property rights and the cost of acquiring knowledge in the case of patents that were not public property. As part of the alignment of its legislation with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Tunisia was on the point of completing the process of adapting its legislation and national procedures, and had launched many different initiatives: a draft law

on patents, drafted with WIPO assistance, preparation for accession to several relevant industrial property treaties such as the Patent Cooperation Treaty (PCT), amendment of the law governing scientific research and technology promotion in order to protect the rights of the inventor or researcher employed by a company or public sector institution, studies with a view to the creation of a national innovation support center, working on the principle of a technology launch and seeking to exploit the results of the work of innovators and researchers through the launch of new products on the market. Tunisia reserved priority status in its development policies and strategies for the promotion of intellectual property and the implementation of the relevant treaties, and therefore it would give all the requisite attention to the discussions on the draft treaty that was on the agenda of the present Conference.

33. Mrs. KUNADI (India) expressed the hope that the process of simplification of procedures for patent applicants and owners initiated by WIPO would duly acknowledge and provide for the concerns of developing nations. She emphasized the need not only to ensure that the proposed PLT reflect a qualitative step forward, but also to avoid provisions which might impinge on substantive national laws, many of which were already evolving in response to the TRIPS Agreement. It should, for example, be clearly confirmed that the implementation of Article 6 of the draft PLT does not restrict the mandate given under Article 2 of the draft PLT in order to eliminate any apprehension in this regard.

34. She recalled that India had joined the Paris Convention for the Protection of Industrial Property and the PCT in 1998, and that these accessions had been welcomed by Indian industry. Encouraged by that support, India was now examining conventions such as the Budapest Treaty and the Madrid Protocol. She reported that India was also modernizing its industrial property administration, noting, in this context, that two projects concerning patent information and trademarks registration services had been completed with the help of UNDP and WIPO. India had also taken the initiative to modernize legislation on industrial property with a view not only to complying with the TRIPS Agreement, but also to developing laws based on the needs of Indian industry and inventors along with safeguards for public interest, national security, biodiversity and traditional knowledge.

35. She appreciated the efforts made by WIPO in creating awareness of the importance of intellectual property rights. She stated that an important component of these rights included issues of intellectual property inherent in traditional knowledge and bio-diversity resources, and emphasized the need to harmonize the approaches in the Convention on Biological Diversity (CBD) and the TRIPS Agreement. In implementing the CBD, countries should be allowed to exercise sovereign rights over their biological resources. However, in order to avoid impediments to innovation, intellectual property rights might have to be integrated into this exercise. India had started to develop an adequate database of traditional knowledge and bio-diversity so as to be in a position to protect its intellectual property in these fields.

36. The delegate emphasized that one of the major problems in the area of intellectual property was the question of enforcement, and reported that India had taken a number of steps in the past few years to strengthen the machinery for the enforcement of intellectual property rights resulting in a marked decline of piracy rates. While governmental efforts would help in the enforcement process, public awareness and vigilance were the best guarantee for the enforcement of intellectual property laws. With the help of WIPO, India had organized seminars and workshops, and WIPO's distance education program also contributed to this awareness process.

37. In conclusion, the delegate emphasized the need to make the intellectual property regime more responsive to the challenges of this century, while at the same time ensuring that the protection and enforcement of intellectual property rights benefit producers and users in a manner conducive to social and economic welfare.

38. Mr. KOBER (EPO) stated that the harmonization of patent law had always been a central concern of the European Patent Organisation. Indeed, the European Patent Organisation, the European Patent Office and the Contracting States had shown, in Europe, that the alignment of patent law is possible, even from widely differing starting points, if the needs of inventors and industry were taken seriously. The European Patent Organisation had therefore always paid close attention to, and emphatically supported, the work of WIPO in the worldwide harmonization of patent law.

39. He noted that, with the draft PLT, these efforts had produced a very creditable result, which would clearly make life easier for patent applicants. Its most important aspects included the provisions concerning the grant of a filing date and the contents of the application as well as rules on the extension of time limits, on continued processing of the application, and reinstatement of rights which, for the

benefit of inventors, now became a world standard even in cases where the applicant had missed the priority date. He also expressed the European Patent Office's keen interest to introduce electronic filing worldwide as soon as possible, and stressed its readiness to offer assistance in the framework of technical cooperation, if required.

40. He expressed his confidence that it would now be possible to move forward, on the basis of the work done during the past five years by the International Bureau, the Committee of Experts and the SCP, and to adopt a PLT which went even beyond what the project was originally expected to achieve. He emphasized that the proposed provisions were substantial and relevant in practice. Their close alignment with the tried and tested formal provisions of the PCT would make it easier to ensure their acceptance, and established the necessary basis for fully unified standards for the formal aspects of patenting at the national and international levels.

41. He emphasized that a consensus on formal requirements, modeled on the Basic Proposal, would be a positive signal for the initiative to harmonize substantive patent law, which had come to a standstill in 1991. The consensus on formal aspects would create a mood of optimism and document the readiness of the world community to carry on harmonizing its patent systems.

42. Mr. DICKINSON (United States of America) expressed his satisfaction that the Diplomatic Conference was now moving forward in a constructive and positive direction. He recalled that exactly 30 years had passed since the last patent treaty, the PCT, had been negotiated in Washington, D.C., and noted that the landscape of intellectual property and the contours of the global economy had changed considerably since then. At the birth of the PCT in 1970, two of the now most important technologies, computers and biotechnology, were just in their infancy, and the term "e-commerce" was a long way from entering the vernacular. While the United States Patent and Trademark Office received a little over 100,000 patent applications and granted about 64,000 patents in 1970, it received 270,000 patent applications and granted 161,000 patents in 1999, meaning that U.S. patent activity had almost tripled in the last three decades. The other major Patent Offices had also experienced significant increases.

43. He stated that one of the chief reasons for these increases were the changes in the global marketplace that had intertwined national and regional economies and broken down barriers to trade. As global trade and multinational businesses had grown, effective and timely worldwide patent protection had become ever more critical to all economies. In light of this rapidly changing landscape, this Conference would have to build upon what had been started 30 years ago by establishing a simpler, less expensive and more consistent framework for obtaining patent protection from various national authorities.

44. He emphasized that the Diplomatic Conference constituted the critical first step towards a global patent system. The need for international harmonization of patent law had never been greater, since the antiquated national - and regional - based patent systems were too cumbersome and expensive and served only to deter innovation and stifle trade. He stated that the draft PLT provided uniform filing requirements and formal procedures among its Contracting Parties, as well as the ability, eagerly sought by users, to prepare a relatively simplified application in a single format, preferably in electronic form, that would be accepted by all national or regional Patent Offices, and would allow applicants to seek worldwide protection with greater confidence and at reduced costs, while lowering the risks of losing potentially valuable intellectual property rights due to formal and procedural errors. It would, in short, provide significant benefits for all users.

45. His Delegation was pleased that many delegations had identified the computerization and interconnectivity of Patent Offices as being of the highest priority. All countries, in particular developing countries, would benefit greatly from the continued development of electronic filing capabilities. With the advent of the Internet, electronic filing capabilities were evolving so fast that limitations on electronic filing imposed by the draft Basic Proposal might significantly impair the ability of Patent Offices worldwide to migrate towards electronic filing regimes. Contracting Parties that were currently moving towards electronic filing could only do so successfully if it were possible to mandate electronic filing reasonably soon. In his view, the proposed moratorium period of 10 years would be too long.

46. With regard to Article 7(2) of the draft PLT, he pointed out that maximizing the exceptions to mandatory representation in this Article was one of his Delegation's top priorities. He also noted that the filing date provisions of Article 5 of the draft PLT, which constituted a key component of the draft PLT, were evolving in a positive direction. Although the United States of America had consistently supported a

liberal approach to the grant of a filing date, it could accept a filing date standard, provided that the basic filing requirement was limited to the receipt of a description, and the filing date provisions were amended to accommodate electronic filing needs. Such a standard would provide filing date certainty, while allowing applicants to be free from excessive regulatory requirements.

47. He also expressed his Delegation's strong support for the provisions of Article 12, which provided relief from an otherwise irreversible loss of rights as a result of an inadvertent failure to comply with formalities. The exceptions to this Article under Rule 13(3) should be minimized. These exceptions generally, and the exception regarding the late payment of maintenance fees in particular, would destroy some of the greatest benefits of Article 12. Moreover, the exceptions for requests for search/examination and filing of translations presently contained in Rule 13(3) should not be permitted. Finally, the "in spite of all due care" standard, integral to relief in this provision, should be clarified so that Contracting Parties would not be free to impose standards of care that are so high that the standard becomes meaningless.

48. Notwithstanding these issues his Delegation remained confident that, with imagination and goodwill, it would be possible to craft a Treaty which was acceptable to all parties.

49. Mr. COBLE (United States of America) stated that his participation in this Diplomatic Conference was an indication of the promise that he and other members of the Congress of the United States of America believed the PLT held for reducing the cost of obtaining and maintaining patents globally. He stated that, by establishing a common format for patent applicants to safely use in preparing and filing a patent application in every member country, the Treaty would eliminate unnecessary costs and risks associated with having to comply with the many different procedural rules for filing patent applications globally. He added that reducing the high cost of patenting had been one of his principal preoccupations in the Congress in the last five years. While progress had been slow and difficult, some successes had been achieved, such as the fee reductions by the European Patent Office, the World Intellectual Property Organization, the Japanese Patent Office, the Australian Patent Office, and the Patent Office of the United Kingdom. He pointed out that the fee reductions in the United States of America alone were totaling some \$70 million annually.

50. He emphasized that this Conference provided an opportunity to take additional steps in this struggle to provide patent systems that facilitated the protection of inventions. In addition to providing a common format, the draft PLT also contained a number of other provisions aiding inventors, such as Article 7(2) regarding exceptions to mandatory representation. He pointed out that, while he recognized the need to have well trained patent practitioners to represent inventors in all countries, inventors should be given the greatest flexibility to conduct procedures which they were in a position to perform, while allowing them the opportunity to retain the services of a professional representative for those procedures which they concluded were too complex for them to handle. Such a system would benefit both inventors and professional representatives.

51. Other provisions of significant benefit to inventors included Article 5, according to which an inventor would be able to obtain the security of a filing date with minimum formalities, and Article 12, allowing an inventor to remedy an inadvertent failure that would otherwise cause loss of a valuable patent right. These and other provisions in the draft PLT would strike down unnecessarily rigid formalities under which inventors could today suffer irreversible loss of rights. He concluded by emphasizing that the draft PLT was user-friendly and remedial in nature, and would provide a great benefit to the world's inventors.

52. Mr. KITAZUME (Japan) emphasized that the importance of the patent system was increasing due to economic globalization and progress of technology. He stated that the number of patent applications in Japan had increased by 2.6% to reach a total of 400,000 in 1998, while the number of applications from overseas had increased by 4.4%, totaling 42,000. In order to deal with that volume of applications, the Japanese Patent Office (JPO) had, during the last decade, streamlined and computerized its administrative processes. He reported that the JPO has accepted online applications from personal computers since 1998, and that electronic applications now account for 96% of all applications. Since January 2000, design applications and trademark applications, and communications in appeal procedures and national phase PCT procedures, can also be transmitted from a personal computer, so that almost all procedures are now paperless.

53. Noting that the economy had become increasingly globalized, he stressed the need for coordination and cooperation among Patent Offices, with a view to establishing, in the long run, an

efficient system for the worldwide and simultaneous grant of patent rights for the same invention at a low cost. To this end, countries would have to trust each other's prior art searches, which are presently being conducted in each country in an overlapping manner. The international harmonization of intellectual property systems, practices, examination standards and information systems were indispensable for achieving such relations of mutual trust. He stated that the JPO was currently promoting harmonization in various fora, and recalled that Japan had actively participated in harmonization efforts within WIPO, including those regarding the Trademark Law Treaty, the Madrid Protocol and the draft PLT.

54. He stated that Japanese users had called for the international harmonization of substantive patent law, such as the first-to-file system and the early publication system. In response to such calls, Japan had actively participated in the discussions for the conclusion of the "Patent Harmonization Treaty" which had been suspended in 1994. He also recalled that discussions for the harmonization of patent procedures had been taken up in order to maintain the momentum for a substantive harmonization of patent law by first harmonizing areas which were considered "easier." He observed that the PLT would be the first treaty in the area of patent law since the conclusion of the PCT in 1970 from which it had inherited many ideas and provisions. He stated that the PLT was highly beneficial for applicants because it would allow them to follow a single standard worldwide, also with regard to electronic applications. He observed that countries could avoid investing in the development of different computer systems, because the PLT applied the same requirements to electronic applications as the PCT. He further stated that other key issues included the provision relating to the grant of filing dates, which should respect the need for legal stability.

55. He expressed his hope that discussions on the harmonization of substantive patent law including the first-to-file system and the early publication system, could restart promptly with the results of this Diplomatic Conference serving as a starting point, and confirmed that the Japanese Government was prepared to contribute to further international harmonization of international intellectual property systems, cooperation regarding practical aspects such as electronic applications, and other areas.

56. Mr. PEREZ HERNÁNDEZ Y TORRA (Spain) said that the Spanish Delegation endorsed the contents of the statement made by the Delegation of Portugal on behalf of the countries of the European Union. The Patent Law Treaty, which continued the international harmonization of patent law with respect to its formal and procedural aspects, would make it possible to standardize, simplify and reduce the cost of the formalities for the processing and management of patents in all the States that became party to it, but without diminishing the guarantees provided for either the patent applicant or owner, or for patent offices. Noteworthy features of the proposed Treaty were the provisions on the electronic handling of the procedures and on the appeals available to avoid the loss of rights on account of formal factors or failure to meet time-limits. Equally important were the provisions on the filing date and content of applications, representation, communications and notifications, the validity of the patent, appeals in connection with time-dependence rights and the restoration of the right of priority among others, as they constituted a suitable framework within which to accommodate the patent system at the world level.

57. Mr. BOGDANOV (Russian Federation) confirmed general support of his Delegation for the draft Treaty. He noted that the draft was a result of many years of work by experts from many countries, representatives of inter-governmental and non-governmental organizations and International Bureau of WIPO. The draft adequately reflects solutions, frequently compromise, on formal aspects of the Patent Law, which were achieved during the work of the Committee of Experts and the SCP. He nevertheless proposed to undertake one more effort to find a more balanced solution to issues such as availability of priority document to interested persons, the possibility for an Office to require a translation of the first application; and also the right of a Contracting Party to refuse to consider correspondence filed on paper. The last mentioned issue, he stated, should be solved proceeding not from readiness of an Office to move to paperless technology of processing of applications but from readiness and willingness of users of patent system to benefit from that technology. It goes not only for its own applicants but what is more important, for applicants from other countries with differing levels of electronic technology development.

58. The conclusion of the PLT would have a great practical significance for simplification of patent procedures, making them more comprehensible and accessible for users. He also pointed out that the interests of all users of patent system would best be served if as many countries and regional inter-governmental organizations as possible acceded to it. To this end, accession to the PLT would have to be made more attractive, and the imposition of unilateral obligation vis-à-vis persons from countries which were not parties to the Treaty would have to be avoided. He affirmed that the PLT should strike a balance

between the interests of all parties concerned, i.e., applicants, patent owners, Patent Offices and patent agents, as well as lower barriers which currently hamper free global trade in industrial property. To this end, it is necessary to avoid provisions, which could be considered by users as artificial formal impediments to acquire patent protection or as unreasonable promotion of interest of only one of patent system participants: applicant, patent owner, Office, or patent agent.

59. In conclusion, he stated that his Delegation considered harmonization of formal aspects of the Patent Law as a step towards harmonization of Patent Law as a whole, and confirmed that the Russian Federation was ready to implement the provisions of the future Treaty in its patent system, and was prepared to continue, under the auspices of WIPO, to work on the harmonization and improvement of substantive patent law.

60. Mr. PURBA (Indonesia) underlined that the advancement of technology demanded a credible system of protection, which was efficient, effective and accessible, for the ever-growing number of innovations. At the same time, the acceleration of globalization in international trade required stronger protection at the international level. In this context, the harmonization of patent formalities was a very important step, which merited careful and thorough consideration by the Diplomatic Conference. He recalled that the Basic Proposal submitted by the Director General was the result of a long history of discussion, negotiation and hard work by the various parties involved, and that the draft PLT and attendant Regulations reflected the state of the art in the development of international legal instruments.

61. He confirmed that his Delegation considered the draft Treaty quite comprehensive and moderate in its attempt to harmonize the various patent systems in the world, and that Indonesia would greatly benefit from the adoption of the Treaty, even though certain adjustments and improvements would need to be undertaken by the Indonesian Patent Office. He also stated that electronic filing seemed inherent or even compulsory in this modern era, but that at least two issues should be taken into account in this context: First, the readiness of patent administrations to utilize the necessary modern equipment, and second, the preparation of local laws concerning electronic filing. He stated that the Indonesian Patent Office would need to consult with other related institutions with a view to coordinating their actions.

62. He noted that, apart from the provisions of the draft PLT for Indonesia as a developing country, the target was clearly to administer the contemporary Industrial Property Right system in such a way as to achieve maximum results. Therefore, Indonesia's priority was to concentrate on internal matters relating to intellectual property rights, including a strategy to enhance private initiative among Indonesian citizens to apply for patent registration who, to date, accounted only for 4.5% of the total applications. Even though this percentage did not compare unfavorably with the number of patent applications in other countries, Indonesia was nevertheless determined to improve this ratio.

63. In conclusion, he stated that Indonesia acknowledged the importance and benefits of harmonized patent formalities and that, although Indonesia needed more time to make the necessary preparations prior to adopting them, the existing Indonesian Patent Law and its proposed revisions were, to some extent, in line with the provisions of the draft PLT.

64. Mr. MARCHANT (United Kingdom) supported the statement made by the Delegation of Portugal on behalf of the European Union. He underlined that, with increasing globalization of trade and the rapid pace of technological development, the draft PLT would provide significant benefits for those seeking to patent their inventions beyond their home market. Indeed, he suggested that there may no longer be such a thing as a "home" market.

65. He observed that patent law was extremely complex and could contain many pitfalls for those seeking to protect their inventions. Anything that could be done to simplify this process, and at the same time make it quicker and cheaper, would be welcomed by industry and other commercial interests in the United Kingdom. But there was another side to the issue, which was to ensure that the system could not be abused to the detriment of fair competition. That balance, he affirmed, would be at the forefront of his Delegation's thinking throughout the Diplomatic Conference as delegates were seeking to achieve an agreement that will attract wide participation and provide an effective, transparent, accessible and user friendly system that patent applicants will wish to use.

66. He informed delegates that the United Kingdom Patent Office had a well-developed and successful track record of listening to its customers, and of developing its legislation and operational practice in a balanced way to serve their needs. This approach of listening and responding had been recognized within

the United Kingdom with the award for the third time of a Charter Mark, a Government scheme that rewards customer-focused public sector bodies.

67. Recalling that efforts were under way in Europe to revise the European Patent Convention (EPC) with a view to simplifying matters relating to translations and the litigation of disputes, and that Members of the European Community would soon start to discuss proposals for a Community patent, he emphasized that these, as well as the efforts of the present Diplomatic Conference, were further steps toward making intellectual property law suitable for the modern world, but not the final step.

68. Mr. BOUAZZAOUI (Morocco) welcomed in the PLT a new collaborative effort at the international level with a view to procedural harmonization in the field of patent formalities, and pointed to the work conducted jointly with the PCT. He informed the Assembly of the main developments in the patent field that had occurred in his country; Morocco had acceded to the PCT, to the Protocol relating to the Madrid Agreement (which had entered into force on October 8, 1999), and to the 1960 Act of the Hague Agreement (which had entered into force on September 13, 1999). Morocco had moreover revised its national legislation on industrial property to bring it into line with the TRIPS Agreement, which it had done by enacting a new law on industrial property protection on March 9, 2000. That law introduced a multitude of innovations: extension of the area of protection to topographies of integrated circuits and to service marks, simplification of procedures for the filing of applications for industrial property titles, more precise definition of the patent and patentability criteria, introduction of provisions on employee inventions and on the patentability of pharmaceutical products, introduction of the concept of compulsory license and *ex officio* license with respect to patents; and the introduction of a summary procedure and the conferment of competence on commercial courts. Finally, following Morocco's accession to the PCT, Law 17/97 would be amended to include the new provisions on PCT international applications. Another law, creating the Moroccan Industrial and Commercial Property Office (OMPIC), had been enacted, its purpose being to create a modern administrative body capable of handling the implementation of the new legislation referred to.

69. The new laws corresponded to the efforts made by Morocco to provide itself with legislative structures suited to the new focus of the world economy and catering for its economic development requirements. Morocco did indeed attach great importance to cooperation, notably within the framework of its program of cooperation with WIPO: awareness campaigns, organization of seminars, workshops, symposia for the benefit of various economic operators (judges, customs officers, members of parliament, academics and companies). This awareness campaign had produced good results, including a considerable increase in applications for industrial property titles.

70. With regard to bilateral cooperation, France's National Industrial Property Institute (INPI), the European Patent Office (EPO) and the Spanish Patent and Trademark Office were providing Morocco with technical assistance.

71. As part of the modernization of its working instruments, the Moroccan Industrial Property Office had introduced an information system, known as SIPIC, which allowed national industrial property titles and international marks designating Morocco to be managed, provided an application for the management of PCT international applications, and managed data relating to the register of companies. The system provided moreover for online consultation via the Internet which would be integrated into the WIPONET worldwide network, thereby making it possible for the information contained in SIPIC to be widely disseminated among users.

72. Mr. BOUHNIAK (Algeria) subscribed fully to the statements made by the coordinator of the African group, and expressed his Delegation's satisfaction with the high level of debate that had prevailed during the work of the five sessions of the Committee of Experts, in which his Delegation had taken part, in the discussions of the sixteenth extraordinary session of the PCT, to which Algeria had recently become a party, and at the recent PLT information day organized by WIPO. Since it was in the process of revising its legislation as part of its alignment with the TRIPS Agreement, Algeria said that it was willing at the same time to introduce into its legislation the provisions of the present draft treaty.

73. Mr. HIEN (Burkina Faso) recalled his country's constant devotion to the cause of intellectual property protection, the status of which was guaranteed by the Constitution, and also its endorsement of the objectives of the PLT, notably the harmonization and simplification of procedures for the protection of patentable subject matter at the world level. Burkina Faso had made genuine efforts to be sufficiently

represented at the present Diplomatic Conference, which was a reflection of the interest it had in such issues.

74. Emphasizing the differences in the level of development of the States participating in the Conference, Mr. HIEN noted that Burkina Faso was one of the least developed countries, and as such wanted the questions raised in the course of the Conference to take due account of the true situation in various categories of countries, in particular the least developed and developing countries. For instance, questions relating to the electronic processing of patent applications or the formalities to be observed in connection with drug patents, notably the protection of products of traditional medicine. In this connection, Burkina Faso strongly supported the statement by the African Group, with which it shared the same circumstances. In conclusion, he commended the WIPO International Bureau for the constant efforts it had continued to make in order to strengthen cooperation with developing countries in general and least developed countries in particular, and expressed the emphatic wish that the Diplomatic Conference might result in a treaty that reflected a true consensus.

75. Mr. BENDZSEL (Hungary) recalled that harmonization of patent law had been on the agenda of WIPO for a long time and affirmed that the draft PLT represented a considerable achievement made by all who participated in the preparatory work. Referring to the worldwide success of the PCT, he stated that his Delegation was content with the approach to establish a link between the PCT and the PLT.

76. He informed delegates that the new Hungarian Patent Act was basically in compliance with the proposed new Treaty. Necessary amendments could be undertaken simultaneously with Hungary's preparation for joining the EPC, which Hungary had been invited to join with effect from July 1, 2002. Hungary had set up a Government program for finalizing the harmonization of its national patent law with the EPC, and also had a well-developed and effective technical and Information Technology infrastructure to manage these new procedures.

77. Expressing his confidence that the PLT would render the international patent system more effective and that simplification of procedures would benefit users as well as Patent Offices, he asserted that his Delegation supported the adoption of this Treaty and was ready to sign it.

78. Mr. GRAÇA-ARANHA (Brazil) informed delegates that, in recent years, Brazil had directed its best efforts to improve the protection of intellectual property rights as a tool of sustainable development of trade and industry. He stated that, while patents played a significant role in the protection of inventions, other forms of intellectual property protection such as trademarks, geographical indications, and industrial designs, for example, were equally important. The Government of Brazil believed that the simplification of industrial property procedures in general would benefit users. In this context, Brazil attributed the greatest importance to a successful conclusion of the Diplomatic Conference on the PLT.

79. Noting that the PLT would contribute to a predictable and transparent environment in patent systems on a worldwide scale, he expressed his Government's confidence that these objectives would be particularly helpful for the economic growth in developing countries in the long term. In view of Brazil's commitment to improve the intellectual property system for the benefit of its users, it was deeply committed to the success of the Diplomatic Conference.

80. He regretted that Members of WIPO had not been able to reach a consensus concerning the issues of genetic resources and biodiversity. As the owner of the greatest biodiversity in the world and the first signatory of the CBD, Brazil attributed its highest priority to ensuring that intellectual property agreements and the CBD were mutually supportive, as mandated by Article 16.2 of that Convention. He therefore thanked the Director General of WIPO, Dr. Kamil Idris, for his decisive contribution to reaching a compromise solution among Member States, and to ensuring that discussions on genetic resources will continue at WIPO. He expressed confidence that the consultation process with Member States would be productive and result in a consensus on the establishment of a standing committee to cover biodiversity-related issues, such as biotechnology, traditional knowledge and access to genetic resources.

81. Mr. SCHMID-DWERTMANN (Germany) supported the statement of the Delegation of Portugal on behalf of the Member States of the European Union. He stated that Germany would make every effort to achieve the goal of the Diplomatic Conference, namely to facilitate patent formalities at a global level which was of great importance for applicants, inventors and companies, not only in Germany and in Europe, but throughout the entire world. He also emphasized that this Conference should only be the first step, and that, after having simplified the formalities of patent applications, the next step should be

the worldwide harmonization of patent law in substance. Recalling that, when such attempts had been undertaken previously, it might have been too early for such a demanding project, he asserted that Germany would cooperate with all those who tried to realize the next step of harmonization which should address substantive patent law.

82. Mrs. WOLTER (Norway) recalled that the driving force behind the Diplomatic Conference had been the recognition of a need for a harmonized, streamlined, effective and user-friendly system in national and regional patent procedures. Patents had proven to be of the utmost importance in the modern global economy and for future development and economic growth throughout the world. By laying the foundations of a simplified system, the draft PLT would play an important role in strengthening the patent system as a whole.

83. She stated that, in order for the PLT to be a success, it was necessary to achieve a balance between two central elements: On the one hand, a harmonized system could only be reached through constructive and extensive participation during the Conference and comprehensive ratification at the end. On the other hand, the less complex the Treaty was, the more user-friendly it would be for patent applicants around the world. Her Delegation believed that the alignment between the proposed PLT and the existing PCT constituted an excellent example for the second element. The challenge was to counterbalance the desire for the perfect on the one hand with the need to be effective and practicable on the other.

84. Mr. ADDOR (Switzerland) emphasized, as his Delegation already had in connection with the group of experts and the SCP, the importance to users of harmonization of patent law formalities at the international level, and the challenge of the Diplomatic Conference in view of the increasing importance of patent law in international trade. He made it clear that the current harmonization of certain formal aspects was a first stage in anticipation of subsequent closer integration of the various forms of national patent law on matters of substantive law.

85. For the purposes of that first stage, his Delegation consented to the principle set forth in Article 2(2) of the Basic Proposal for the PLT, according to which no provision of the treaty or the regulations under it could be interpreted as limiting the freedom of a Contracting Party to set whatever conditions of substantive patent law it wished in the applicable legislation. While expressing his satisfaction with the outcome of the informal consultations that had taken place on the matter of formalities in connection with genetic resources, he invited all delegations wishing to deal with matters of substantive law at the Conference to confine themselves to the proposals that had emerged from the many meetings of the Committee of Experts and the SCP.

86. On the subject of the Basic Proposals for the Patent Law Treaty and the Regulations under it, he regarded the solutions found as constituting a sound basis capable of meeting the needs of patent system users, in particular the provisions concerning the filing date, the extension of time limits, the continuation of the procedure and the reinstatement of a priority claim. While giving general support to the Basic Proposals as submitted and supporting proposals that took due account of the interests of the economic operators of all countries, his Delegation nevertheless reserved the right to propose amendments and additions in the course of the Conference.

87. Mr. LEE (Republic of Korea) stated that it was most important at that stage not to lose the momentum that had resulted in the Diplomatic Conference. Recognizing that there were still some unsettled issues, he expressed his hope that those could be overcome through a joint effort, making it possible to adopt the PLT.

Third Session
Friday, May 12, 2000
Afternoon

88. The PRESIDENT opened the third meeting of the Plenary of the Diplomatic Conference, and returned to item 10 of the Agenda (Opening Declarations by Delegations and by Representatives of Observer Organizations).

89. Mr. MAEMA (Lesotho) stated that the aim of the draft Treaty was the harmonization and simplification of formalities and procedures to facilitate the filing of patents, and expressed the confidence of his Delegation that this would ease the task of users by giving them rules that are uniform throughout the world. He noted that as the world becomes more interdependent, it is necessary to provide users adequate legal instruments to facilitate and promote technological advances. He also noted that the growing internationalization of trade in goods and services and the increase in technology transfer at the worldwide level demonstrates the need to adopt a treaty on harmonization of patent laws, which, in turn, means that the harmonization process must be carried out in order to meet the challenges imposed by globalization. He concluded that this process should ideally cover the widest possible spectrum in order to ensure a higher level of protection of patents, and therefore proposed the inclusion of substantive provisions in the future work of the SCP.

90. He also stated that while the harmonization of patent laws of countries with diverse legal systems is not an easy task, his Delegation felt that with the prevailing spirit of compromise and cooperation, outstanding differences could be conciliated. Such harmonization would strengthen the world patent system further, which, in turn, would foster foreign investment and facilitate access to new technologies, especially by local users. He expressed the hope of his Delegation that the peculiar needs of developing countries would be taken into consideration in the proposed treaty. In this regard, he fully endorsed the Statement made by the Coordinator of the African Group. He expressed his belief that the Conference should not lose sight of the fact that different levels of development exist among various countries, a position which should be considered in order to produce a truly meaningful treaty.

91. He concluded by stating that his Delegation intends to cooperate with other delegations in order to successfully finalize the Conference. He expressed the sincere hope of his Delegation that the Diplomatic Conference would be able to come up with solutions enabling all States to accede, and that the PLT would provide a firm foundation for future developments of patent law and the international patent system.

92. Mr. EVASCO (Philippines), in setting forth the policy underpinnings of his government's support for the move towards the harmonization of patent law worldwide, noted several key events in the long history of the protection of intellectual property rights in the Philippines.

93. In June 1947 the Philippine Patent Office was created, followed immediately by the establishment of a registration process for trademarks, trade names, and service-marks and their protection from unfair competition and false marking. In November 1972, the Copyright Law was updated by presidential decree to give more full protection to intellectual property in light of the tremendous advances being made in science and technology. The Presidential Decree also sought to encourage arts and letters and to stimulate research and invention, while safeguarding the public's right to cultural information. On June 6, 1997, Congress passed Republic Act No. 8293, also known as the Intellectual Property (IP) Code of the Philippines. It established an integrated legal framework for a new intellectual property system for the country and declared, for the first time, a state policy on intellectual property. It further created an independent Intellectual Property Office mandated to administer and implement that policy on intellectual property.

94. He noted that the full implementation of the IP Code was a difficult task for a developing country such as the Philippines, where technological and socio-economic capacities remain inadequate. Notwithstanding these circumstances, he noted that, as stated in the IP Code, the Philippines fully recognized that an effective intellectual and industrial property system was a vital tool of development which can promote economic growth because it facilitated the transfer of technology, attracted foreign investments, ensured market access for Philippine products, promoted intellectual and cultural growth through the protection, within stipulated time periods, of the exclusive rights of scientists, inventors, artists and other gifted citizens of Philippine society to their intellectual property and creations, and ensured the transfer of new and original knowledge into industry for the promotion of national development and progress and the common good. Furthermore, he observed that, in line with its commitment and obligations under the TRIPS Agreement, the Philippines has also adopted a policy to streamline administrative procedures of registering patents, trademarks, and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the country. He noted further that the new IP Code marked the shift from a patent system based on the principle of "first-to-invent" to that based on the principle of "first-to-file," and that the Philippine Intellectual Property Office was in the concluding stages of a transition period, processing all patent

applications, whether filed under the old or the new system. He projected that the new patent system will be fully operational and functional in less than a year's time.

95. Turning to the work of the Diplomatic Conference, he stated that the draft Basic Proposal for the PLT and its Regulations provided a useful basis to begin the process of harmonization and simplification of the formal requirements for patent applications set by national and regional Offices, as well as the streamlining of procedures for obtaining and maintaining patents. He stated further that the Philippines did not intend by its opening statement to begin the debate on specific issues regarding the Basic Proposal, but only to highlight certain points of particular concern to this Delegation: first, that it may be necessary to subject the Basic Proposals to further refinements with regard to what should be accepted as minimum requirements for a patent application for it to be accorded a filing date, and second, that it may be useful to pursue further discussion on those provisions that concern patent practitioners in order to ensure that their needs are taken on board by such provisions.

96. He concluded by stating that, on the whole, it was the hope of his Delegation that these concerns would be satisfactorily addressed in the course of this Diplomatic Conference, reiterated the full support of the Philippines for the harmonization of patent law on a global level, and emphasize its readiness to engage in fruitful discussions for the successful conclusion of this Conference.

97. Mr. JOSEFSSON (Sweden), after first expressing his support for what was said in the opening statement of the Delegation of Portugal on behalf of the Member States of the European Union, stated that the protection of inventions provided by patent law fulfilled a basic function and was of great importance for the development within vast branches of industry, and that international cooperation and an internationalized legal framework are further necessary in order to create and uphold an appropriate system of patent law. He noted that while the international treaties on patent law already in force contributed to the fulfillment of well-founded claims on the international legal system originating from the importance of patent law in general as well as from the need of international patent law, there was still a significant need for further development of international legal instruments in order to improve the possibilities of protection of inventions throughout the world and not least to facilitate the patent procedure for applicants and owners seeking protection in several states and regions. He concluded that the subject for this conference, the adoption of the PLT on harmonization of the provisions of formal patent law, was an important step responding to those demands. Consequently, he stressed the importance of fruitful and successful work at the Diplomatic Conference.

98. Mr. TRAORÉ (Mali) mentioned that the Government of Mali had followed with great interest and taken an active part in all the preparatory work that had led to the production of the drafts of the text of the Patent Law Treaty. The adoption of the draft Treaty would constitute a new and significant advance with a view to the simplification and harmonization of the administrative procedures for securing patents throughout the world, and would permit the creation of a secure legal framework which was necessary to stimulate inventive activity and research and development, and to attract investment, two factors essential to the strengthening of the foundations of industrial and technological development in Mali.

99. He shared the concerns voiced in the statement made on behalf of the African Group, among other things regarding the need to provide his country with technical assistance so that it could implement an electronic filing procedure in the short term and build up its human resources by means of appropriate training programs. Mali supported the idea of examining the issue of the conservation of genetic resources and folklore in an industrial property setting, as well as the creation of a framework conducive to exchanges for that purpose.

100. Mr. STRENC (Romania) noted that the present Conference was the culmination of a vast intellectual and administrative effort that had been taking place for several years, during which Romania had taken part in all the work of the Committee of Experts and Standing Committee. The Basic Proposal, with the amendments that would be made during the work in progress, would mark the finalization of a treaty that met the current needs of the process of harmonizing procedures for granting patents and would lead on to the goals so well encapsulated by the Director General: simplification of procedures, standardization of patent documents, achievement of a balance between electronic and paper filing. Those aims formed part of the general process of legislative and administrative development in the patent field in Romania, leading to harmonization with the main developments at the international level, and would culminate in Romania's accession to the European Patent Convention, scheduled for July 1, 2002.

101. Mrs. MÁRQUEZ (Venezuela) said that her country was convinced of the need to establish uniform, simple and flexible procedures within the patent system. To that end, the authorities were working in parallel at the national, subregional and international levels. At the regional level, a process of modification of a set of common provisions on industrial property linking Bolivia, Colombia, Ecuador, Peru and Venezuela, was coming to fruition. That process benefited from the invaluable support of the WIPO International Bureau. In the field of patents, the new Andean provisions had taken due account of the Basic Proposal for the Patent Law Treaty. The provisions also included rules on the protection of topographies of integrated circuits and, for the first time, enforcement measures to repress infringements and acts of unfair competition in the field of intellectual property. At the national level, specific provisions had been drafted on customs matters, and legislation on accession to the Patent Cooperation Treaty would shortly be presented to the National Congress.

102. Venezuela had set in motion a program for entrepreneurs and innovators with a view to protecting those inventions that involved an inventive step and to facilitating their practical application. A system of administrative inspections had also been put into practice in the trademark, patent and copyright fields under which the national intellectual property office was empowered to impose fines.

103. Venezuela's national intellectual property office had entered into an agreement with the technical corps of the judicial police and the Ministry of Justice with a view to protecting intellectual property, not only by repressive means but also through education and prevention activities. In addition, a body of attorneys had been set up within the Office of the Attorney General who specialized in dealing with intellectual property matters. Work was also in progress on the creation of a special court dealing with economic issues, which, in addition to handling intellectual property cases, would hear those related to unfair competition and "dumping."

104. Venezuela considered the protection of traditional knowledge to be a matter of great importance deserving special attention. Work was being done on the creation of a database with which to document the traditional knowledge of local communities and their products, processes and practices, and also the existence and location of the plant and animal species with which that knowledge was connected.

105. There were community provisions in the Andean community, namely Decision 391, which dealt with the subject of access to genetic resources. In addition, the subjects of folklore, access to genetic resources and the protection of traditional knowledge were among the negotiating issues defined by consensus by the 34 countries constituting the American Free Trade Area (AFTA). In that connection, Venezuela subscribed to the statement made by the Delegation of Peru on behalf of the Group of Latin American and Caribbean Countries, and agreed on the need to set up a standing committee within WIPO to study those subjects.

106. Mr. MCHUMO (United Republic of Tanzania) stated, by way of introduction, that he endorsed and supported the statement made by the Delegation of Uganda on behalf of the African group. He began his principal remarks by stating that in June 1991 his Delegation participated in the Diplomatic Conference in The Hague which discussed a Treaty Supplementing the Paris Convention as far as Patents Are Concerned, most of the provisions of which were later incorporated in the TRIPS Agreement of April 1994. He noted, however, that some procedural issues relating to harmonization of national laws and government patent applications as well as grants in that Agreement remained, and expressed his Delegation's understanding that such pending issues would be discussed and finalized after the Diplomatic Conference on the PLT.

107. He noted that the draft PLT not only takes into account modern technological procedures such as electronic handling of applications but also recognizes and accepts filings of applications and communications on paper, the latter of which is best suited for many developing countries like the United Republic of Tanzania, whose level of technological development is still very low. He expressed the sincere hope of his Delegation that the present Diplomatic Conference would adopt a PLT which would take into account the differences in the level of economic, scientific and technological development among the participating states. In closing he noted also that this would improve the PCT, to which the United Republic of Tanzania became a party in September 1999.

108. Mr. VAN DER EIJK (Netherlands) stated, by way of introduction, that his Delegation fully endorsed the declaration that was made by the Delegation of Portugal on behalf of the Member States of the European Union. He began his principal remarks by recalling the former Diplomatic Conference held in 1991 in The Hague and hosted by the Netherlands Government. He noted that the subject of the

Conference had a wider scope in that it included substantive issues of Patent Law. He expressed the hope of his Delegation that, although it was not possible to conclude such a treaty at that time, it would be possible in the near future to pick up the unresolved substantive patent law issues. He stated that his Delegation was ready to cooperate in this matter soon after the adoption of the PLT.

109. He stated that, although the Basic Proposal before the Diplomatic Conference on the PLT followed a more modest approach, his Delegation believed the project was worthwhile. He noted that the globalization of the modern economy calls for harmonized patent legislation as innovative industry is more and more confronted with diverging requirements laid down in national patent laws which result in costs and thresholds that are a burden to inventors and innovators, and that his Delegation therefore welcomed and supported in principle every effort to harmonize and simplify. He expressed the hope of his Delegation that it would be possible to find a common understanding of the rules that will be applied on a global level, which, in turn, would require all delegates to be ready to give up their national practices when this is needed and a readiness to deviate from national legal traditions. He stated that his Delegation came with an open spirit and was ready to accept reasonable solutions, even when this required changes in the domestic legislation. He expressed his hope that this spirit would prevail in the Conference, and his confidence that the outcome would be positive.

110. Mrs. ABD EL GAWAD (Egypt) stated that, in regard to the harmonization and simplification of patent law, Egypt was preparing a new patent law that is in keeping with international conventions in the field of industrial property, particularly with regard to certain areas that have not enjoyed protection in the past such as integrated circuits and utility models. She also stated that Egypt has improved its infrastructure in that it has updated the new patent law Offices and provided them with electronic equipment so as to be in a position to apply the new electronic systems and new electronic requirements for the recording procedures.

111. She concluded her statement by expressing her support for the statement made by the Delegation of Uganda.

112. Mrs. KJERRUMGAARD (Denmark) stated, by way of introduction, that her Delegation fully endorsed the declaration that was made by the Delegation of Portugal on behalf of the Member States of the European Union. She stated, in her principal remarks, that her Delegation hoped that the PLT would be only the first important step towards harmonizing the patent systems, and that they were looking forward to discussing, in the near future, a treaty which covered substantive patent law as well.

113. Mr. KOPČIĆ (Croatia) expressed pleasure with the fact that the PLT will constitute the basis for the harmonization of procedural aspects of the patent granting procedures around the world, and hoped that work would continue within WIPO not only in regard to such procedural aspects but also in regard to the preparation of an agreement on the harmonization of substantive patent law.

114. He informed the delegations that the majority of standards established by the PLT have already been included in the new Croatian Patent Law, enacted by the Croatian State Parliament with other five intellectual property laws, on June 30 of last year, and which entered into force on January of this year. He explained that the six laws constitute the legislative basis of the new Croatian intellectual property system, which has been completely harmonized with WIPO and TRIPS provisions, within the process of accession of the Republic of Croatia to the World Trade Organization (WTO), which is expected to be realized in the very near future. He expressed his appreciation to WIPO, the European Community, the United States of America, Germany, Austria and Hungary for their review of the laws while in preparation, and noted, in particular, the comprehensive comments received from WIPO and Germany.

115. He informed the delegations that, inasmuch as the Republic of Croatia will engage in a harmonization process in view of its forthcoming integration in the European Union, it will likewise include all the PLT provisions in its Patent Law. He noted that, in anticipation of such harmonization, the Republic of Croatia has provided in its Patent Law the possibility of granting a patent for an invention in the Republic of Croatia on the basis of the substantive examination results carried out for the same invention by national and international Offices which have the status of the International Searching Authority or International Preliminary Examination Authority under the PCT with which, at the time of filing the request referred to in the appropriate article, the Office has already signed the co-operation agreement. He noted also that, when a cooperation agreement was offered to that effect, all the Offices responded positively to the initiative and indicated a readiness to cooperate. He stated that a

co-operation agreement had already been signed with Austria and Germany, and that agreements with other Offices were expected.

116. In concluding, he stated that the Croatian Office would support and willingly join the initiatives raised regarding electronic filing on a global scale, and that, given the high level of its implementation of information technology, the Croatian Office was qualified to actively participate in the electronic filing system.

117. Mr. KIM (Democratic People's Republic of Korea) underlined the importance attached to science and technology by his government, stating that a great number of valuable inventions of practical significance had been created in his country in recent years, which had contributed to the development of the national economy. He noted that, last year, his Government adopted the Invention Law of the Democratic People's Republic of Korea, to meet the demands of the developing situation in his country, and by revising the Regulations on Inventions and Innovations. He observed that, consequently, the wide-scale creation of new technology including inventions and innovations could be conducted on a more solid legal basis.

118. He stated, in connection with the Basic Proposal for the PLT, that further discussions were necessary with regard to "entry into force" under Article 22. In particular, he felt that ten instruments of ratification and accession by the States were not sufficient for such an important treaty to enter into force.

119. Mr. HEATH (Australia) stated that Australia was committed to a successful conclusion of this conference. He noted that, in order to bring broad benefits to applicants in particular and to the intellectual property community in general, the differing procedural requirements among countries, for example, minimum filing and formality requirements, needed to be streamlined in order to reduce unnecessary expense, to reduce unnecessary bureaucratic procedures, to encourage harmonization, and to allow economic savings which, in turn, could be used for additional research and development.

120. He recalled that Australia was an International Searching Authority under the PCT, and was committed to taking an active role in this respect. He also noted that, in view of the fundamental link between the PCT and the PLT, it was necessary to ensure that there was a mechanism in place to deal with any amendments that flowed from the PCT to the PLT, and that the PLT was flexible enough both to adapt to new ways of filing and processing that may evolve in the future and to allow parties the capacity to deal flexibly with the needs of their users.

121. He also pointed out that the trend in Australia, like other Member States, was towards electronic filing, and that, as a result, delegations needed to make sure that the PLT was capable of accommodating not only electronic filing, but also any other new technologies that may evolve.

122. Mr. TOBIN (Canada), congratulated the Chairman and other Offices on their election and stated that Canada was honored to have been elected to lead Committee I.

123. He indicated that Canada placed considerable importance on multilateral efforts to further harmonize and standardize business laws. He stressed that Canada continued to be a strong supporter of the efforts of WIPO to conclude the PLT, which would reduce procedural differences among countries in relation to the acquisition of patent protection, produce benefits for inventors and applicants seeking patent protection around the world, and lead to greater efficiencies in Patent Offices. He stated that Canada believed that the current text of the Basic Proposal provided a good basis for consideration by the Conference.

124. In closing, he stated that Canada also considered it important to move forward with efforts to harmonize substantive patent law, and was hopeful that the adoption of the PLT would provide the basis for launching further discussions in the near future.

125. Mrs. WEIL-GUTHMANN (France) fully endorsed the statement made by Portugal on behalf of the member countries of the European Union, and observed that the Patent Law Treaty would, on its adoption, make it possible to streamline the administrative formalities to be complied with by applicants in their dealings with offices before obtaining a patent. With that in mind, France particularly welcomed the provisions contained in Articles 11 and 12 of the Basic Proposals, the aim of which was to harmonize and streamline the so-called "continuation of the procedure" and "reinstatement of rights" procedures.

France hoped that the adoption of the Treaty would be the first step on the road to world harmonization of patent law, and sincerely hoped that issues relating to substantive patent law would be embarked upon at forthcoming sessions of the SCP.

126. Mr. KARUNARATNE (Sri Lanka) expressed support for the statement made by the Delegation of the Islamic Republic of Iran on behalf of the Asian Group. He expressed the hope that the Conference would achieve its desired objectives for the benefit of the patent systems of all participating countries and users of the patent systems, and extended the fullest cooperation of his Delegation to a successful conclusion of the Diplomatic Conference.

127. Mr. BANSKÝ (Slovakia), speaking on behalf of the Central European and Baltic States Group, stated that that Group very much supported the adoption of the PLT. He noted its many benefits: the simplification and harmonization of formality requirements with respect to the national and regional legislation, applications and patents; the elimination of cumbersome procedures in processing patent applications; the positive effect on increased efficiency of the work in Patent Offices; and the benefit of reduced operating costs and fees to inventors and applicants. He noted further that the PLT, when linked with the PCT, would provide a stable basis and powerful tool for future development of the patent system with regard to the globalization of patent protection, progress in research and development, and the implementation of technology.

128. On behalf of the Delegation of Slovakia, he informed the delegations that, since the Slovak Republic would soon be a member of the European patent family pursuant to its invitation to join the EPC on July 1, 2002, intensive work was currently being carried out in the Industrial Property Office of the Slovak Republic with regard to the modification of his country's patent law. He also informed the delegations that the new Patent Law was expected to be finalized in early 2001 and would be fully harmonized with the PLT, the revised EPC and European legislation as an *acquis communautaire*. He also expected the Slovak Republic to become party to the PLT in the near future.

129. Mr. UNGLER (Austria) observed that standardization and simplification of procedures were keywords in most fields of economic activity. He noted that, in this age of economic globalization and development of information technology, it was of vital importance for enterprises to file patent applications in different regions and countries in order to obtain international protection for their innovations and inventions. However, existing national differences in the field of procedural law meant additional expense and problems for applicants. The PLT would, therefore, be an important instrument for the standardization and simplification of patent formalities on an international level, and would help reduce applicants' costs in respect of obtaining patent protection. Furthermore he stated that harmonization of law was necessary to strengthen the confidence on intellectual property rights and to increase the awareness of the importance of intellectual property. He concluded by stating that the proposed PLT represented an appropriate balance between the interest of the users of the patent system and the needs of Patent Offices, and would satisfy all concerned.

130. In closing, he noted the need for international harmonization of substantive patent law issues, in particular, the conditions of patentability with regard to rapidly developing technologies, for example, biotechnological inventions and information technology. He observed that the harmonization of substantive patent law would be one of the most important objectives of the SCP in the future.

131. Mr. CAVAZOS TREVIÑO (Mexico) said that all present were witnessing a historic opportunity to progress beyond the Patent Cooperation Treaty toward greater harmonization of the world patent system. He also said that the PLT text drawn up by the Secretariat was a true reflection of the subjects that had been discussed in the present forum in recent years. He considered that, despite that there were still certain points to be made on specific subjects, he was confident that goodwill on the part of all delegations would enable a text to be adopted that was sufficiently flexible to be adopted by the greatest possible number of countries. With that in mind, Mexico was willing to make a positive and constructive contribution to the achievement of a treaty that would strengthen national industrial property systems under an international scheme for the filing of patent applications.

132. Mr. VIDAURRETA (Argentina) expressed his Delegation's support for the statement made by the Delegation of Peru on behalf of the Group of Latin American and Caribbean Countries. He said that Argentina had followed the PLT negotiation process with interest and considered that the same spirit of collaboration and consensus would continue to prevail in the current final stage of the negotiations for the conclusion of the new Treaty. With that in mind, he considered that the number of accessions to the

treaty that would be achieved, and the scale of international application, would be a function of the breadth of the consensus of the final text adopted. That would achieve the objective of bringing about significant harmonization of the procedural provisions in the patent field. He said that his national government stood by its decision to respect all the international undertakings made in the intellectual property field, and that Argentina was preparing to accede to the PCT. His country also hoped to become party to the Patent Law Treaty, as its expectation was that the final text adopted would be to the benefit of industrialized as well as developing countries.

133. Mr. MORENO PERALTA (Panama) said that, even before his country's accession to the WTO, Panama had laid down the legal and institutional foundations bring about effective protection for intellectual property subjects. However, that had entailed great sacrifices and hard work in each of the national agencies responsible for implementing intellectual property legislation. The Delegation of Panama endorsed the proposal by Colombia on genetic resources, as its country shared the same circumstances and objectives. It likewise endorsed the statement made by the Delegation of Peru on behalf of the Group of Latin American and Caribbean Countries (GRULAC). It was significant that the countries of the Group possessed biological wealth, traditional knowledge and folklore that had to be considered carefully, as the right balance had to be found in the apportionment of the benefits deriving from the exploitation of those assets. That should be properly dealt with within the framework of WIPO, by virtue of a legal instrument that guaranteed the interests of all its Member States. Finally, he observed that the process of incorporating new international enactments on intellectual property, such as the Patent Law Treaty, illustrated the need for national authorities concerned with industrial property to be given such technical and economic assistance as would enable them to apply and effectively to observe the intellectual property rights protected, especially patents.

134. Mr. ZAFERA (Madagascar) praised the efforts that had been made for more than five years both by the Committee of Experts and by the International Bureau, which had resulted in the Basic Proposals for the Patent Law Treaty and the Regulations under it, and said that he fully endorsed the statement made by the representative of Uganda on behalf of the African Group. With technical assistance from WIPO, the Malagasy Republic had undertaken to bring its patent legislation of July 13, 1989 into line, with the TRIPS Agreement, which had resulted in a draft law that was on the point of being tabled at the National Assembly.

135. The Malagasy Industrial Property Office (OMAPI) had also embarked on a national project entitled PROAPI (National Program of Intellectual Property Support), the overall aim of which was to introduce and establish an environment conducive to intellectual property culture in Madagascar. The program, which had started in January 2000 and would come to an end in 2005, comprised five components, namely: modernization of the national office; teaching, training and integrated management of human resources in the intellectual property field; promotion and exploitation of the system; legal structures and arbitration; there was as well as a specific TRIPS component. Favorable to the harmonization and simplification of patent law formalities and procedures, and also a reduction in the costs provided for in the draft treaty, he supported the basic proposals submitted by the Director General insofar as they were beneficial to users of the system and to the strengthening of national offices, even if certain provisions would nonetheless benefit from being improved.

136. On the subject of genetic resources, he associated himself with the remarks made by the Coordinator of the African Group, and subscribed to the consensus presented by the Director General. He nevertheless emphasized the great importance of the issue, and encouraged WIPO to carry on with the consultations among Member States with a view to achieving protection for those resources with the aid of intellectual property.

137. Ms. AALTO-SETÄLÄ (Finland) stated that her Delegation fully endorsed the declaration made by the Delegation of Portugal on behalf of the Member States of the European Communities. She noted that Finland's national stakeholders had expressed their satisfaction with the objectives of the draft PLT, namely, the international harmonization of formalities connected with the filing of patent applications, since those objectives served the increased importance of development and innovation as the driving forces of industry and the economy.

138. Mr. MAYSON (Liberia) stated that, as far as the harmonization of patent registration procedures was concerned, the PLT would further complement the efforts to develop the patent system worldwide. He also emphasized that to Liberia, as a designated and receiving Office of the PCT, the PLT was both essential and responsive to the need for effective functioning of its Office. He noted that Liberia was in

the process of enacting its new intellectual property law. It was, therefore, optimistic that the PLT would complement the provisions of that law. He also noted that, inasmuch as the PLT provides for the extension of time limits for the inadvertent non-compliance with registration requirements in order to prevent applicants from unduly losing protective rights, it was very compatible with the slower pace of information transmittal that could occur in LDC regions in general and Liberia, in particular, in view of less developed information infrastructure.

139. In closing, he expressed his support for the statement of the Delegation of Uganda speaking on behalf of the African Group, and re-emphasized the need for the International Bureau to consider and take concrete steps toward enabling Offices of LDCs such as Liberia to acquire electronic filing capacities as an important means of achieving globally harmonized intellectual property registration systems.

140. Mr. HERNÁNDEZ VIGAUD (Cuba) said that his country attached the utmost importance to the negotiation and conclusion of the Patent Law Treaty, and hoped that a true consensus would be achieved on questions where there were still some differences of opinion. He was confident that the present Diplomatic Conference would further illustrate the transparency, cooperation and flexibility that had characterized the work and negotiations within WIPO, so that the system to be introduced might be useful and would not exclude any State, while at the same time appealing to and being effective for all patent applicants.

141. On the subject of access to genetic resources, he thanked the Director General for his good offices, as the subject was one that had to be considered at the earliest possible moment by the Member States of WIPO. It was necessary to achieve acceptable and tangible overall results in that area within the shortest possible time, as otherwise there was the risk of wasting the harmonization efforts made in recent years. With that in mind, he associated himself with the statement made by Colombia the previous day, and supported the proposal that a standing committee be set up within WIPO to deal with those subjects. He likewise supported the statement made by the Delegation of Peru on behalf of the Group of Latin American and Caribbean Countries. Finally, he highlighted the efforts made by his Government to modernize the intellectual property system.

142. Mr. HE (China) commented that the Basic Proposal would provide even better services to applicants and better treatments than those provided by the Paris Convention or the PCT. As an example, he noted that, for the purpose of the filing date, only three key elements were necessary and the description could be in any language, with a translation being filed later. He also noted that a reference could replace the descriptions and the drawings, and a translation could be filed later; that the form and contents of applications were defined; that a Model International Form could be used; and that the restoration of the right of priority of an application filed after the expiration for the priority period was provided.

143. He also stated that his Government endorsed the internationalization of the patent system. He supported the efforts of WIPO with regard to the harmonization of patent systems; and the uniforming and coordination of the formal elements of patent application designed to reduce the burden on applicants, to simplify the procedure in Offices, and to provide more user-friendly services to applicants. He noted that, in order to attain these objectives, some countries, including China, would need to find the necessary resources. As an example, he explained that the Chinese Intellectual Property Office, which receives over 130,000 patents applications per year, would need time to change certain procedures with regard to examination and management in order to apply the provisions of the PLT. Also, insofar as the Basic Proposal went beyond the Paris Convention and the PCT, China would need to consider the possible impact on the work of its Office. Consequently, he stated that China would first ensure the processing and examination of patent applications according to its domestic law and to the stipulations of the international treaties to which it has already acceded, we strongly believe that an orderly operation of the Patent Offices is in the best interests of applicants.

144. He commented that in regard to the norm of electronic filing, the proposal that no Contracting Party would be obliged to accept paper filing after ten years was a development from what was currently required by the PCT. In the opinion of the Delegation of China, the development of science and technology and the globalization of the economy would lead naturally to the internationalization of the patent system and to the use of electronic means for patent filing. As the result of scientific and technological progress, it would make the different patent systems more inter-related and more inter-dependant. He also noted that, while this would provide new opportunities for the development of patent systems in all countries, it also posed certain risks and challenges. He therefore proposed that, in order to facilitate the development of the patent system and promote the transfer of advanced

technology to developing countries, WIPO establish a new development strategy with the aim of guaranteeing sufficient technical assistance to developing countries for the transition to electronic filing and examination.

145. He stated that the Delegation of China fully supported the efforts towards the adoption of the PLT. He also expressed the wish that the Diplomatic Conference give further consideration to important issues such as mandatory representation, elements for the purpose of according a filing date, delayed filing of subsequent applications which have asked for priority right, and so on. He observed that an ideal patent system should take into account not only the interests of the patent owner and the public at large but also the operations of the Offices, since an efficient Office was of direct benefit to patent owners.

Election of the members of the Drafting Committee

146. Mr. GURRY (Secretariat) stated that, in regard to Agenda Item No. 7, Election of the members of the Drafting Committee, it is proposed that the Drafting Committee be constituted by the following members: Mr. Amor Bouhnik (Algeria); Mr. David Russell Herald (Australia); Ms. Wen Xikai (China); Ms Amparo Oviedo Arbelaez (Colombia); Mr. Rolando Miguel Hernández Vigaud (Cuba); Mr. Jesús Congregado Loscertales (Spain); Mr. Stephen G. Kunin (United States of America); Mr. Alexander Bavykin (Russian Federation); Mr. Jean-Luc Gal (France); Mr. Satoshi Moriyasu (Japan); and Mr. Roger Walker (United Kingdom).

147. The PRESIDENT stated that, in the absence of any objection, the proposal was adopted, and the members were elected to the Drafting Committee.

Election of the Officers of the Credentials Committee, the Main Committee, and the Drafting Committee

148. Mr. GURRY (Secretariat) stated that, in regard to Agenda Item No. 8, Election of the Officers of the Credentials Committee, the Main Committees, and the Drafting Committee, work was commenced but not completed. He recalled in the previous session it had been decided that the Officers of the Credentials Committee would be Ms. Joyce C. Banya (Uganda) as President and Mrs. Michèle Weil-Guttmann (France) and Mrs. Betty Berendson (Peru) as Vice-Presidents, the Officers for Main Committee I would be Mr. Alan Troicuk (Canada) as President and Mr. Koakou Ata Kato (Togo) and Mr. Hans Georg Bartels (Germany) as Vice-Presidents. It was proposed that the Officers of Main Committee II should be Mr. Arturo Hernández Basave (Mexico) President and Mr. Lucas Ondieki Sese (Kenya) and Mr. Fouroumo Kourouma (Guinea) as Vice-Presidents. He also notified the President that it is now proposed that the Officers of the Drafting Committee should be Mr. David Russell Herald (Australia) as President and Mr. Rolando Miguel Hernández Vigaud (Cuba) and Mr. Alexandr Bavykin (Russian Federation) as Vice-Presidents.

149. The PRESIDENT stated that, in the absence of any objection, the list of candidates read by Mr. Gurry was adopted and that the members named therein were elected. He thanked all those who had shown flexibility in the consultations. He then said that the Conference would continue with the remaining opening declarations.

150. Mr. ALVARADO ALGUILAR (Bolivia) expressed support for the statement made by the Delegation of Peru on behalf of the Group of Latin American and Caribbean Countries, and regarded the Diplomatic Conference for the adoption of the Patent Law Treaty as a transcendental step in the process of procedural harmonization in that area, as it assured users of compliance by parties with harmonized requirements. In the process of amending the common provisions on industrial property of the Andean community, which was binding on Bolivia, due account had been taken of the principles of the proposed Patent Law Treaty.

151. The subject of genetic resources and biological diversity was particularly important to Bolivia in terms of intellectual property. The country was going through a process of concerted efforts being made with the various social players involved in the subject, from indigenous populations to private companies, with a view to putting together a legal framework for the protection of intellectual property rights in that field. At the international level, the treatment that was being given to the subject within WIPO and other international fora provided evidence of the need to deal with it in order to achieve a solution to the concerns of a considerable number of developing countries throughout the world. He said that, as a result of the proposal by the Andean community during the negotiations on the establishment of the American Free Trade Area (AFTA), all the participants at that gathering had decided by consensus to

include the protection of folklore, access to genetic resources and the protection of traditional knowledge in the negotiations. Bolivia had an interest in the subject being considered in a broad context within the institutional framework of WIPO, and for that reason he praised the efforts of the Director General and his commitment, stated at the outset of the Conference, to serious consideration of the subject. He hoped that the efforts could reach a satisfactory conclusion with the establishment of a standing committee within WIPO. Finally, with regard to the draft Patent Law Treaty, the Delegation considered that it was concomitant and not at variance with the undertakings made by his country in the framework of WIPO, the Convention on Biological Diversity, the WTO and the Andean community.

152. Mr. EL FAKI ALI (Sudan) informed the delegations that his country had already embarked on the enactment of legislation for the protection of intellectual property as evidenced by its trademark registration law of 1969, industrial design law of 1974, patent law of 1971, and copyright law of 1979. In regard to patents, he also noted that the Intellectual Property Office, the General Registrar's Office and the Ministry of Justice had undertaken the registration and protection of patents at the international and national levels since 1971.

153. He noted that the proposal made by his Delegation in the third session of the Standing Committee on Patents for a reduction of fees on applications submitted from nationals of developing countries, was referred for and is still undergoing informal consultations with WIPO. He stated that he did not wish to put forth the proposal again in this meeting for inclusion in the provisions of the PLT out of regard for the wishes of certain Member States. However, he hoped that the Diplomatic Conference would adopt a Recommendation in this matter within the framework of item 14 of its agenda and Rule 1(2)(v) of its Rules of Procedure urging Member States and regional organizations to give special consideration to applications of applicants from developing countries, as well as to the reduction of fees imposed on such applications.

154. He concluded by expressing his support for the statement given by the Delegation of Uganda in the name of the African Group, with regard, especially, to the question of genetic resources.

155. Mrs. BERENDSON (Peru) said that her Delegation attached great importance to the discussion and negotiation of a new Patent Law Treaty, and hoped that the Treaty would reflect the interests of all participants. She also endorsed the statement made previously by the Delegation of Colombia. Discussion of the matters of access to genetic resources and the protection of traditional knowledge were of the utmost importance to all members of WIPO, both developed and developing countries.

156. She thanked the Director General for having supported the issue, and mentioned that in recent years WIPO had organized roundtables and an intergovernmental meeting in that field. She considered that the subject had developed sufficiently for negotiations to begin, and she therefore requested a standing committee to be set up within WIPO to consider the subject.

157. Mr. LENGERANLI (Turkey) noted that, since 1994, Turkey had been very successful in establishing a new and up-to-date industrial property system which was compatible to the TRIPS standards and to European Community legislation.

158. He observed that intellectual and industrial property rights in Turkey were not protected in accordance with international standards prior to 1994. Also, although the patent law had been in force since 1879 and a trademarks law had been in force since 1965, there was no law for the protection of industrial designs, geographical indications, or topographies of integrated circuits. He commented that, although Turkey was party to the London Act of the Paris Convention and the Convention Establishing the World Intellectual Property Organization, prior to 1994, its lack of legislation had caused problems for his country's national industry and for the integration to the world.

159. He explained that Turkey had established the Turkish Patent Institute for administration of industrial property rights on June 24, 1994. This Patent Institute, which had financial and administrative autonomy, was part of the Ministry of Industry and Trade. It presently employed 150 staff, but was expected to double in the near future depending on the workload. The Institute administered all types of procedures related to industrial property rights, provided services to industry and researchers, issued documents, advised persons and organizations about national and international regulations, and represented Turkey in international fora with regard to industrial property rights. He also noted that Turkey is in the process of preparing a draft law regarding the protection of lay-out designs of integrated circuits, with the intention that it will be finished as soon as possible. He also indicated that a new Institute responsible for

copyrights and neighboring rights, the Turkish Intellectual Property Institute, will be established in the current year.

160. He informed the delegations that Turkey was party to the Paris Convention, the Convention Establishing the World Intellectual Property Organization, the PCT, the Strasbourg Agreement Concerning the International Patent Classification, the Protocol Relating to Madrid Agreement, the Nice Agreement, the Vienna Agreement, the Locarno Agreement, the Budapest Treaty and the World Trade Organization. He noted that internal procedures for accession to the European Patent Office (OEB), for participation in Geneva Act of the Hague Agreement Concerning the International Deposit of Industrial Designs, and for participation in the Trademark Law Treaty were ongoing. He also noted that Turkey had observer status under the EPC, and depending on its candidacy with regard to the European Union, to OHIM as well. He noted that Turkey was one of the countries that signed and ratified the Agreement to Establish the World Trade Organization, and that Turkish industrial property legislation would be reviewed in November 2000 in the TRIPS Council. In summary, he concluded by indicating that Turkey was very well integrated into the international industrial property system, and PLT Diplomatic Conference was accepted as a part of integration.

161. Ms. HUIEROVÁ (Czech Republic) stated that the Czech Republic had always attached great importance to the international harmonization of patent law and the leading role of WIPO in this area, and considered the work on the harmonization of national patent laws to be one of the most important steps for further development of international technical and economic cooperation in the world.

162. She informed the delegations that last year the Czech Republic celebrated its eighty-year history of patent protection, and that this year it had adopted a new amendment to the patent law. She noted that the new amendment introduced supplementary protection certificates into the Czech patent system in accordance with the relevant EU legislation and provisions which were necessary for the implementation of the prepared accession of the Czech Republic to the EPC.

163. In regard to the draft PLT, she stated that the Czech Republic welcomed harmonization of patent formalities and requirements, and especially welcomed the basic concept of conformity with the PCT and with the rapid evolution of information technologies. She also stated that the Czech Republic fully supported the provisions which would permit the European Community, the European Patent Organisation and other international patent organizations to be a party to this treaty.

164. In concluding, she stated that the Czech Republic would be ready to further reform its patent legislation in order to be able to accept new obligations under the new international treaty.

165. Ms. LACHOWICZ (Poland) stated that as far as the Basic Proposal for the envisaged treaty was concerned, it in large part conformed, particularly with regard to the items of an essentially technical content, with the Delegation of Poland's concepts of harmonization, and therefore was acceptable to a large extent. She noted that the treaty afforded foreigners easier access to industrial property rights in other countries, provided significant benefits not only to inventors and patent applicants around the world but also to national authorities by establishing a clear and uniform international framework for regulating the grant of patents, avoided the introduction of additional formality standards and unnecessary costs for applicants, and reduced the risk that applicants might lose their rights. She expressed the hope of her Delegation that the simplification of formalities by the PLT would be the first step to further substantive harmonization.

166. She stated that her Delegation nevertheless felt that some issues—such as filing date, minimum application documentation, relief in respect of time limits or re-instatement of rights—still needed to be carefully discussed with the aim of reaching a fair balance between the benefits to applicants and the obligations of Offices which, of course, must operate effectively for the benefit of applicants.

167. She stated that Poland supported maximum conformity with the PCT, which had an important function and was a model for a system which would enable users to prepare an application in a simple format. She stated that Poland also favored the flexibility introduced in the draft treaty with regard to the possibility of electronic filing in the future.

168. In regard to the name of the PLT, she made the general observation that the PLT, which as initially conceived was to cover all substantive and procedural matters pertaining to patent law, now addressed only procedural formalities. She stated that the name "Patent Law Treaty" was inadequate and even

confusing, particularly in view of the interest expressed by a number of delegations in taking up substantive issues in future, and suggested that the name "Procedural Patent Law Treaty," or something to that effect, would be more appropriate.

169. Mr. RAJAN (Ireland) stated, by way of introduction, that his Delegation fully endorsed the statement made by the Delegation of Portugal on behalf of the Member States of the European Union. In his principal remarks, he stated that great strides had been made with regard to cooperation in patent matters by international agreements such as the PCT and the TRIPS Agreement, but that there was an obvious need for further international harmonization given the arrival of the 21st Century, an age of instant communication in which the electronic filing of applications would be widely introduced and accepted as the norm. He noted that it was to maximize harmonization and to simplify procedures that the PLT was proposed, and indicated that the Delegation was committed to a successful outcome to the Conference. In closing, he stated that the Delegation would like WIPO to take up the issues of harmonization of substantive patent laws once the PLT was concluded.

170. Mr. GANTCHEV (Bulgaria) stated that, as mentioned by the Delegation of Slovakia on behalf of the Central European and Baltic States, the PLT would be an enormous step forward, and that Bulgaria was currently undertaking steps to bring its domestic legislation in line with the provisions of the PLT by the end of the year. He also stated that Bulgaria supported the statement made by the Delegation of Colombia and the points which had been subsequently reiterated by many other delegations. He noted that Bulgaria was looking forward to the meeting of the Assemblies in September in order to decide on a format for continuing the discussions on the issues of traditional knowledge and genetic resources.

171. Ms. VARGA (The former Yugoslav Republic of Macedonia) stated that her country was happy to have contributed to, and would support the adoption of, a streamlined and user-friendly procedure for patent protection. She informed the other delegations that many of the provisions proposed in the PLT were more liberal than those present in the national legislation of The former Yugoslav Republic of Macedonia, and that many changes had to be made in that legislation and its corresponding regulations. She noted, in particular, the minimum elements required to obtain a filing date and the prolongation of time limits. She stated that the changes would take time given the discussions—including the substantive harmonization of patent law—which must occur first. She nonetheless indicated that the changes would be made since the former Yugoslav Republic of Macedonia was committed to going forward for the benefit of its customers.

172. Mr. DE BEAUMONT (AIPPI) said that AIPPI had long been cooperating with WIPO and supported all the efforts made by the Organization toward the harmonization of the procedural aspects of patent systems, in particular within the Committee of Experts for the preparation of the draft PLT and the SCP. In the hope that the Diplomatic Conference would come to a satisfactory conclusion, he expressed the wish that the work going on within the PCT might continue as soon as possible so that the substantive aspects of the patent system could be studied at the international level and that the studies result in the most extensive harmonization possible. The additional studies were all the more necessary as certain provisions of the draft PLT, especially those of Article 5 on the minimum conditions for a filing date to be accorded, would inevitably raise substantive issues even though, at first sight, they appeared to be very favorable to applicants.

173. Deriving authority from its hundred year experience and the more than 80 national groups representing all sectors concerned (industrialists, attorneys and agents), AIPPI considered that the existence within the country of active professional patent agents was essential to the construction and smooth development of the patent system.

174. On the subject of Article 7 of the draft treaty, AIPPI asked for a fair balance to be struck in order that measures destined to be applied as a matter of course in all countries and intended to favor certain users might not harm the practical application of the patent system in countries that currently had very different levels of patent activity. AIPPI would support any proposal designed to achieve that balance.

175. Mr. KHAFAGUI (WASME) said that the World Association for Small and Medium Enterprises subscribed to the statements made by other delegations regarding the importance of the present Conference, and drew attention to the advisory role played by organizations such as his in the drafting of the Patent Treaty and its Regulations. He hoped that the Conference would be completely successful.

176. Mr. BROWN (EPI, CNIPA, CIPA and TMPDF) stated that all four organizations which he represented strongly supported in principle the adoption of the PLT, which would provide a sound legal framework for harmonization of administrative provisions of patent laws. He noted that it would be of benefit to applicants and Offices alike and expressed the hope that, during the Diplomatic Conference, the Basic Proposal could be improved even more in the interest of all users of the patent law system and Patent Offices around the world. He indicated that a statement from the EPI had been provided to the Secretariat for distribution according to Rule 46(3) of the Rules of Procedure. On behalf of TMPDF, he stated that he supported Article 7(2) of the draft Treaty and requested that all the language in square brackets be introduced into the treaty.

177. Mr. AHLERT (ABAPI) informed the other delegations, by way of introduction, that the ABAPI position paper was available from the Secretariat. Turning to his principal remarks, he expressed concern as to the tendency to concentrate certain activities and procedures in countries served by the trilateral Offices, i.e., the USPTO, the EPO, and the JPO, from which most of the patent applications originate. He stated that this tendency was expressed in Article 7(2) of the current draft, which restricted the ability of countries to impose the use of a local agent for certain acts. He explained that the proposal actually created an imbalance because it favored mostly developed countries and it created a burden for national Offices of developing countries and least developed countries which would need to communicate with applicants abroad. In support of this statement, he referred the other delegations to FICPI's position paper, the interesting considerations brought by the Delegations of Burkina Faso, Lesotho, and others as to the need to consider the different realities of developed, developing and least developed countries, and to the relevant comments offered by the Delegation of China. He also stated that it was the opinion of ABAPI that, even without the reintroduction of the texts between square brackets, Article 7(2) as it presently stands unduly restricted the possibility guaranteed by the Paris Convention for members to legislate freely upon the appointment of an agent. He also noted that several delegations had entered reservations in respect of this Article in past sessions of the SCP. In conclusion, he suggested that, especially in consideration of developing and least developed countries, the whole of paragraph 2 of Article 7 be deleted.

178. Mr. WAMSLEY (IPO) stated that the IPO agreed and enthusiastically supported the goals of the PLT to harmonize and streamline procedures for obtaining patents around the world by standardizing procedures for the granting of filing dates, the format of applications in forms, the simplification of forms, the avoidance of loss of rights, and the implementation of electronic filing. He identified, in particular, three Articles that IPO strongly favors: Article 5, relating to filing dates, which would simplify procedures and reduce cost; Article 7(2), whose exceptions relating to the use of representatives should be maximized in order to reduce cost; and Article 12 which allows applicants and patent owners to reinstate rights that have been lost. He also stated that IPO believed that Article 12 and the related Rules should take into account the interest of third parties who had relied on abandonment or expiration of rights to make investments in new products or services, and indicated that third party interests could be protected by maintaining effective standards, setting time limits on reinstatement, or guaranteeing intervening rights.

179. Mr. NIIMURA (JIPA) stated that JIPA, a non-profit Intellectual Property Organization with over 700 corporate members, welcomed the proposal for the PLT that would make the patent system more user-friendly, reduce costs and avoid loss of rights. He noted, in particular, that JIPA expected cost reductions in view of Article 6, paragraph (5) and Rule 4, paragraph (4) regarding the submission of translations of priority documents. He also noted, however, that although one of the objectives of the PLT was to harmonize and simplify formal requirements set by national and regional Offices, it might result in different practices if certain words or phrases in the Articles and Rules were interpreted differently by the Contracting Parties. He stated that JIPA therefore believed that this problem could be corrected, i.e., the Articles and Rules could be made easier to understand, by putting as many example clauses or "namely" clauses in the Notes as possible.

180. Mr. SCHMITT-NILSON (FICPI), speaking on behalf of Mr. John Orange, stated that FICPI, as the world-wide organization representing practitioners in the free profession, had a keen interest in the provisions contemplated in the treaty and expected that its members and clients would benefit greatly from the simplification of formalities that should result. He stated that to a large extent, the measures to protect the applicants' interest, such as the restoration of priority rights and minimum conditions for obtaining a filing date, were included in the draft treaty, but that some of the provisions intended to accommodate existing national laws, such as the exceptions to further processing, did not take into account the realistic needs of the applicant and could act to the detriment of the user. He informed the

delegations that FICPI has prepared a position paper, which highlighted some amendments that FICPI believe would further improve the treaty and provide added protection for applicants. He expressed his hope that it would receive favorable consideration at the appropriate time during the Conference.

181. He also noted that one aspect of the Treaty that FICPI has strongly opposed was the bracketed exceptions in Article 7. He explained that FICPI had consistently advocated a more flexible position, giving Member States the option of implementing the system of professional representation most appropriate to them, and expressed concern about the impact the provision might have on the profession in many countries to the long term detriment of industry in those countries. He informed the delegations that FICPI had commissioned an economic impact study by Professor Park of American University in Washington, the same person who had made a presentation at the most recent AIPLA cost containment symposium. He stated that the results of the study showed that, based on filing statistics from WIPO and a commercially available database of filing cost, the implementation of the exceptions to representation contemplated in Article 7 would have a negative impact on the vast majority of the active patent countries. He explained that, of the 35 countries considered, eight showed a net economic benefit from the proposed minority non-representation, whereas 27 had a net economic loss, and in some countries the profession would be unable to sustain itself. He concluded that FICPI believed that a measure that could have a profound effect on the economic development of a country did not belong in the Articles of a treaty concerned essentially with formality issues.

182. In closing, he informed the delegations that copies of the cited study and FICPI's position paper on Article 7 were available. He expressed the hope of FICPI that member States would carefully consider the issues contained therein when the provisions of Article 7 were discussed more fully.

183. Mr. KIRK (AIPLA) began his remarks by stating that the instant treaty exercise was initiated in large part by WIPO to continue a productive dialogue among nations to harmonize the procedural aspects of patent filings, with the goal that at some point they would return to the substantive harmonization task that lies before them. He noted, in that regard, that almost every delegation that had spoken thus far had noted their desire to return to the substantive harmonization that was not accomplished in 1991, and indicated the strong support of AIPLA for the completion of that effort so that there could be meaningful work sharing and true harmonization around the world.

184. He also noted that, while several delegations representing agents had spoken in favor of deleting Article 7(2), AIPLA favored retaining Article 7(2) and maximizing the exceptions to mandatory representation. He stated that AIPLA fully agreed with the comments on Article 7(2) made earlier by U.S. Congressman Coble. He noted that inventors, who were among the brightest and most creative individuals in society around the world, would be able to recognize what they could safely do for themselves and when they would need to seek representation. He also noted that, while many had spoken in favor of welcoming procedural harmonization and the simplification of the procedural aspects of patent practice, certain representatives wanted to deny the full benefit of these improvements by forcing inventors to use agents even for ministerial tasks before industrial property Offices. He summarized the difference of opinion and purpose as essentially a question of whether the goal was to represent the interests of attorneys and agents or inventors and patent applicants. He concluded by stating that the AIPLA believed that it should be the goal of the Conference to represent the latter, and, consequently, strongly urged the delegates to retain the exceptions to mandatory representation in Article 7(2) without brackets.

185. Mr. CHIRAMBO (ARIPO) brought to the attention of the other delegations the fact that ARIPO was created by an agreement adopted in Lusaka, Zambia in 1976. Article III of that agreement included as the first objective of ARIPO the harmonization and development of the industrial property laws of ARIPO's Member States. He noted that ARIPO's Member States, now totalling 15, put that objective in concrete form by adopting a Protocol on Patents and Industrial Designs in 1982. He also noted that the Protocol had undergone revision over the years, the first of which in 1994 created a legal link between the Protocol and the PCT.

186. He stated that the Member States of ARIPO had come to the Diplomatic Conference with aspirations regarding several provisions of the PLT, in particular, those which related to electronic filing and to representation. As to electronic filing, he noted that, while ARIPO had just joined the WIPO Network and welcomed the possibility of electronic filing, it reiterated the concerns about electronic filing which had been aired already at the Diplomatic Conference. As to representation, he noted that revisions

to the Harare Protocol had also focused on the question of representation, and that ARIPO would welcome any provision that addressed the question to the benefit of all countries.

187. Mr. TAKAMI (JPAA) stated that JPAA believed that the PLT had three principal aspects: first, provisions on the improvement of the PCT; second, provisions on the implementation of electronic filing; and third, particular provisions with regard to representation, addresses for service, extensions of time limits, and belated claims of priority. As to the first aspect, he noted that the PCT was a model system which would enable users to prepare an application in a single format and thus offered the maximum improvement for users. As to the second aspect, he noted that, after 10 years of experience with electronic filing in Japan, it was clear that the electronic application was an effective means of communication between the Japanese Patent Office and patent attorneys. As to the third aspect, he made a distinction between a more flexible approach based on the principle of user-friendliness and the need for a well-functioning patent system which relied on the efficient and smooth cooperation between Patent Offices at the national and regional levels and a body of qualified representatives admitted to practice before those Offices. As to the extension of time limits and belated claims of priority, he stated that the JPAA supported, in principle, the new Articles providing for such user-friendly benefits. As to representation, he stated that JPAA stressed the importance of having a high quality application with a view toward obtaining the effective, sufficient protection which the inventor sought. He also noted that the efficient cooperation between a Patent Office and a body of qualified representatives itself served to minimize the risk of procedural mistakes and ensured the maintenance of an application and examination procedure of high quality. As to the translation provisions in Article 7(2), he stated that the translation was in fact an integral part of the application in that the examination by a Patent Office was based on the first application and was granted based on the exact and maximum contents of the first application and its translation. In Japan, it was a specification created by qualified representatives having legal and technical knowledge. He noted further that the scope of the claims were defined by the translation and that, given the language barrier, professional knowledge was essential to obtain substantive protection. He also stated that Article 7(2) did not directly relate to cost reduction, but rather to a transfer of costs between the countries concerned. In conclusion, he suggested that Article 7, paragraph (2)(iv) be deleted.

188. In closing, he noted that the PLT was but a first step toward the goal of harmonization, and that JPAA strongly hoped that the objective of the Basic Proposal on substantive harmonization should not be forgotten and that international harmonization of substantive patent law would be achieved.

189. The PRESIDENT offered his thanks to all, not only for their kind words, but also for the very positive and constructive spirit they exhibited. He noted that Item 10 (Opening declarations by delegations and by representatives of observer organizations), was now completed, and that the work of Main Committee I would begin in the same room on Monday, May 15, 2000, at 10 am.

Fourth Session
Thursday, May 18, 2000
Morning

190. The PRESIDENT opened the meeting and referred to the first report of the Credentials Committee contained in document PT/DC/17. He informed the meeting that the Credentials Committee had met on May 16, 2000, and had elected the following officers: Ms. Joyce Banya from Uganda as President, and Mrs. Michèle Weil-Guthman from France and Mrs. Betty Berendson from Peru as Vice-Presidents. He congratulated the officers on their election, and asked the President of the Credentials Committee to submit the first report of that Committee to the Plenary of the Diplomatic Conference.

191. Ms. BANYA (Uganda) presented the first Report of the Credentials Committee as contained in document PT/DC/17. She said that the Credentials Committee, held its first meeting on May 16, 2000. In accordance with Rule 9(1) of the Rules of Procedure of the Conference, the Committee examined the credentials presented by delegations. In accordance with the prevailing factors as stated in paragraph 5 of document PT/DC/17, the Committee examined the signatories of various documents to determine their acceptability. The Credentials Committee found in order the following credentials:

192. For ordinary members, credentials and full powers, i.e., credentials for participating in the Conference and signing the Final Act of the Conference and full powers to sign the PLT to be adopted by the Diplomatic Conference for the State, as this was listed in paragraph 7(a)(i) of the report.

193. Credentials without full powers, i.e., credentials for participating in the Conference and signing the Final Act of the Conference.

194. There were 74 States as listed in paragraph 7(a)(i). Special member delegations were three in total, namely, the letters and full powers of the EPO, the credentials of the African Intellectual Property Organization (OAPI) and the African Regional Industrial Property Organization (ARIPO). For observer organizations, the letters or documents of appointment of the following organizations were examined by the Committee and found to be in order. Intergovernmental Organizations were four, as listed in paragraph 7(b)(i) of the Report. Non-Governmental Organization were 25, as listed in paragraph 7(b)(ii) of the Report.

195. Ms. Banya declared that, in accordance with paragraph 8 of the report, the Credentials Committee recommended that the Conference accept the credentials and full powers of delegations, and the letters or documents of appointment of representatives of the organizations as listed in the report. The Credential Committee also requested Member States or organizations that had not done so, to deposit their credentials with the Secretariat as soon as possible. She added that, since the first meeting of the Credential Committee, a number of credentials had been submitted, and that those would be examined in the next meeting of the Credentials Committee.

196. *The PRESIDENT, noting that there were no requests for the floor, declared the report of the Credentials Committee as contained in document PT/DC/17 adopted.*

Fifth Session

Thursday, June 1, 2000

Morning

197. The PRESIDENT invited the President of the Credentials Committee to report.

198. Mrs. BANYA (Uganda) introduced the Second Report of the Credentials Committee (document PT/DC/33) and the Report of the President of the Credentials Committee (document PT/DC/39). She stated that the credentials of two delegations had been received after the Report of the President of the Credential Committee (document PT/DC/39) had been published, and that, consequently, the following delegations were to be added to the lists of credentials contained in that document:

- the Delegation of Turkey to the list of credentials with full powers;
- the Delegation of Guatemala to the list of credentials without full powers.

199. She said that those two additions would be reflected in the final Report of the President of the Credentials Committee. She thanked the members of the Credentials Committee and the Secretariat for their work.

200. The PRESIDENT thanked the President and the Members of the Credentials Committee for their work. In the absence of any objections from the Plenary, declared the Report of the Credentials Committee adopted.

201. The PRESIDENT then gave the floor to any intergovernmental organization wishing to make statements.

202. Mr. SCHATZ (EPO) made the declaration referred to in Article 20(2)(i) stating that, in accordance with Article 4, paragraph (3) and Article 2, paragraph (2) of the EPC, the EPO is competent to grant patents with effect for its Member States.

203. Mr. CHIRAMBO (ARIPO) made the declaration under Article 20(2)(i), stating that pursuant to Section 3, paragraph (10) of the ARIPO Protocol on Patents and Industrial Designs, the ARIPO is competent to grant patents with effect for its Member States.

204. Mr. BLINNIKOV (EAPO) made the declaration under Article 20(2)(i), stating that under Article 2(1) of the Eurasian Patent Convention, the Eurasian Patent Office is authorized to issue patents with effect for its Member States.

205. The PRESIDENT then called agenda item 13 Adoption of the draft Final Act submitted to the Conference by the Steering Committee, contained in document PT/DC/40. In the absence of any opposition from the Plenary, he declared that Final Act adopted.

206. The PRESIDENT then invited the International Bureau to introduce document PT/DC/45.

207. Mr. TRAMPOSCH (WIPO) explained that document PT/DC/45 was based on the results of the meetings of Main Committee I and Main Committee II. The document listed the changes to document PT/DC/41 containing the text of the Articles of the PLT, to document PT/DC/42 containing the text of the Regulations, and to document PT/DC/43 containing the text of the Agreed Statements, as previously adopted by Main Committees I and II.

208. Mr. HERNÁNDEZ VIGAUD (Cuba) specified that the word "*remedio*" ("*remedy*") should be replaced by "*medidas*" ("*measures*") in the third and fourth lines of the Fifth Agreed Statement in Spanish.

209. The PRESIDENT said that this would be noted and changed or modified accordingly.

210. In the absence of any objections, the PRESIDENT then declared the draft PLT (document PT/DC/41), the draft Regulations under the PLT (document PT/DC/42), and the draft Agreed Statements (document PT/DC/43) adopted.

211. The Delegation of India submitted the following closing statement: "At the outset, I would avail of this opportunity to congratulate you on the successful outcome of this Conference. I would also like to thank you for giving me the floor. We appreciate the openness of the Director General and the International Bureau on issues of concern to us during the deliberations of this Conference. In my opening statement, I had expressed my country's concerns regarding issues of intellectual property inherent in traditional knowledge and biodiversity resources. These issues need to be addressed as developing countries, Mr. Chairman, should be allowed to exercise sovereign rights over their biological resources. We look forward to WIPO's initiatives and support on this sensitive issue. The Conference reached a consensus on the flexibility of moving to early electronic filing. While we realize that technology is moving very rapidly in these fields, we hope WIPO will be forthcoming and provide additional technical and financial cooperation for developing countries to meet these requirements, so that our patent seekers are not disadvantaged in any way. Finally, Mr Chairman, we are concerned that the IP regime ensure not only the protection and enforcement of intellectual property but also contribute to the advantage of producers and users in a manner conducive to social and economic welfare, especially in developing countries. We are going back, Mr. Chairman, with the assurance that our concerns in these areas will be addressed".

212. The Delegation of Norway submitted the following closing statement: "To begin with, Norway would like to thank all the Officers for their excellent work to make this Conference successful. Secondly, we thank the International Bureau for their splendid and most important work and assistance during these weeks. Finally, we would like to express our thanks to you, honorable delegates, for your constructive and flexible approach to the various challenges we have met, and for the positive spirit in which you have worked throughout the debate. Especially, we would like to emphasize the process concerning filing of communications, where also the Director General, Dr. Kamil Idris made important contributions. Regarding the present PLT and Regulations, we strongly feel that this Conference has been a great success, and we find the result very interesting and promising. As we mentioned in our opening statement, the driving force behind this Conference has been to harmonize, streamline and make the system more effective and user-friendly. This has, indeed, been achieved. In particular, we would like to mention the requirements regarding the filing date, the alignment between the proposed PLT and the existing PCT and the mechanism to avoid unintentional loss of rights as a result of failure to comply with time limits. The Delegation of Norway considers it to be of the utmost importance to carry on with the harmonization work and to make the system easier to use, thus stimulating future development and economic growth. Norway intends, in the near future, to make the necessary legal adjustments and thereby being able to accede to the PLT."

213. The Delegation of the United Kingdom submitted the following closing Statement: No one could say that the negotiations over the past three and a half weeks have been easy. Nonetheless, the United Kingdom Delegation is very pleased that we have now agreed a Treaty, and more importantly, that this agreement has been reached by consensus. We fully recognize that this might mean that delegations might not have got the Treaty they may have wished for. However, it is important that all delegations should have a Treaty they can accept. I hope that this is the case. The United Kingdom can certainly accept the Treaty we have just agreed. It therefore intends to sign the Treaty tomorrow as the first step towards ratification. During this Diplomatic Conference, all delegations have worked long and hard to reach consensus. This Delegation recognizes that the successful outcome is due in no small part to the skills and efforts of you Mr. President and of the Presidents of Main Committees I and II. Also, we owe a deep debt of gratitude to the staff of the International Bureau who have ensured smooth running of the Diplomatic Conference. I would like to thank them for all their hard work. Finally, I would congratulate all delegates on the successful outcome of this Diplomatic Conference. You have all shown that even when we disagree, we can reach common ground. That is immensely encouraging and gives me encouragement for the future.

214. The PRESIDENT thanked the members of the Plenary for their hard work and their determination to adopt that very important Treaty. He stated that the adoption of the draft PLT after 15 years of negotiations was a historic moment and a great day for the patent community since that treaty was expected to reduce the cost of patent protection and to make patent procedures more user-friendly and widely accessible. He said that the adoption of the PLT was a remarkable result in particular for two reasons: firstly, because a number of difficult and controversial legal issues had been resolved, as for instance the requirements for obtaining a filing date or the transition period for electronic filing; secondly, because these controversial issues had been resolved by consensus among all participants. He added that, in view of the participation of more than 140 countries at this Diplomatic Conference, the fact that these difficult issues had been resolved amiably in the spirit of compromise and mutual support, could be considered as a major breakthrough, not only in terms of patent law harmonization, but also in terms of international negotiations in general. He said that he and the whole Conference were very grateful to the Director General of WIPO and the International Bureau for undertaking the efforts which finally resulted in the PLT which would be of great benefit for all the users of the patent system all over the world.

SUMMARY MINUTES OF MAIN COMMITTEE I

prepared by the International Bureau

President: Mr. Alan Troicuk (Canada)

Secretary: Mr. A. Tramposch (WIPO)

First Session

Monday, May 15, 2000

Morning

1. The PRESIDENT opened the meeting and welcomed the participants. He expressed his appreciation for being elected as President of Main Committee I, and said that it was an honor and privilege to take on this responsibility.
2. He then presented the working arrangements for Main Committee I. According to Rule 12 of the Rules of Procedure, Main Committee I was responsible for proposing, for adoption by the Plenary, the substantive provisions of the Treaty, the Regulations and any recommendation, resolution or agreed statement. Once the work was completed in Main Committee I, the Committee ideally would have reached agreement by consensus on the text of the substantive provisions whose adoption then by the Plenary should be straightforward, since the membership of Main Committee I and the Plenary was the same.
3. The PRESIDENT drew attention to the fact that the Rules of Procedure provided for the decisions of the Committee to be made by voting. However, the Rules also provided that, to the extent possible, decisions should be made by consensus. He expressed his belief that the Committee should make every effort to try to find solutions that allowed for all decisions of the Committee to be made by consensus. He said that he was very optimistic that, with some hard work, creativity and a constructive spirit, the Committee would be able to achieve that.
4. Regarding the actual working plan, the PRESIDENT proposed to start work at the beginning of the Treaty and to advance numerically, dealing with the Articles of the Treaty and the related Rules in conjunction. It was understood that, if it appeared that further work was required in respect of a particular provision, or that it might be useful to have some informal consultations, that provision would be set aside and returned to later.
5. Where agreement was reached in substance on a provision, the President's intention was to declare that provision adopted and to refer it to the Drafting Committee for review. He said that he would use the term "adopted" to mean that this Committee had agreed on the substance of the text to be proposed for adoption of the Plenary, subject to review only by the Drafting Committee. Once the Drafting Committee had reviewed the text of a provision, it would resubmit that text to Main Committee I for final approval. If further agreement was reached in Main Committee I, the President intended to declare the provision approved, meaning that Main Committee I had given its final approval to that provision as being proposed for adoption by the Plenary.
6. Before opening the floor for substantive discussions, the PRESIDENT invited comments or questions on the administrative arrangements that he had just introduced. Not having received any comments or questions, the President opened the discussion on the Basic Proposal for the PLT, documents PT/DC/3 and 4.

Article 1: Abbreviated Expressions

7. The PRESIDENT invited the Secretariat to introduce Article 1.
8. Mr. BAECHTOLD (WIPO) explained that Article 1 contained definitions of the terms which were used throughout the Treaty and the Regulations. He said that he did not intend to introduce the Article

item by item, but wanted to point out the changes and proposals in that Article that are suggested by the Secretariat.

9. Concerning Article 1(v) ("Communication") the Secretariat proposed to delete, at the end of this definition, the words "by means permitted by the Office", since that issue was already covered by Article 8(1). The definition would then read: " 'communication' means any application, or any request, declaration, document, correspondence or other information relating to an application or patent, whether relating to a procedure under this Treaty or not, which is filed with the Office."

10. Mr. BAECHTOLD (WIPO) further indicated that the Secretariat had proposed several definitions or amendments of definitions in document PT/DC/6. One concerned a new definition of the term "form" proposed as item (ivbis). The others would concern items (xvi) and (xvii) and related to the definitions of the Paris Convention and of the PCT. The Secretariat proposed that the discussion on these three items be postponed until the discussion on document PT/DC/6 and the relationship between the PLT and the PCT.

11. Mr. BAECHTOLD (WIPO) then pointed out that some delegations had made proposals and, in particular, the Delegation of the United States of America, which had made proposals concerning items (v) and (viii), contained in document PT/DC/8. Furthermore, the Delegation of Japan had made a proposal for an agreed statement relating to item (xiv) contained in document PT/DC/10.

12. The PRESIDENT opened the discussion on Article 1(i).

13. Mr. AHMAD (India) pointed out that the patent administration in his country operated also through branch Offices, and these branch Offices also received applications. Therefore, the Delegation sought a confirmation that the definition of "Office" included branch Offices.

14. Mr. TRAMPOSCH (WIPO) confirmed that it had been the intention of the SCP that the definition of "Office" would include branch Offices. However, the International Bureau would consider it to be appropriate and beneficial to include a mention of branch Offices in the Notes. He suggested to include a reference, in Note 1.01, to branch Offices in two places, since "Office" was mentioned twice in that Note. The sentence would then read in full: "The term 'Office' includes both the national Office, including branch Offices, of any State which is a Contracting Party to the Treaty, and the Office, including branch Offices, of any intergovernmental organization which is a Contracting Party."

15. Mr. KHAFAGUI (WASME) expressed the view that the items in this Article could be regrouped alphabetically or by order of the subject they dealt with.

16. The PRESIDENT noted that there were no other comments on the item under consideration.

17. *The PRESIDENT declared Article 1(i) adopted in substance and referred to the Drafting Committee.*

18. The PRESIDENT opened the discussion on Article 1(ii), and noted that there were no comments on the item under consideration.

19. *The PRESIDENT declared Article 1(ii) adopted in substance and referred to the Drafting Committee.*

20. The PRESIDENT opened the discussion on Article 1(iii), and noted that there were no comments on the item under consideration.

21. *The PRESIDENT declared Article 1(iii) adopted in substance and referred to the Drafting Committee. He opened the discussion on Article 1(iv).*

22. Mr. AHMAD (India) stated that the term "person" as defined in item (iv) did not contain any explicit reference to a government. His Delegation wished to be sure that it was left to the national law to define a "person" and that, in that context, a government would also be treated as a person.

23. Mr. TRAMPOSCH (WIPO) referred to Note 1.02 of document PT/DC/5. This Note indicated that the question of what constitutes a legal entity was not regulated by the Treaty and remained a matter for the applicable law of the Contracting Party in which patent protection was sought. This meant that a Contracting Party could define a "legal entity" to include a government and, in that case, a government

would be considered a person for the purposes of the Treaty. A change to the Note would not seem to be necessary because it would not be logical to include a government under the definition of a natural person. It would rather fall under "legal entity", and this appeared to have been the intention of the SCP.

24. Mr. HIDALGO LLAMAS (Spain) proposed that the word "*natural*" in the Spanish text of subparagraph (iv) be replaced by the word "*física*."

25. The PRESIDENT said that the issue under consideration appeared to be best dealt with by the Drafting Committee, and that it could be reviewed by Main Committee I afterwards.

26. *The PRESIDENT declared Article 1(iv) adopted in substance and referred to the Drafting Committee.*

27. The PRESIDENT recalled that the International Bureau had suggested amending item (v) of Article (1) by deleting, at the end of that definition, "by means permitted by the Office;".

28. Mrs. BOLAND (United States of America) said that her Delegation would withdraw its proposal concerning item (v) in document PT/DC/8, if the change to that item as proposed by the Secretariat were adopted.

29. *The PRESIDENT declared Article 1(v) adopted as amended through the proposal made by the Secretariat.*

30. The PRESIDENT opened the discussion on Article 1(vi), and noted that there were no comments on the provision under consideration.

31. *The PRESIDENT declared Article 1(vi) adopted in substance and referred to the Drafting Committee.*

32. The PRESIDENT opened the discussion on Article 1(vii), and noted that there were no comments on the provision under consideration.

33. *The PRESIDENT declared Article 1(vii) adopted in substance and referred to the Drafting Committee.* He opened the discussion on Article 1(viii).

34. Mr. AHMAD (India) stated that this provision, dealing with the applicant, used two expressions, namely "applying" and "filing," which appeared to convey the same meaning. He stated, further, that his Delegation was assuming that the term "applicant" covered joint applicants, since Article 1(xv) clarified that singular included plural.

35. The PRESIDENT recalled that the Delegation of the United States of America had announced a written proposal concerning that item and proposed to postpone any further discussion of this particular definition until the said proposal was circulated.

36. Mr. TRAMPOSCH (WIPO) confirmed that the effect of Article 1(xv) would be that the definition of applicant would also cover joint applicants. As regards the use of the terms "applying" and "filing," he said that the two different words were in fact used with specific intention in this item. The second part of this item, which read "or whom the records of the Office show as another person who, pursuant to the applicable law, is filing or prosecuting the application" dealt with national laws that would allow a person other than the applicant to actually file the document with reference to the application and be treated in the way that the applicant would be treated under this Treaty. For example, a country might require that the inventor be the applicant, but the application may be processed by the employer or by another person. Therefore, he suggested retaining those words in spite of the outward ambiguity.

37. The PRESIDENT opened the discussion on Article 1(ix), and noted that there were no comments on the provision under consideration.

38. *The PRESIDENT declared Article 1(ix) adopted in substance and referred to the Drafting Committee.* He opened the discussion on Article 1(x).

39. Mr. MENGISTIE (Ethiopia) questioned whether it was necessary to refer explicitly to firms and partnerships in this provision. In particular, he pointed to Article 1(iv), defining the word "person" as meaning both natural persons and legal entities.

40. Mr. BADRAWI (Egypt) asked whether a reference to firms or partnerships could mean to cover all sorts of bodies that did not constitute any specific legal entity.

41. Mr. TRAMPOSCH (WIPO) explained that the terms "firm" and "partnership" were included in this definition because a number of Member States had requested their inclusion, in view of the fact that, under their applicable law, they did have firms and partnerships that were not considered to be legal entities under their national law. If those terms were not in this definition, the Treaty would not cover such firms and partnerships. There was no intention for the Treaty to be exclusive.

42. Mr. BADRAWI (Egypt) replied that, if this was the case, discussion on Article 1(iv) had to be reopened, because it contained a reference to natural persons and legal entities. Under the national legislation of Egypt, a natural person or legal entity would be the person who is considered to have legal personality. Thus, if a firm or partnership were to be allowed to play a role as it seems under item (x), then a clear definition was needed in Article 1(iv) in order to cover that situation.

43. Mr. TRAMPOSCH (WIPO) pointed out that, under item (x), the ability of a person, firm or partnership to act as a representative was subject to the applicable law, it did not impose any obligation on any country.

44. Mr. BARTELS (Germany) asked whether the definition of "representative" was subject to the national law or not.

45. Mr. TRAMPOSCH (WIPO) replied that the answer was yes, referring to Note 1.08.

46. Ms. WEN (China) indicated that the position of the Delegation of China was similar to that of the Delegations of Ethiopia and Egypt. Her Delegation believed that it was necessary to reconsider this item. Furthermore, the Delegation said that it appeared to be not sufficient to refer merely to "natural person" or "legal entity." For in China partnership and firm may be appointed as representatives though they are not legal entities.

47. Mr. NIYONKURU (Burundi) said that his Delegation was concerned over the multitude of definitions in the draft Treaty, particularly those relating to natural persons and legal entities (item (iv)), the applicant (item (viii)), the owner (item (ix)), or the agent (item (x)). He asked the International Bureau what provisions would be likely to solve the problem that could face an inventor with insufficient funds for patenting and making use of his invention, who therefore, during his search for funding, was liable to have his invention stolen.

48. Mr. TRAMPOSCH (WIPO) stated that, in preparing the Treaty, the SCP had in fact not discussed the specific issue that was referred to by the Delegate of Burundi. Nevertheless, WIPO considered this issue to be very important and was acting in helping to protect the rights of inventors. WIPO had very recently undertaken a project that would assist small and medium enterprises and individual inventors in being able to effectively protect and market their inventions, thus work that would address itself to the types of concerns that were presented by the Delegate of Burundi. This specific issue, however, had not been discussed by the SCP and it appeared that it would be better dealt with in another context than in that of the PLT, since it seemed to be a substantive rather than formal issue.

49. Mr. KAUDYROV (Kazakhstan) expressed concern about the definition of the term representative and said that, in the view of his Delegation, the words "firm or partnership" appeared to be redundant and could be deleted. If the term "person" was used after its definition, it was not necessary to state again what it meant. That being so, the Delegate said that, in item (x), "representative" should simply be defined as meaning any person that can be a representative under the applicable law. This would make it clear that the very term "person" had already been defined as meaning a natural person or a legal entity, and there was no need to go into all the detail about firms or partnership.

50. The PRESIDENT asked whether any delegation would have difficulties with deleting the words "firm or partnership." He recalled that there was concern that, in some States, there are firms or partnerships which, under national law, are not considered legal entities. Perhaps in the context of this Treaty the use of the term "legal entity" could be different, so that even in those Member States, the terms "legal entities" as they appeared in the Treaty could be given a more open interpretation so as to include those firms or partnerships.

51. Mr. HERALD (Australia) stated that, under the law of Australia, a firm or partnership had a different connotation than a legal entity. It appeared to that Delegation that the issue arose because of the different status of firms or partnerships in different jurisdictions. Given the concern that item (x) could create doubt about the meaning of item (iv), the Delegation suggested replacing the reference to "person, firm or partnership" in item (x) by the words "natural person, legal entity, firm or partnership."

52. Mr. BROWN (EPI) endorsed the statement of the Delegation of Australia. He said that it should be avoided that a group of people who were entitled to represent under an applicable law was excluded by a Contracting Party because they were not a legal entity.

53. Mr. BADRAWI (Egypt) said that he had listened with interest to the intervention by the Delegation of Australia. However, he wondered where the definition under discussion should be included. Item (iv) was defining the term "person" in the context of this Treaty. A general definition of that word was not given. Furthermore, in accordance with the definition given by the Treaty, he understood "person" to mean natural person or legal entity. Accordingly, the question arose whether one needed to go into greater detail in defining the term "person" or whether one should leave it as it was already defined, namely as a natural person or legal entity. If one were to go into greater detail, the logical place to address such detail would be item (iv). There, it would be stated that "person" should mean a natural person or legal entity and that this could also include various groupings that do not enjoy legal personality, firms or partnerships for instance.

54. Mr. TRAMPOSCH (WIPO) suggested to word item (x) to the effect that the term "representative" would cover any natural person or entity that can be a representative under the applicable law. Thus, the item could be worded as follows: "representative" means any natural person or entity that can be a representative under the applicable law;". This language would be inclusive rather than exclusive, but would avoid ambiguity that may arise from the interaction with other definitions in the Treaty.

55. Ms. FRANCISCO (Philippines) raised the question whether a firm was different from a partnership. Her Delegation was of the opinion that the definition of "person" was sufficient. It would be sufficient to provide that "representative" means the person who can be a representative under the applicable law. Thus, the words firm or partnership, if understood to be non-legal entity, could include other words such as "association" and "organization". Furthermore, the Delegation asked whether the omission of the word "legal" from the term "legal entity" in the definition of "person" would change the definition in item (iv).

56. Mr. TRAMPOSCH (WIPO) said, in reply to the Delegation of the Philippines, that the intention of the suggestion by the International Bureau was to make it clear that a representative, as dealt with by the Treaty, was the representative as defined by the national law. The intention was also to cover more than strictly legal entities, if the applicable law allowed an entity, which was not a legal entity under its law, to be a representative.

57. Mr. DAVIES (Canada) stated that his Delegation felt that it was important to distinguish between a person, a firm and a partnership. Having heard the intervention by the Delegation of Australia and the suggestion by the International Bureau, the Delegation was of the opinion that it was important to retain the intention originally stated in item (x). The Delegation therefore supported the proposal made by the International Bureau.

58. Mr. BOUAZZAOUI (Morocco) said that his Delegation suggested adopting a clearer definition of the agent, given the differences existing between national laws on the subject, the reference given in item (viii) to "the person whom the records of the Office show" and the reference in item (x) to "the applicable law." He suggested therefore simply to define the agent as "any entity that is an agent within the meaning of the applicable legislation."

59. Mr. TRAMPOSCH (WIPO) explained that, since the purpose of the definition of "representative" was to make clear that what was meant was the representative under the applicable law, a very simple definition could be envisaged along the following lines as suggested by the Delegation of Morocco: "representative" means representative under the applicable law;". This would be very clear and unambiguous.

60. Mr. BOGDANOV (Russian Federation) said that his Delegation supported the last suggestion of the Secretariat. However, he felt that this did not seem to resolve the problem of the definition of "person" in item (iv), which was restricted to natural persons and legal entities, and therefore so, did not extend to entities that were not legal entities or natural persons, such as firms and partnerships. His Delegation believed that it was necessary to amend the definition of "person,". One possibility was to refer to a natural person or an organization. An alternative approach would be to make it clear in some other way that a "person" meant any person who had authority to carry out procedures in accordance with this Treaty.

61. Mr. BARTELS (Germany) said that his Delegation supported the proposal made by the International Bureau. Nevertheless, he wished to present an alternative proposal, which would, however, have the same effect as the suggestion of the International Bureau. In order to avoid a circle definition by saying "a representative is a representative," he suggested that the definitions could state clearly that national law should define who can be a representative.

62. Mr. BADRAWI (Egypt) said that it appeared to his Delegation that the latest suggestion made by the International Bureau would settle a great deal of the concerns that had been expressed. It could be said that "representative" means anyone that can be considered a representative under the applicable law. As regards item (iv), the Delegate observed that definition could be extended in general terms in order to cover natural persons and legal entities, whether or not they had a legal personality.

63. Mr. EL FAKI ALI (Sudan) declared that his Delegation did not have a problem with the definition of "representative." As he understood it, the definition of the term "representative" in the Basic Proposal specified that what was addressed was the applicable law of the Contracting Parties. It therefore covered any person, natural person or legal entity, irrespective of whether they had a legal personality or not. He was therefore of the view that this wording should not be changed too much.

64. The PRESIDENT announced that the Credentials Committee would meet on May 16, at noon.

65. Mr. BOUHNIAK (Algeria) proposed, on behalf of his Delegation and by way of a compromise, the following wording for item (x): "'representative' means any entity empowered to exercise the profession of representative under the applicable law."

66. Mr. HERALD (Australia) drew attention to the fact that representatives were also dealt with in Article 7 of the Treaty. He suggested that the term "representative" was a fairly well understood, self-standing definition. He therefore queried the need for the definition, particularly having regard to the nature of the debate concerning that issue, and suggested to simply omit item (x).

67. Mrs. BOLAND (United States of America) expressed the support of her Delegation for the suggestion made by the Delegate of Australia.

68. Mrs. KISHEBUKA (United Republic of Tanzania) suggested item (x) should be retained as the definition of "representative" in the Basic Proposal. This definition included a "person" was already defined in item (iv), and extended the meaning of the term "representative" to include firms and partnerships. The delegate also did not see a problem with the definition of the word "person."

69. Mr. BADRAWI (Egypt) said that deletion of item (x) might create difficulties. Since the word "representative" was used in the Treaty, it needed to be defined.

70. Mr. DAVIES (Canada) said that his Delegation could accept the proposal of the Delegation of Australia to delete item (x).

71. Mr. FICSOR (Hungary) said that his Delegation supported the latest suggestion of the International Bureau, namely that "representative" should mean representative under the applicable law. The Delegation believed that that wording would help to avoid any inconsistency between items (iv) and (x). Using the word "entity" in item (x) and the words "legal entity" in item (iv) could lead to a restrictive interpretation of the term "person" and could perhaps exclude from the scope of that definition entities that were only assimilated to legal entities under the applicable national law, but were not qualified as legal entities proper. It however, appeared from Note 1.02 that this would be an unintended result. It was basically for the same reasons that the Delegation could also accept the deletion of item (x), as proposed by the Delegation of Australia.

72. Mr. KAUDYROV (Kazakhstan) expressed the support of his Delegation retaining item (x). He recalled that representatives were important participants in the processes covered by the PLT and that their legal status must not be ignored. He supported the suggestions for amending both items (iv) and (x). In addition, he suggested that, in item (iv), the wording be changed in order to understand references to a "person" as references to a natural person and an organization or association. Item (x) should be drafted in the sense that "representative" meant any person that can be a representative under the applicable law. This would justify the inclusion of these two definitions in Article 1, and would in fact ensure further consistency and coherence throughout the Treaty.

73. Mr. WALKER (United Kingdom) noted that his Delegation found itself in much the same position as the Delegation of Hungary. His Delegation's preference would be for the solution offered by the Delegation of Australia and supported by the Delegation of the United States of America. However, if that was not accepted by the Committee, the Delegation could also support the simplified definition suggested by the International Bureau, namely, that a "representative" meant a representative under the applicable law. The Delegation's preference was to delete item (x), but it could also accept the International Bureau's suggestion.

74. Mr. BOGDANOV (Russian Federation) said that his Delegation supported the proposal made by the Delegation of Kazakhstan.

75. Mrs. OVIEDO ARBELAEZ (Colombia) said that she preferred a broad definition of the term "person" in item (iv), as there might be legal entities other than a "person" that could also be owners of patents, as in the case of *de facto* companies, autonomous estates, single person companies and consortia, to name but a few. With regard to item (x), she preferred the definition of the term "representative" to be left to the national legislation of each country.

76. Mr. RAJAN (Ireland) proposed to word the definition of "representative" as follows: "representative" means a representative of a person under the applicable law;".

77. Mr. MOUKOURI (Congo) said that his Delegation wished to emphasize the importance of a provision on the representative in a treaty on patent law, opposed its deletion and consequently supported the proposal by the International Bureau for the definition of the representative to be left to be determined by the applicable law.

78. Mr. STOHR (EPO) said that his Delegation would accept the deletion of this definition. However, he thought that it was useful to define the term "representative." The purpose of this definition was, in the view of the Delegation, to make it clear that national law defined the term "representative." Therefore, he expressed preference for the version presented by the International Bureau, namely, for saying "representative" means a representative under the applicable law;".

79. Mr. BARTELS (Germany) said that his Delegation wished to maintain Article 1(x) and was in favor of the wording which was last proposed by the International Bureau.

80. Mr. MORENO PERALTA (Panama) considered that it was important to retain the definition of "representative," and supported the wording suggested by the International Bureau to the effect that "representative" would be understood to mean the person who was such under the applicable law.

81. Mr. JONG (Democratic People's Republic of Korea) supported the proposal made by the International Bureau, namely to word item (x) to define representatives as representatives under the applicable law.

82. Mr. GRIGORIEV (EAPO) observed that the term "person" was already defined, and that word is mentioned in items (iv), (viii), (ix) and (x) that word. Consequently, an applicant and an owner could only be a natural person or a legal entity. In the view of the delegate, the discussion on items (x), was, in effect, an attempt to correct the definition of "person" in item (iv). In order to be consistent, one should rectify the definition in item (iv) and widen the scope of that provision to include any natural person or entity regardless of its legal status. If this would be done in item (iv), everything would be quite logical in all the other places where the word "person" was used. Item (x) could be drafted to say that a representative meant any person that could be a representative under the applicable law. It would be

understood that person had the meaning defined in item (iv). This approach would avoid complications and constitute an acceptable solution.

83. Mr. TOURÉ (Burkina Faso), speaking on behalf of his Delegation, said that he wished to have a subparagraph on the representative retained, in view of the importance of the representative's role in the treaty, and supported the proposal made by the International Bureau, described as a simplified, compromise proposal.

84. Mr. HIDALGO LLAMAS (Spain) endorsed the previous statements in view of the fact that subparagraphs (iv) and (x) dealt with different subjects and should not be confused. He considered that the term "representative" should feature in the treaty, but without being defined, that being left to national law. He therefore supported the suggestion by the International Bureau that "representative" should be understood to be a person who could act in dealings within a patent office under national law.

85. Mr. OMOROV (Kyrgyzstan) expressed the support of his Delegation for maintaining item (x). He said that it was very important to include a simplified version of this provision in the Treaty. Furthermore, the Delegate drew attention to item (iv) and expressed his Delegation's belief that the wording should be amended to include a legal person or other entity having legal status or without it. Item (x) could then state that "representative" meant any person that can be a representative under the applicable law.

86. Ms. FRANCISCO (Philippines), considering that many delegations had expressed their opinion on the definition of representative, believed that this item should be retained as one of the defined terms in the Treaty. Regarding the suggestions made so far, she expressed the support of her Delegation for last recommendation of the International Bureau. She further expressed the understanding of her Delegation that the definition of "representative" would apply to "another person" who is filing or prosecuting the application in item (viii) and "representative of the owner" who is maintaining the grant in item (ix).

87. Mrs. AYITÉ (Benin) considered that, given the importance of the role of the representative in the patent filing process, it would not be wise to disregard that point in the definitions, and therefore expressed support for retaining subparagraph (x) in a simplified form. However, in order to avoid the term being defined by itself, the first proposal by the International Bureau would be preferable.

88. Mr. VAN DER EIJK (Netherlands) said that he had the impression that what the Committee tried to achieve was that the question who could be a representative should be left to national law. He felt that in order to achieve this result, a definition was not needed. The Delegation could therefore accept the replacement of item (x) by a Note to Article 7 explaining that this matter is not dealt with by the Treaty but left to national law. However, his Delegation could accept a definition stating that this Treaty does not deal with the question who can be representative, if the majority of the Committee supported such a definition.

89. Ms. WEN (China) said that her Delegation was of the opinion that a definition of the term representative was very important in the context of the Treaty. This term was as important as the terms like applicant or owner. The Delegation said that it could accept the suggestion of the International Bureau to say that representative means representative under the applicable law. However, it said that it preferred a more detailed definition along the lines proposed by the Delegation of Spain, referring to any person that can exercise the function of a representative under the applicable law.

90. Mr. HOLMSTRAND (Sweden) referred to Article 7(1), stating that a Contracting Party may require that a representative have the right under the applicable law to practice before the Office in respect to applications for patent. He suggested that this language dealt sufficiently with the matter of who could be a representative. Assuming that Article 7(1) would be accepted, the Delegation associated itself with the Delegations of Australia and the Netherlands in questioning the rationale for having a specific definition of the concept of representative in Article 1. The Delegate said that such a definition would not only appear to be redundant, but, in view of Article 7(1), it would also be misleading in so far as it contained a reference to applicable national law.

91. Mr. STRENC (Romania) declared that his Delegation strongly believed that a definition of representative was needed, for the purposes of Article 7. The Delegation therefore supported the proposal made by the International Bureau. It also stated that it was in favor of a definition referring to national applicable law.

92. Mr. TRAMPOSCH (WIPO) said that, respect to item (iv), the intention had never been to modify any national law dealing with the definition of "person". The intention has always been to be as inclusive as possible. He further stated that, in the PCT, which was linked to the PLT, there was no definition of "person," and there had never been a problem in the context of that Treaty. The term "person" could therefore be left to national law, just as the term "representative" could be left to national law. With respect to item (x), two main threads appeared in the discussion. One was to leave the term "representative" to the applicable law, since it did not need to be included in the Treaty. The other was that the term "representative" was so important that there should be some mention in the Treaty to show that the intention of the Diplomatic Conference is that the definition be left to applicable law. In cases where a principle is felt to be self-evident and yet is felt to be so important that the Diplomatic Conference desired to express itself in writing and in full agreement on those principles, an agreed statement could be used. One possibility for the definition of "representative" and the definition of "person" would be for the Diplomatic Conference to adopt an agreed statement, stating that in adopting the Treaty the Diplomatic Conference understood and intended that the term "representative" mean a representative under the applicable law, and that the definition of the term "person" was intended to be left to applicable law. One potential difficulty in leaving provisions in the Treaty simply stating that the definition of a term was left to applicable law was that it could raise the question of whether other terms that were not mentioned in the Treaty were not left to applicable law. This could create problems in the future that one might not be able to anticipate at this time.

93. Mr. BADRAWI (Egypt) said that his Delegation believed that the definition was required with Treaty, and that the definition proposed by the International Bureau was valid, because it left matters up to applicable law. Similar wording could be found in very many treaties. Unless otherwise stipulated, national law would deal with this matter. The Delegation concluded by saying that the definitions of "representative" and of "person" should appear in the Treaty and not in an agreed statement.

94. Mr. HERALD (Australia) fully supported the proposal of the International Bureau. He said that his Delegation was becoming concerned during the discussions on item (x) that there were numerous references back to item (iv). The Delegation was concerned that the suggestion to expand the latter would conflict with Australian law. There appeared potential difficulties in how to define a "person" in respect to entities and firms and partnerships where the law was clearly different in different jurisdictions. In the view of his Delegation, the Treaty was not seeking to harmonize the substantive legal issues behind who is a "person" or who is a "representative" as such. Rather, this definition seemed being intended to make clear that where the word "person" or "representative" was used, this was in accordance with the national legal requirements of the country concerned. The Delegation also observed that the PCT did not define a "person". Given the relationship between PLT and the PCT, the Delegation of Australia expressed concern about the effect of providing a definition of a term in the PLT, which is commonly used in the PCT without a definition, because that would potentially create a different scope of the term as used between the two treaties. Given the relationship between the PLT and the PCT, this was undesirable. For those reasons, the Delegation of Australia strongly supported item (iv) and (x) with a clear agreed statement from the Conference that it is intended that national law or the applicable law apply.

95. Mr. BARTELS (Germany) reiterated that his Delegation was in favor of maintaining items (iv) and (x) in the Treaty. The function of Article 1 was to clarify some expressions, which appeared to need clarification. It was of course, not necessary to include in Article 1 the definition of an item which was seen as self-explanatory. However, the Delegation of Germany felt a need for clarification at this point as a position at the beginning of the Treaty. Therefore, it thought that it should be said clearly in the Treaty that a "representative" is a representative as defined by the national law.

96. The PRESIDENT declared that, after having heard a long discussion with a wide variety of views expressed, it seemed to him that in a consensus was reached in principle, namely to make it clear that the determination of who may be a representative is a matter that is to be left to national law. The discussion was primarily about how to reflect that intention. Of all of the Delegations that had spoken, the majority appeared to be in favor of having a simplified definition. The majority seemed to support the proposal by the International Bureau to have the definition read as "representative means a representative under the applicable law."

97. *The PRESIDENT declared Article 1(x) adopted in substance and referred to the Drafting Committee.*

98. The PRESIDENT then re-opened discussion on Article 1(iv).

99. Mr. GRIGORIEV (EAPO) said that he was concerned over the fact that the definition in item (iv) appeared in other provisions of the Treaty. In particular with regard to the definition of "applicant", this created a situation where only a natural person or a legal entity may apply for a patent. Anyone else beyond those to categories was excluded. The Delegation said that, although it could go along with that proposal in principal, but that it had a doubt in this respect.

100. Mr. TRAMPOSCH (WIPO) said that the Delegation of the EAPO had raised a very important point. However, reference to "person" in this item was not meant in any way to exclude any person, any entity, any organization, any firm, any partnership that is currently able under national law to do or take the kinds of acts that are referred to in the Treaty. He recalled that Article (1) was not entitled "definitions". It was entitled "abbreviated expressions", because it simply clarified the terms that were used in the Treaty, in order to avoid that that bulky language had to be repeated over and over again in the Treaty. The intention of item (iv) was to say that references to a person should not be construed as a natural person as perhaps would be done in everyday language, but should also include legal entities. The danger now was that the reference could be too restrictive. One suggestion might be to modify this definition so that it was not exclusive or exclusionary in any way, namely that references to a person should be construed as including, in particular, a natural person and a legal entity. This would mean that something other than a natural person or a legal entity could also be a person if that is appropriate under the applicable law. In conclusion, he suggested the following wording for item (iv): "References to a person shall be construed as including, in particular, a natural person and a legal entity."

101. Mr. TRÉPANIER (Canada) said that his Delegation supported the wording suggested by the International Bureau.

102. Mr. BADRAWI (Egypt) stated that his Delegation fully endorsed the proposal by the International Bureau.

103. The PRESIDENT noted that there were no objections to the suggestion made by the International Bureau.

104. *The PRESIDENT declared Article 1(iv) adopted, subject to the changes proposed by the International Bureau.*

Second Session

Monday, May 15, 2000

Afternoon

104*bis* The PRESIDENT re-opened the discussion on Article 1(viii).

105. Mrs. BOLAND (United States of America) proposed the insertion of the phrase "pursuant to the applicable law" after "the person who." She explained that the person who is applying for a patent should be subject to the same limitations as the person who is filing or prosecuting an application, and that in both instances the applicable law should control.

106. Mr. BADRAWI (Egypt) agreed in substance with the proposal made by the United States of America because of course we have to follow the applicable law had to be followed.

107. Mr. TRAMPOSCH (WIPO) suggested to add the words ", pursuant to the applicable law," after the word "Office" on the first line, to delete the words "whom the records of the Office show" on the second line, and to delete the words ", to the applicable law," in the third line, so that Article 1(viii) would read:

"applicant" means the person whom the records of the Office, pursuant to the applicable law, show as the person who is applying for the patent or as another person who is filing or prosecuting the application."

108. *The PRESIDENT declared Article 1(viii) adopted in substance with the amendments proposed by the International Bureau and referred to the Drafting Committee.* He opened the discussion on Article 1(xi).

109. Mr. BADRAWI (Egypt) stated that Article 1(xi) merely provided a linguistic explanation of the word signature, and suggested to add a legal element by providing that signature means the signature of the person who is legally authorized to sign.

110. Mr. TRAMPOSCH (WIPO) explained that Article 8(4) required a Contracting Party to accept any signature that complies with the requirements in the Regulations, and that this would not oblige Contracting Parties to accept a signature of a person who is not authorized to sign. He pointed out that one possibility would be to retain the current definition of "signature" in item (xi), but to add the words "of a person who is legally authorized to sign."

111. Mr. BROWN (EPI) asked how such a restriction would match with Rule 9 in cases where a "person" as defined in Article 1(iv) did not sign.

112. Mrs. EL MAHBOUL (Morocco) suggested retaining item (xi) as it stood, given that Rule 9(iii) and Note 1.09 were sufficiently explicit.

113. Mr. BADRAWI (Egypt) stated that there would not seem to be any contradiction. He explained that the person who is legally authorized to sign would not necessarily be the applicant or owner, but could also be a duly authorized representative.

114. Mr. HENNESSEY (ABA) supported the retention of Article 1(xi) as currently drafted and stated that the addition would merely add complications.

115. Mr. HERALD (Australia) supported leaving Article 1(xi) as proposed in the original text and said that the definition was an attempt to take account of electronic filing and the need for alternative forms of self-identification other than the traditional hand-written signature. He expressed concern about adding a further procedural step by allowing an investigation as to the authority of the person who signed the particular document. This would seem to run counter attempts to eliminate any need for verification of signatures.

116. Mr. KOGDA (Burkina Faso), speaking on behalf of his Delegation, regarded the proposal by a number of delegations that item (xi) should be retained since it was the most appropriate, in as much as it would be difficult for a legal entity to produce a signature. Such an act could only be performed by a natural person authorized to do so.

117. Ms. FRANCISCO (Philippines) supported the retention of item (xi) as currently drafted. She said that the issue of authority of the person signing, or the legality of his signature, could be addressed in other provisions.

118. Mr. TRAMPOSCH (WIPO) stated that even without the proposed addition any Contracting Party could reject the signature of someone who is not authorised to sign the relevant documents, and suggested to clarify this in the Notes. He added that the proposed addition might lead to linguistic difficulties because the signature of someone who is not authorised to sign could be considered as not being a signature. He stated that item (xi) as drafted could cover digital signatures for electronic filing as well as a sign or seals and would, consequently, allow countries who currently accept a sign or seal instead of a hand-written signature to continue this practice.

119. Mr. BADRAWI (Egypt) stated that item (xi) as currently drafted provided a mere explanation which would seem more appropriate for a dictionary rather than a Treaty, and that he, therefore, favoured the addition of a legal element by referring to the authorization to sign.

120. Mr. TRAMPOSCH (WIPO) said that a dictionary would probably define a signature as a handwriting on a page that self-identifies, and explained that the legal import of item (xi) as currently drafted was in the word "any" which extended the definition of "signature" to means of self identification that went beyond a hand-written signature, such as a sign or a seal or a digital signature which otherwise would not fall under the definition of the term signature.

121. *The PRESIDENT concluded that there was no support for the amendment proposed by the Delegation of Egypt and that Article 1(xi) was adopted in substance as it appears in document PT/DC/3, and referred to the Drafting Committee.* He opened the discussion on Article 1(xii).

122. Mr. DRISQUE (Belgium) asked the International Bureau whether the present wording of item (xii) might otherwise prevent a Contracting State from continuing to apply a linguistic law that required a legal entity to use the language of the region of the State in which its headquarters was located.

123. Mr. LEWIS (WIPO) stated that the problem raised by the Delegation of Belgium had been discussed at previous meetings and had led to the inclusion of the words "for the relevant procedure before the Office". The provision could, therefore, be interpreted as referring not only to the nature of the procedure, such as the filing of the application, an opposition proceeding, etc; but also to some geographical restriction in the relevant procedure. He suggested clarifying this in the Notes.

124. Mr. DRISQUE (Belgium) said that he was able to withdraw his Delegation's reservation, insofar as the explanations given by the International Bureau would be included in the Explanatory Notes.

125. Mrs. LÖYTÖMÄKI (Finland) asked for a clarification of Article 1(xii) and stated that Article 1(xii) would seem to relate, in the context of Article 6(3), to the filing of the application, without affecting the translation requirements during or after the search and examination process. She explained that in Finland the application could be filed in any language in order to get a filing date, but the Office would then request the applicant to file a translation into one of the official languages. Once the search and examination process has started and the application became available to the public, a translation of the claims and the abstract into the other official language was also requested. She asked whether Article 1(xii) as currently drafted would allow her Office to continue this practice, which had been instituted to guarantee the constitutional rights of Finland's national language minority.

126. Mr. TRAMPOSCH (WIPO) replied that Article 1(xii) would probably not allow the continuation of that practice.

127. Mrs. LÖYTÖMÄKI (Finland) stated that under these circumstances she would find it hard to accept a solution that would restrict the constitutional rights of Finland's national language minority, and that she would raise the issue under Article 6(3).

128. Mr. STOHR (EPO) expressed concern with regard to the Notes to Articles 1(xii) and 6(3). According to Note 1.10, the term "for the relevant procedure before the Office" relates to the situation in which an Office has different language requirements for different procedures. He explained that the EPC requires that the application be filed in one of the official languages in order to be processed. However, before the patent is granted, the applicant has to provide a translation of the claims into the two other languages, which are not the languages of procedure, for the purpose of integrating them into the European Patent Specification. He suggested to include this case in Note 1.10 as an additional example, provided that Article 6(3) of the draft PLT could be interpreted accordingly, and proposed to address the issue in the context of Article 6(3).

129. Mr. SHALIT (Israel) stated that in Israel applicants were required to file the title of the invention in English and Hebrew to allow all citizens ascertain the field of the invention, and that his country wished to continue this practice. He also suggested addressing this issue in the context of Article 6(3).

130. Mr. LEBESNERAIS (France) endorsed the comments made by the EPO whereby consideration of the present item was linked to that of the definition of the language accepted by the Office under Article 6, since a translation of the patent application in both other languages of the Office had to be supplied for a European patent to be granted.

131. Mr. BARTELS (Germany) asked whether the phrase "a language accepted by the Office" in Article 1(xii) could be interpreted as referring to all languages accepted by an Office at various stages of the procedure, thus covering the case where an Office accepted one language at an early stage, and later required translation in two other languages so that the procedure was in three languages simultaneously.

132. Mr. TRAMPOSCH (WIPO) replied that, without any change to Article 6, such procedure would be precluded, and suggested to address this issue in the context of Article 6(3).

133. The PRESIDENT concluded that Article 1(xii) was adopted on the understanding that discussions could be re-opened if this appeared necessary in the discussion of Article 6, and that the Notes would be clarified to respond to the concerns voiced by the Delegation of Belgium.

134. *The PRESIDENT declared Article 1(xii) adopted in substance and referred to the Drafting Committee. He opened the discussion on Article 1(xiii).*

135. Mr. PANTULIANO (AIPLA) suggested either to include, in the Note to item (xii), a similar explanation as in Note 1.10 to the effect that "a language accepted by the Office" refers to a verbal and to a computer language, or to insert, in item (xiii), the word "verbal" before the word "language".

136. Mr. TRAMPOSCH (WIPO) stated that the phrase "language accepted by the Office" was intended to have the same meaning in item (xiii) as in item (xii) and could be defined in the same way as in Note 1.10.

137. *The PRESIDENT declared Article 1(xiii) adopted in substance and referred to the Drafting Committee as proposed*

138. *The PRESIDENT declared Article 1(xv) adopted in substance and referred to the Drafting Committee as proposed. He opened the discussion on Article 1(xviii).*

139. Mr. BAVYKIN (Russian Federation) proposed, without objecting to the wording of item (xviii) itself, to distinguish more clearly between States and intergovernmental organizations throughout the Treaty. Article 4, "National Security", for example, could not apply to an intergovernmental organization, and there were other instances in the Treaty that could only apply to States, such as those dealing with citizenship, territory or procedure of ratification. He proposed to add, in Article 1, a number of definitions which would take account of the difference between States and intergovernmental organizations as subjects of international law, such as a definition of "territory", "Contracting Party" and "instrument of ratification". He referred to precedents in the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs of July 2, 1999, that provided, in Article 1 item (xv), a definition of "territory", and in item (xxix) a definition of "instrument of ratification". Noting that the draft PLT repeatedly refers inaccurately to the legislation of States and intergovernmental organizations, he suggested to include a definition of legislation that distinguishes between the legislation of States and basic documents of intergovernmental organization parties to the Treaty.

140. The PRESIDENT invited the Delegation of the Russian Federation to prepare a written proposal and, in the meantime, deferred discussion of Article 1(xviii).

141. *The PRESIDENT declared Article 1, items (xix), (xx), and (xxi) adopted in substance as proposed and referred to the Drafting Committee.*

Rule 1: Abbreviated Expressions

142. *The PRESIDENT declared Rule 1 adopted in substance as proposed and referred to the Drafting Committee.*

Title of the Treaty

143. Ms. LACHOWICZ (Poland) proposed the adoption of a title that was more in line with the content of the Treaty, which is dealing with procedural formalities rather than with substantive patent law.

144. Mr. TRAMPOSCH (WIPO) recalled that, at the time when discussions moved from substantive to procedural harmonization, it was decided to retain the title "Patent Law Treaty" because it would conform to the Trademark Law Treaty, which also deals with procedural matters.

145. Mr. HERALD (Australia) noted that any future instruments aiming at the harmonization of substantive patent law could be adopted by way of protocols to the PLT. Therefore, the title "Patent Law Treaty" could serve as a basis for issues covering formalities as well as issues of substantive law.

146. Mr. TRAMPOSCH (WIPO) replied that the adoption of protocols to the PLT or a revision of the latter could provide ways of going forward, but that the final decision would lie with the Member States of WIPO.

147. Mr. VIDAURRETA (Argentina) said that his Delegation agreed to the title proposed for the Treaty, as it was correct in conceptual terms.

148. Mr. BOGDANOV (Russian Federation) said that his Delegation preferred a title for the Treaty that adequately reflected its contents. At present, the draft Treaty was dealing only with formal aspect of patent law and explicitly excluded, in Article 2, any harmonization of substantive patent law. He proposed to use the title "Treaty on Formal Aspects of Patent Law".

149. Mr. KAUDYROV (Kazakhstan) supported the proposal made by the Russian Federation.

150. Mr. BADRAWI (Egypt) supported the retention of the title of the Treaty as contained in the Basic Proposal on the grounds that it was in conformity with the title of the Trademark Law Treaty (TLT) which, like the draft Treaty, dealt exclusively with procedural law.

151. Mrs. BOLAND (United States of America) stated that her Delegation was in favor of keeping the title "Patent Law Treaty"

152. Mr. GUTTORMSSON (Iceland) expressed his satisfaction with the title of the Treaty as proposed in the Basic Proposal and opposed any change.

153. Mr. BOUHNİK (Algeria) declared himself in favor of retaining the title as it stood.

154. Mrs. AYITÉ (Benin) also spoke in favor of retaining the present title.

155. Mr. EL FAKI ALI (Sudan) expressed his preference for changing the title of the Treaty in a way that it more clearly reflects its contents. This argument is logically sound, though it is the minority view.

156. Mr. CAVAZOS TREVIÑO (Mexico) favored retaining the title of the Treaty as worded in the Basic Proposals, since it did not prejudge the question of whether substantive or procedural law was involved.

157. The PRESIDENT noted that there were only four delegations who supported changing the title of the Treaty. Since no delegation had indicated that it could not accept the existing title, *he concluded that the current title of the Treaty was adopted.*

Article 2: General Principles

158. Mr. BAECHTOLD (WIPO) introduced Article 2. He explained that the Article 5 was excluded in paragraph (1) pending a decision as to whether the bracketed words "no later than" in Article 5(1) would be retained or not. He explained that provisions similar to paragraphs (1) and (2) were contained in Article 27(4) PCT and Article 27(5) PCT.

159. Mr. HIDALGO LLAMAS (Spain) announced that his Delegation would make a proposal for amendment of the Spanish version of Article 2(2) so that it might better correspond to the English text. The final words of paragraph (2) should read: *"para establecer los requisitos que desee de derecho nacional sustantivo aplicable a patentes"* ("to prescribe such requirements of the applicable substantive law relating to patents as it requires").

160. The PRESIDENT stated that the drafting change in the Spanish text would be referred to the Drafting Committee. He also concluded that Article 2(1), as proposed, was adopted in substance and referred to the Drafting Committee on the understanding that the discussion could be reopened if it proved necessary in the context of the discussion of Article 5.

161. *In the absence of any proposals to the contrary, the PRESIDENT also concluded that Article 2(2), as proposed, was adopted in substance and referred to the Drafting Committee.*

Article 3: Applications and Patents to Which the Treaty Applies

162. Mr. BAECHTOLD (WIPO) introduced the provision. He proposed, in paragraph (1)(b)(ii), that the word "from" be replaced by the words "in respect of any procedure, commenced after". He explained that this proposal was intended to adapt item (i) to the wording used in Article 21(2), and to clarify its meaning.

163. Mr. BOGDANOV (Russian Federation) expressed concern with regard to Note 3.01 according to which the Treaty applies to all applications filed with an Office of a Contracting Party irrespective of the nationality of the applicant, owner or other interested person. He noted that this interpretation was not creating an incentive to accede to the Treaty because nationals of a State would enjoy all the rights afforded by the Treaty even if that State was not a Contracting Party. He therefore suggested to delete this interpretation from the Explanatory Notes.

164. Mr. TRAMPOSCH (WIPO) explained that Note 3.01 merely stated an obligation which flowed from the national treatment obligation under the Paris Convention for the Protection of Industrial Property (Paris Convention). Contracting Parties to the Treaty would be subject to that obligation either as Parties to the Paris Convention, as Members of the World Trade Organization (WTO), or under Article 15 of the Treaty which requires compliance with the provisions of the Paris Convention.

165. Mr. BOGDANOV (Russian Federation) explained the view that the interpretation contained in the Explanatory Notes would seem to go beyond the national treatment obligation under the Paris Convention and the Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), in that it seemed to require the extension of national treatment to all applicants, irrespective of whether they are nationals of a State party to any of these treaties. He said that nothing in the draft Treaty would seem to support such an interpretation.

166. Mr. TRAMPOSCH (WIPO) recalled that it had been the understanding of the SCP during its discussion of the draft that the PLT should apply to all applications that fulfilled the requirements under Article 3. He suggested that, a different interpretation would require an amendment of Article 3.

167. Mr. AHLERT (ABAPI) asked for a clarification of Note 3.03 in document PT/DC/5 according to which "the Treaty and Regulations do not apply to the applications listed in that Article other than applications for patents for invention, and applications for patents of addition, namely applications for inventor's certificates, utility certificates, utility models..." He asked, in particular, whether utility models were not included in the provisions of the Treaty.

168. Mr. BAECHTOLD (WIPO) explained that Note 3.03 listed all applications which are not covered by the draft PLT, and that, as stated in that Note, utility models were not covered.

169. Mrs. BOLAND (United States of America) proposed that, in item (i) of Article 3(1)(a), the words "that can" be replaced by the words "permitted to" for improved clarity. She also proposed the insertion of the phrase ", of the types of the applications in (i)," after the words "divisional applications", in item (ii) of Article 3(1)(a) to clarify that such divisional applications were, in fact, the types of applications referred to in item (i).

170. The PRESIDENT noted that these proposed amendments could be considered in the context of Main Committee I.

171. Mr. BADRAWI (Egypt) proposed to clarify in Article 3(1)(a) that the Treaty only applies to applications that are accepted under the substantive law of Contracting Parties.

172. Mr. TRAMPOSCH (WIPO) replied that this was the intention of the current text of Article 3(1)(a) which, by referring to "national and regional applications" only covers applications which are accepted as national or regional applications by a national or regional Office. He suggested that this be clarified in the Explanatory Notes.

173. Mr. BADRAWI (Egypt) supported the inclusion of such an explanation in the Notes.

174. Mr. BOGDANOV (Russian Federation), with reference to his previous intervention, asked the International Bureau to explain the legal basis in the draft Treaty for the interpretation contained in Note 3.01 in document PT/DC/5.

175. Mr. TRAMPOSCH (WIPO) explained that Article 3(1)(a) applied the provisions of the Treaty and the Regulations to all national and regional applications for patents for invention and for patents for addition which are filed with or for the Office of a Contracting Party, without restriction. In particular, the

provision did not authorize a Contracting Party to limit the application of the Treaty to applications filed by its own nationals or by nationals of other Contracting Parties.

176. Mr. BOGDANOV (Russian Federation) stated an international treaty was, in general, only applicable to countries party to that Treaty, unless it contains an explicit indication to the contrary. He said that the draft PLT did not contain such an indication.

177. Mr. TRAMPOSCH (WIPO) noted that the Trademark Law Treaty (TLT), like the draft PLT, contained no explicit limitation regarding nationals of States that are not party to it. He observed that the TLT, like the draft PLT, constituted a harmonization Treaty, as opposed to international registration agreements which could be subject to reciprocity. He noted that it had been the intention of the SCP to make the PLT applicable to all applications irrespective of the nationality of the applicant. He commented that although a provision could be added to the draft PLT that would make that principle explicit, such a provision could lead to an *a-contrario* argument in the context of the TLT which does not contain such a provision.

178. Mr. HERALD (Australia) commented that the insertion, in item (ii), of the phrase "of the types of applications" suggested by the Delegation of United States of America might render that provision ambiguous because it would not be clear whether it refers to the "parent application" or to the divisional application.

179. Mr. HABIBI (Libyan Arab Jamahiriya) asked whether the draft Treaty would apply to utility models.

180. Mr. BAECHTOLD (WIPO) explained that in Note 3.03 in document PT/DC/5, utility models were expressly included in the list of applications which are not covered by the draft PLT.

181. Mr. VIDAURRETA (Argentina) gave his agreement to the wording of Explanatory Note 3.01, as the purpose of the Treaty was to harmonize formal aspects of applications, and it did not allow objections to be raised on the basis of an applicant's nationality. With reference to Explanatory Note 3.03, he asked the International Bureau whether his country could extend the application of the Treaty to utility models if it so wished, even though it was not bound to do so.

182. Mr. TRAMPOSCH (WIPO) confirmed that Contracting Parties would not be obliged to apply the Treaty to utility models, although though they could do so if they wished if necessary, this could be further clarified in the Explanatory Notes.

183. The PRESIDENT invited comments on the point raised by the Delegation of Australia concerning the amendment proposed by the Delegation of the United States of America as to whether divisional applications would have to be of the types of applications referred to in (i).

184. Mrs. BOLAND (United States of America) stated that, according to her proposal, the divisional application itself should be of the type of application referred to in paragraph (i).

185. The PRESIDENT invited comments on the issue raised by the Delegation of the Russian Federation and asked whether, in view of the fact that there was no support from other delegations for an amendment of either the Article itself or of Explanatory Note 3.01, it would be acceptable to the Delegation of the Russian Federation to go along with an adoption of Article 3(1)(a) as currently drafted.

186. Mr. BOGDANOV (Russian Federation) said that he did not object to the text of the Article and that his Delegation was prepared to approve it. However, he reiterated his concern with regard to Explanatory Note 3.01.

187. Mrs. ABD EL GAWAD (Egypt) asked how the reference to the PCT in Article 3 was to be interpreted in the case of a State that was not party to that Treaty.

188. Mr. TRAMPOSCH (WIPO) explained that there was a fundamental difference between the PCT and the draft PLT. On the one hand, the PCT provided for a single international application which has to be acknowledged and respected by all States party to the PCT, and set up an administrative system among its Contracting Parties. This had the effect that someone who is not a national or resident of Contracting Party cannot file an application under the administrative system, which would be recognised by all Contracting Parties of the PCT. On the other hand, the provisions of the draft PLT applied only to national applications in the national Office of a Contracting Party. The PLT neither creates an international

administrative system in itself, nor does it provide an administrative link to the system created by the PCT. By acceding to the PLT, a country would not automatically become a part of the international administrative system created by the PCT or of any other international administrative system. If a country joined the PLT, it would be obliged to modify its national procedures so that these procedures would be similar to the procedures under the PCT. These procedures would, however, remain national procedures.

189. *The PRESIDENT concluded that Article 3(1)(a) was adopted in substance with the amendments proposed by the Delegation of the United States of America, and referred to the Drafting Committee.*

190. Mr. STOHR (EPO) stated that his Delegation could support Article 3(1)(b) with the amendment suggested by the International Bureau, but proposed that Note 3.07 be amended to take account of the fact that, since Part X of the EPC provides for the processing of international applications before the European Patent Office, Article 3(1)(b) applied to the EPO even though it was not a party to the PCT.

191. Mr. BAECHTOLD (WIPO) agreed that Note 3.07 should be amended accordingly.

192. Mr. BÜHLER (Switzerland) asked the International Bureau how Article 11, which related to a time limit set by the Office, could apply to the time limits appearing in Articles 11 and 12 and Rules 12 and 13, which were applicable to the time limits referred to in Articles 22 and 39(1) of the PCT, as mentioned in Note 3.08 of document PT/DC/5.

193. Mr. TRAMPOSCH (WIPO) stated that on further consideration, he agreed that Article 11 and Rule 12 did not apply and Note 3.07 should be amended in this respect.

194. Mrs. BOLAND (United States of America) said that her Delegation could support the amendment suggested by the International Bureau. She additionally suggested to insert a comma after the words "international applications" in the chapeau of subparagraph (b), in order to make sure that the reference to international applications applied to both patents for invention and patents of addition.

195. Mr. HERALD (Australia) supported the amendment to Article 3(1)(b)(ii) proposed by the International Bureau.

196. Mr. BOGDANOV (Russian Federation) stated that his Delegation agrees with the text as contained in the Basic Proposal and did not see a need for an amendment.

197. Mr. TRAMPOSCH (WIPO) suggested to add the words "on or" before the word "after" in item (ii).

198. *The PRESIDENT concluded that Article 3(1)(b) was adopted in substance with the amendments suggested by the International Bureau and referred, together with the proposal by the Delegation of the United States of America, to the Drafting Committee.*

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199. The PRESIDENT opened the meeting.

200. Mr. EREMENKO (EAPO) asked for clarification regarding the relationship between paragraphs (1) and (2) in Article 3. Paragraph (1) referred to the provisions of the Treaty and the Regulations that would apply to national and regional applications for patents. According to paragraph (2), the provisions of the Treaty and the Regulations would apply to patents for invention, but no mention of regional patents was made in that paragraph. Since the Treaty and the Regulations would apply under paragraph (1) to national and regional applications, a similar reference should be contained in paragraph (2).

201. Mr. TRAMPOSCH (WIPO) explained that the terms "national and regional" were more often used in connection with the term "application," but that there were patents that were in effect regional patents, although they had national effect. One possible solution would be to add the words "national and regional" before the word "patents" in paragraph (2) the first line of the English text.

202. Mr. HERALD (Australia) said that, in the opinion of his Delegation, a simple insertion of the words "national and regional" before the word "patents" did not seem to be sufficient, because that would refer only to national and regional patents for invention, but not to patents of addition. Therefore, the draft appeared to need further revision.

203. Mr. HE (China) said that his Delegation was seeking clarification with regard to the terminology used in Article 3. In particular, he noted that paragraph (2) referred to patents for invention, patents of addition, granted re-issue patents and so on, whereas paragraph (1) would only cover applications for patents for invention and for patents of addition. The delegate was not clear why there was that difference between the two paragraphs.

204. Mr. LEWIS (WIPO) explained that the ideal underlying the drafting of Article 3(1) and (2) was that the terminology used in both paragraphs should be the same as the terminology which is used in the PCT. Furthermore, the terms used in the PLT should have exactly the same meaning as those terms under the PCT. This was expressly stated in Note 3.11 of document PT/DC/5. Patents for invention were basically conventional patents, which constituted presumably 99% of the applications for patents. Patents for addition were special types of patents that existed in some jurisdictions. These patents protected any improvement in an invention already protected by a patent. Patents of addition had the following features: First, the fees are lower. Second, it may not be possible to consider the first invention from the point of view of obviousness and from the point of view of inventive step. It may be considered obvious from the point of view of novelty, but it may be excluded for the purposes of determining inventive step. Third, the term of protection would be shorter, since it would be tied to the term of the original patent.

205. Mr. HE (China) referred to Note 3.12, where it was stated that the Treaty and the Regulations were not applicable to certain kinds of applications that can be filed under the PCT. However, the Treaty and the Regulations would be applicable to patents that were granted as a result of such applications having been filed. There appeared to exist an inconsistency.

206. Mr. BAECHTOLD (WIPO) explained that the types of applications which were referred in Note 3.12 were not covered by the PLT, because they could not be filed as international applications under the PCT. However, once a patent was granted, the distinction as to the kind of application based on which it was granted became meaningless.

207. Mr. BADRAWI (Egypt) suggested that the provisions should be formulated in a way to be applicable to patents for invention and to patents of addition on the basis of national or regional applications as mentioned in paragraph (1). This suggestion could solve the drafting problem.

208. Mr. TRAMPOSCH (WIPO) said that one needed to be very careful when linking paragraph (2) to paragraph (1), because it could limit paragraph (2) to applications mentioned in paragraph (1). Patents that were granted on applications which might not be covered by paragraph (1) should still be covered by paragraph (2). If there were no objection to using the term "national and regional patents for inventions" and "national and regional patents of addition," the International Bureau would suggest using that language.

209. Mr. STOHR (EPO) said that his Delegation supported the insertion of the expression "national or regional patents" as proposed by the Delegation from the EAPO. This addition was of particular importance with regard to the future Community patent which would be a true regional patent, as opposed to the present European patent which, after grant, was subject to the national law of the Contracting States.

210. Mr. SHALIT (Israel) explained that, under the law of his country, patents of addition were available. A person who made an international application under the PCT could request, at the time of filing the PCT application, that the application be treated as a patent of addition in Israel or in other countries that have patents of addition. This request could even be made on, or after, entering the national phase under the PCT.

211. Mr. HE (China) said that his Delegation still had doubts with regard to Note 3.12. He wondered whether the Note was not in contradiction with the Article itself, since the scope of paragraph (1) seemed to be narrower than the scope of paragraph (2).

212. Mr. LEWIS (WIPO) explained that, as far as applications were concerned, the Committee of Experts and the Standing Committee had decided to restrict the application of the Treaty to those kinds of applications which could be filed as applications under the PCT, plus divisional applications because they were provided for under the Paris Convention and they were very similar in terms of their requirements. As far as patents were concerned, there were a number of procedures which were linked to patents under the Treaty, and the most important ones were those contained in Rules 15 to 18. The Committee of Experts and the Standing Committee were of the view that the same procedures should apply to all patents so that there would be no distinction between patents which have arisen from a provisional application and patents which have arisen from an ordinary application. It did not seem to make much difference whether or not the patent was first filed as a provisional application, or as an ordinary patent for invention. The idea was to obtain uniformity in the practice in the procedures before the Office in respect of patents.

213. The PRESIDENT recalled that the Delegation of the EAPO had proposed to add, in Article 3(2), the words "national and regional." Taking into account the suggestion of the Delegation of Australia, it appeared to be necessary to include these words in two places, in the first line before the words "patents" and, again, in the second line before the word "patents." The provision would read as follows: "The provisions of this Treaty and the Regulations shall apply to national and regional patents for invention, and to national and regional patents of addition, which have been granted with effect for a Contracting party."

214. *The PRESIDENT declared Article 3(2) adopted in substance, subject to the modification that was agreed, and referred to the Drafting Committee.*

Article 4: National Security

215. The PRESIDENT informed the meeting that the Delegation of the Russian Federation had announced a proposal concerning Article 4. He postponed discussion on this provision until that proposal had been circulated.

Article 5: Filing Date

216. Mr. DUMONT (Argentina) said that the Latin American countries were working on a proposal, and asked for the same procedure to be observed for Article 5 as for Article 4.

217. The PRESIDENT postponed discussion on Article 5 until the proposal announced by the Delegation of Argentina had been circulated.

Article 6: Application

218. Mr. LEWIS (WIPO) introduced Article 6(1). He explained that this paragraph dealt with the form and contents of the application. It provided that no Contracting Party had to comply with any requirement relating to the form or contents of an application that was different from or additional to the requirements relating to the form or contents which were provided for in respect of international applications under the PCT, the requirements relating to the form or contents which may be required in the international phase under the Patent Cooperation Treaty, and any further requirements prescribed in the Regulations.

219. Furthermore, Mr. Lewis said that there were two changes that the International Bureau would like to suggest. Both of these were in the chapeau of Article 6(1). The first concerned the deletion of the words "or prescribed in the Regulations." The reason for this was to avoid the possibility of requirements under paragraph (1), being amended by a provision other than Rule 3(1), which was subject to unanimity.

220. The second proposed amendment was the omission of the words "and subject to paragraph (6). The words "except where otherwise provided for by this Treaty" seemed to be sufficient to cover paragraph (6) and, therefore, the words "and subject to paragraph (6)" were not necessary. In conclusion, the chapeau of Article 6(1) would read: "Except where otherwise provided for by this Treaty, no Contracting Party shall require compliance with any requirement relating to the form or contents of an application different from or additional to:".

221. The PRESIDENT asked the Delegation of the United States of America to introduce its proposal contained in document PT/DC/8.

222. Mrs. BOLAND (United States of America) said that the proposal related to the fact that the term "Contracting State" was used in Article 6(1)(ii) for the first time in the Treaty and her Delegation was of the opinion that perhaps a qualifying definition of that term, as was defined in PCT Article 2 would be appropriate.

223. Mr. TRAMPOSCH (WIPO) suggested to replace, in item (ii), the words "Contracting State of .." with the definition contained in the PLT, namely the words "States party to,".

224. Mr. BOGDANOV (Russian Federation) said that if regional organizations could become parties to the PCT, the words "State party to" appeared not to be appropriate.

225. Mr. THOMAS (WIPO) explained that although the PCT provided for international applications under the PCT to have effect in relation to regional patent granting authorities, the membership of the PCT was provided only for States,.

226. The PRESIDENT proposed adoption of Article 6(1), subject to the modification suggested, and to possible additional changes due to the proposals contained in document PT/DC/6, which would allow re-opening the discussion on that provision.

227. *The PRESIDENT declared Article 6(1) adopted, subject to possible changes resulting from the discussion of document PT/DC/6.*

228. Mr. TRAMPOSCH (WIPO) introduced two issues related to Article 6(1) in document PT/DC/6, namely "(1) Incorporation by Reference of Future Changes to the PCT," and "(2) Incorporation under the PLT of Transitional Reservations Contained in the Present PCT Regulations." With respect to incorporation under the PLT of transitional reservations contained in the present PCT regulations, he noted that the importance of the suggestion would be that a number of transitional reservations that were provided for in the Regulations of the PCT would not be carried over into the PLT. These transitional reservations in the PCT were included in order to allow Contracting States of the PCT to have enough time to implement changes in the regulations in their national legislation. The theory was that, when a country joined the PLT, that Contracting Party of the PLT would be required to modify its national legislation and could implement those PCT Regulations at that time.

229. Mr. THOMAS (WIPO) explained the transitional reservation in the PCT. It was recognized that some countries would not be able to change their national law in time to be able to be bound by the changed PCT Regulations at the time when they came into force. Therefore, it had been necessary for the PCT Assembly on a number of occasions to effectively introduce a reservation provision in the PCT Regulations. It was, however, not a reservation in the sense of, for example, the reservations as provided for in the Article 64 of the PCT itself. The purpose of the reservation provision was in effect to enable a country not to apply a certain change in the PCT Regulations because of an incompatibility of that changed provision with the national law until such time as the national law could be brought into compliance. There had been a number of those provisions included in the PCT Regulations in the past, and when all States finally had no problem with certain amended provisions, the reservation provision relating to that matter could be removed from the Regulations. Experience showed that this could normally be achieved within a few years after the amendment of the Regulations. If a country had problems in amending its national law in time to comply with changed PCT Regulations, one would expect that it would normally have a similar problem in relation to the application of the procedures concerning national applications under the PLT.

230. Mr. TRAMPOSCH (WIPO) referred the Committee to document PT/DC/6, Annex 4, containing a suggestion for a new paragraph (1)(c) in Rule 3. He asked the Committee to consider whether this provision should be placed in the Rules or in the Treaty itself. However, it appeared to be better to first consider the principle, before going forward with specific suggestions for drafting and, in particular, where this provision should be included in the Treaty.

231. Mr. HERALD (Australia) said that his Delegation considered the future interaction between the PCT and the PLT to be of fundamental importance for the success of the Treaty. As a starting point, the Delegation was of the opinion that, if, under the PCT, there was an agreement that the Regulations should be changed in a certain manner, it should be a matter of general principle that those amendments

flow automatically into the PLT. However, that part of the mechanism gave rise to a range of interesting issues which had to be addressed. Given the significance of the issue, the Delegation was of the view that they needed to be addressed in a totally transparent manner, and not through subtle interpretation of words in a particular paragraph, such as current Article 6(1)(ii) on which the Delegation had a concern. Two interesting scenarios arise. One was under the PCT, under which there were a number of reservations currently available. One could foreshadow that, in the future, those reservations would continue to be added for new amendments. The Delegation said that it was aware that in respect of some of those reservations, there could be situations where a Contracting Party to the PCT did not need to make a reservation under the PCT, but would under the PLT. The other situation was where a member of the PLT which was not a member of the PCT would be affected.

232. The Delegation expressed his view, when amendments made under the PCT carry through to the PLT, that the reservation mechanisms should continue to apply under the PCT, but that reservations made under the PCT should not automatically flow through to the PLT. Rather, the PLT should provide for a separate mechanism whereby all Contracting Parties under the PLT would be able to make a reservation of the type given under the PCT to any future amendments of the PCT.

233. Mr. THOMAS (WIPO) asked whether the reservation possibility under the PLT would cover only those provisions which had been amended in the PCT Regulations and which were subject to reservation provisions in the PCT Regulations, or whether the PLT reservation would apply to any of the amendments which were being proposed to the PCT.

234. Mr. HERALD (Australia) said that it could well be that, under the PCT, none of the PCT Contracting States would see a need for a reservation on a provision, but a PLT member, who was not a PCT member, might have asked for a reservation. Therefore, unless the PLT was limited to PCT membership, the reservation mechanism under the PLT must address all amendments under the PCT.

235. The PRESIDENT suggested limiting the discussion to the issue of incorporation under the PLT of existing transitional reservation in the PCT, and to consider the broader issue later. He invited further comments at the conceptual or level of principle on the issue of transitional reservations.

236. Mrs. BOLAND (United States of America) said that her Delegation was in support of the formulation suggested by the International Bureau. The Delegation did not have problems with the current draft, but was open to discuss the elevation of this provision to an article and further drafting improvements.

237. Mr. HIDALGO LLAMAS (Spain) requested clarification of the manner in which this mechanism would function, given that there was still a transitional period up to November 30, 2000, for Contracting States to give notification of their reservations. He asked whether all reservations relating to the PCT would be automatically incorporated in the PLT and be enforceable within the PLT context.

238. Mr. TRAMPOSCH (WIPO) referred to the text of Article 6, paragraph (1)(ii). This item permitted that a Contracting Party to the PLT could apply the requirements relating to the form and contents which, under the PCT, might be required by the Office in the national phase. Technically, this could mean that if any Contracting State party to the PCT notified a reservation by November 30, 2000, this reservation would be available under the PLT to all Contracting Parties of the PLT. This seemed to be the result of the drafting and of the linkage between the PLT and the PCT. It appeared that there was no requirement under the PLT for a notification by a deadline, November 30, 2000, in this case, but that if any Contracting State of the PCT availed itself of that possibility, it would become available to all PLT Contracting Parties.

239. Mr. BOGDANOV (Russian Federation) asked for setting aside the discussion of this Article to take some time for future consideration.

240. The PRESIDENT suggested to continue with conceptual discussion before returning to a more detailed discussion of drafts, including possibly a new draft from the International Bureau.

241. Mr. HERALD (Australia) noted that his Delegation had no disagreement with the principal embodied in Rule 3, but that their primary concern was related to the issues of future amendments. It would be regrettable if, in the context of Article 6(1)(ii), with respect to future amendments, one Member State under the PCT put in a reservation with respect to a particular requirement that was not part of the national requirements for all Member States, with the result that it becomes available to all Member

States under the PLT. This would create an interesting scenario for changing national law requirements under the PLT, where the change is effected by the withdrawal of a reservation under the PCT by a PCT Member State.

242. Mr. TRAMPOSCH (WIPO) explained the genesis of the drafting of Annex IV of document PT/DC/6 and the reasons for suggesting to insert it in Article 15 of the Treaty instead of in the Rules. He recalled that, when preparing document PT/DC/6, it was initially thought that a reference to specific provisions of the PCT in the Treaty would not be appropriate since the rule numbers could be changed in the future. However, after further consideration, it was felt that a possibility of amending Rules by the Assembly, even with a unanimity requirement, would not be satisfactory and that the provision concerning existing transitional reservations would be better placed under Article 15.

243. The PRESIDENT asked the International Bureau to introduce the proposals that it was making in PT/DC/6 concerning the incorporation by reference to future changes to the PCT.

244. Mr. TRAMPOSCH (WIPO), referring to the text which was just adopted in Article 6(1), stated that no Contracting Party to the PLT should require compliance with any requirements related to the form or contents of an application, different from, or addition to, the requirements related to the form or contents which were provided for in respect of international applications under the PCT.

245. The definition of the PCT provided for in Article 1(xvii) read "the Patent Cooperation Treaty (PCT), signed on June 19, 1970, as amended and modified," in order to include future modifications. This definition, read in conjunction with the language of Article 6(1), would lead to the conclusion reflected in document PT/DC/6, paragraph (12) which quotes Explanatory Notes 6.08 as follows: "It is inclusive in items (i) and (ii) of Article 6 that any relevant amendments or modifications to the PCT or to the Regulations or Administrative Instructions under the PCT will automatically have effect under the present Treaty." Since the last meeting of the SCP the International Bureau had carefully considered potential problems of international treaty law where a State which adhered to this Treaty would be bound by future changes in another completely separate Treaty, of which it may not even be a Member. In particular, although the Administrative Instructions could be modified by the Director General of WIPO without a vote of the PCT Assembly, those changes would be binding on Contracting Parties of the PLT. The International Bureau had therefore considered a number of possible solutions to this difficulty and came up with four options which were set out on page 5 of document PT/DC/6. Options (1) and (2) were alternatives and Options (3) and (4) were additional mechanisms that could be used in conjunction with either Option (1) or Option (2).

246. From the point of view of international law, the safest way to proceed would be for the PLT Assembly to ratify by a vote every future change to the PCT, before it would be incorporated into the PLT. That vote would give those changes the status of modifications of the Regulations of the PLT. Such an option would not be a problem in the case of changes to the PCT Regulations, because a joint session of the two Assemblies could be called, and when the PCT Assembly adopted changes to the PCT Regulations, the PLT Assembly could then immediately ratify those changes. It would be more difficult when there was an amendment of the Administrative Instructions under the PCT, which were promulgated by the Director General of WIPO sometimes without convening a meeting of the PCT Assembly. Whenever amendments to the Administrative Instructions were promulgated, the PLT Assembly may need to be called into special session to adopt those changes, so that they would have effect under the PLT. A procedure to avoid this, which is incorporated in Option (2) in document PT/DC/6, would be the automatic incorporation of future PCT changes, with the possibility for the PLT Assembly to reject those changes.

247. Either of these two options could be used in conjunction with option three or four, Option (3) provided for a consultation procedure for ratification or rejection of future PCT administrative instructions changes, following a procedure already used under the PCT for the amendment of the PCT Administrative Instructions. Option (4) provided for the possibility of future reservations by PLT members to future PCT changes, until such time as they were able to implement those requirements into their national law.

248. The PRESIDENT invited comments.

249. Mr. MORIYASU (Japan) stated that, from an international law point of view, the automatic incorporation of one Treaty, namely the PCT Treaty, into another Treaty, namely the PLT, was not appropriate and therefore his Delegation could not accept Option (2). His Delegation could accept

Option (1) with provision allowing for "transitional reservations," as explained in paragraph (22) of document PT/DC/6. Thus, his Delegation could support the concept of Annex 2.

250. Mr. BOUCOUVALAS (Greece) said that his Delegation is supporting Option (1) in combination with Options (3) and (4), to avoid constitutional problems that would arise for his country if the amendments to the PCT were to be automatically incorporated into the PLT. Referring to Option (4), providing for individual or general reservations to future PCT changes by PLT Contracting Parties, he asked the Secretariat to specify the relevant provisions in the Draft Treaty and the Regulations.

251. Ms. FRANCISCO (Philippines) asked if the matter under consideration was the result of a PCT meeting and whether the Committee was being asked to consider a decision of the PCT Assembly. She also asked whether there had been a final decision by the PCT Assembly to align the PCT with the PLT. For the time being, the Delegation supported Option (1).

252. Mr. THOMAS (WIPO) explained that the contents of document PT/DC/6 did not, as such, embody the decisions of the PCT Assembly. Further, there had been no formal decision by the PCT Assembly to the effect that the PCT provisions should all be brought into line with the PLT. Although the recent changes to the PCT Regulations adopted by that Assembly had been specifically designed to facilitate the progress of the PLT, those changes applied under the PCT in their own right. As had been mentioned by the Secretariat at the PCT Assembly, some future changes to PCT procedures might be required to bring the PCT in line with the PLT, for example, in respect of certain time limits.

253. Mrs. BOLAND (United States of America) stated that her Delegation preferred Option (2) in document PT/DC/6. It therefore supported the text contained in Annexes I, III and IV of that document. The Delegation was in favor of avoiding the need for frequent meetings of the PLT Assembly. If Option (2) was not adopted, the PLT Assembly would have to meet every time the PCT Rules and/or Administrative Instructions were changed, which could be quite expensive.

254. Mr. FICSOR (Hungary). The Delegation of Hungary thanked the International Bureau for the valuable comments and suggestions it had made in document PT/DC/6 concerning the way future changes to the PCT could be incorporated into the PLT. The Delegation was of the view that Option (1) in combination with Options (3) and (4) would result in an appropriate mechanism for the incorporation of future changes to the PCT and provide legal security. It was also of the view that this would ensure the necessary flexibility of the mechanism for incorporating future PCT changes and would have the additional advantage of helping avoid too frequent meetings of the PLT Assembly. It did not support giving the PLT Assembly the possibility only to reject PCT changes that had already been adopted under the PCT as proposed under Option (2), since this would create a period of uncertainty during which the PLT Assembly could reject PCT changes. It was of the view that Option (1) would provide for a better co-operation between the Assemblies of the PCT and the PLT.

255. Mrs. EL MAHBOUL (Morocco) said that her Delegation supported Hungary's position on the basis of Article 30 of the Vienna Convention on the Law of Treaties, which stated that, when a treaty specified that it was subject to, or that it is not to be considered incompatible with, an earlier or later treaty, the provisions of that other treaty prevailed.

256. Mr. BADRAWI (Egypt) stated that his Delegation supported Option (1). In its view, this Option was most inclusive of the provisions of international law. He expressed doubt as to whether it would be necessary for the PCT to be amended to bring it into conformity with the PLT. If the ratification of the PLT was to result in adaptations to be incorporated into the PCT, there would be no need to call special meetings of the Assembly.

257. Ms. FRANCISCO (Philippines) noted, with regard to the cost of convening meetings of the PLT Assembly, that the present draft required the instruments of ratification or accession of only a small number of members for the PLT to take effect, compared to the present membership of the PCT. If, at the present time, the PCT Assembly could not agree to align the PCT along the PLT, it would be possible for ten PCT members immediately to become party to the PLT and adopt any provisions they supported. The present draft PLT was easy to understand and to implement. The Delegation noted that the Philippines was not a PCT Contracting State and foresaw great difficulties for its country becoming a member of the PLT, if the PCT changes were to be incorporated into the PLT. It was of the view that the PCT Assembly should decide whether or not to align the PCT with the PLT.

258. Mr. AHMAD (India) stated that his Delegation associated itself with the interventions of the Delegation of Japan and like minded delegations, and placed on record its preference for Option (1). In its view, the issue of practicality was not insurmountable and a solution would be found by the International Bureau.

259. Mr. BARTELS (Germany) expressed the view that the relationship between the PLT and the PCT had not been adequately explored in the preparation of this Conference in the light of the discussions, his Delegation was of the view that it was necessary to make the provisions on the incorporation of changes to the PCT in the PLT as clear as possible. However, his Delegation did not support the automatic transfer of amendments of the PCT into the PLT, which could result in constitutional problems. Therefore, the Delegation had a preference for Option (1). It was also necessary to consider the majority in the PLT Assembly required for ratification of future PCT changes, in particular whether it should be two-thirds, or not. His Delegation agreed with the Delegation of the United States of America that there would be significant costs if a PLT Assembly were to be convened for every change to the PCT. In order to avoid these costs, his Delegation suggested that a meeting of the PLT Assembly be convened each time a meeting of the PCT Assembly was convened, so that following a decision to amend the PCT, a decision could be made in respect of the PLT.

260. Mr. STRENC (Romania) stated that his Delegation preferred Option (2). It was important not to require the PLT Assembly to meet for every future PCT changes. The possible disadvantage of having to convene a meeting of the PLT Assembly in special session in order to decide not to incorporate possible changes could, in practice, be avoided once the PLT was in force and its Assembly operational. In its view, the PCT Assembly would always take into account the existence of the PLT.

261. Mr. TRÉPANIÉ (Canada) stated that, in view of some of the concerns expressed by the Delegation of the United States of America, his Delegation supported in principle at least, the philosophy set forth in Option (2). However, it believed that the Conference should try to seek a formula by which the needs of both those favoring Options (1) and (2) could be met, perhaps by having a regular PLT meeting during the Governing Bodies, once a year, in conjunction with the WIPO Assemblies.

262. Mr. JUNG (Republic of Korea) stated that his Delegation could not accept Option (2), because the PCT was very different from the PLT in that it dealt only with "one" international application during its international phase, while the PLT dealt with different applications in all different countries. A further consideration involved the proposed provision for electronic filing in the PCT Administrative Instructions. The electronic filing system was much easier to introduce under the PCT than under the PLT, because the PCT was dealing with "one" international application but the PLT with "multiple" applications around the world. His Delegation agreed with the statement of the Delegation of Germany that Option (2) was inconsistent with the general concepts of the Constitutional law. Regarding the cost of the PLT Assembly meetings that adopt changes of the PCT provisions, as mentioned by the Delegation of the United States of America, his Delegation suggested a possible compromise, namely that the changes of the PCT be submitted to the next meeting of the PLT Assembly and that, during the interval, the changes to the PCT would not be applied to the PLT.

263. The PRESIDENT stated that the International Bureau would prepare a new draft, taking account of the discussion at the Committee.

264. Mr. LEWIS (WIPO) introduced Article 6(2), stating that subparagraph (a) sets out the general rule according to which each Contracting Party would have the right to prescribe its own request form. The Regulations under subparagraph (b), namely, Rule 3(2), obliged a Contracting Party to accept the use of request Forms based on the PCT request form. He recalled that previous drafts had provided for a Model International Form, but that the SCP had, in view of the strong linkage between the PCT and the draft PLT, decided to tie this form as closely as possible to the PCT request form.

265. Mr. IWASAKI (Japan) drew the attention of delegates to the fact that the PCT request form did not provide for the additional requirements under the national law which apply under the PCT in the national phase, and that applicants might, therefore, need to submit separate papers to meet such requirements under the national law. He suggested that a Contracting Party should be able to require that such national requirements be included in the request form in addition to the requirements under the PCT. He referred delegates to a proposal of his Delegation in document PT/DC/10.

266. Mr. BARTELS (Germany) observed that Article 6(2) should be interpreted in light of Article 2, so that a Contracting Party would not be prevented from providing forms which are more favorable to applicants. He stated that the issue of the relationship of the draft PLT and the PCT, which had just been deferred, might also be relevant in this context.

267. Mr. SHALIT (Israel) observed that the PCT request form did not provide for an indication to the effect that an application is intended to be treated as a divisional application. He also pointed out that some States did not publish the patent application after it had been laid open to public inspection, and that, consequently, the application form or the request form might be part of the published application. Referring to States, such as Israel, whose official language is not a language in which the PCT request form is printed, he said such States should be able to provide an application form in that language in addition to the PCT languages.

268. Mr. TRAMPOSCH (WIPO) replied that paragraph (2)(a) referred to paragraph (1)(iii), which in turn contained a reference to the Regulations which specifically mention divisional applications, so that the request form could contain an indication of the fact that the applicant wanted the application to be treated as a divisional application. He also explained that paragraph (2)(a) did not require a national Office to accept a PCT request form, but that it allowed a Contracting Party to prepare its own request form in its own languages, provided that this form was based on the list of requirements that may be contained in a PCT request form.

269. Mr. SHALIT (Israel) expressed concern that an Office might be obliged, under subparagraph (b), to accept an international request form without being able to require a translation into its official language.

270. Mr. TRAMPOSCH (WIPO) explained that Article 6(3) that allows a Contracting Party to require a translation of any part of the application that is not in a language accepted by its Office.

271. Mr. LEE (Republic of Korea) supported the proposal made by the Delegation of Japan.

272. Mr. TRAMPOSCH (WIPO) agreed with the Delegates of Japan and the Republic of Korea that paragraph (2)(a) did not cover requirements that are permitted under PCT Rule 51*bis* of the PCT, but not covered by the provisions for declarations which had recently been adopted by the PCT Assembly. He said that, in his view, those requirements were referred to in Article 6(1)(ii), and suggested to include a reference to paragraph (1)(ii) in paragraph (2)(a) by adding the words "allowed under paragraph (1)(ii) or" after the words "further contents".

273. *The PRESIDENT concluded that Article 6(2) was adopted in substance, with the amendments proposed by the International Bureau and referred to the Drafting Committee.*

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274. The PRESIDENT reconvened the session. He informed the delegations that it was possible for the Committee to meet on Saturdays if required, and that, depending on how the work proceeded, a final decision could be made later in the week.

Rule 3: Details Concerning the Application Under Article 6(1) and (2)

275. Mr. LEWIS (WIPO) introduced Rule 3(1). He explained that Rule 3(1)(a) prescribed the further requirements which may be required in respect of divisional applications. In addition, Rule 3(1)(b) was dependent on the adoption of Rule 2(6)(iii) which itself deals with applications by new applicants who are determined to be entitled to an application contained in an earlier application under that Rule.

276. *The PRESIDENT, noting that there were no comments regarding Rule 3(1)(a) or (b), declared Rule 3(1) adopted, subject to any need to return to Rule 3(1)(b) should the discussion of Rule 2(6)(iii) require a change, and referred to the Drafting Committee.* He invited the International Bureau to introduce Rule 3(2).

277. Mr. LEWIS (WIPO) introduced Rule 3(2). He suggested that the question as to whether a reference to "format" was necessary be deferred pending a more general discussion of the matter in respect of communications in general under Article 8. With regard to Rule 3(2)(iii), he noted that, although there is no PCT request form which contains a "national or regional application" election at this time, it was thought wise to include the provision in case such a form is adopted in the future.

278. Mr. STEWART (FICPI) asked whether an applicant would be able to use a PCT request form when filing in a country which requires the "indications" in an application to be in a language such as Arabic or Cyrillic.

279. Mr. TRAMPOSCH (WIPO) explained that a request form need not be submitted for the purposes of a filing date under Article 5(1). However, he noted that if a request form were submitted and the Office required that the "indications" referred to in Article 5(1)(i) and (ii) be in the language of that Office, those "indications" would have to be given in the language of that Office for a filing date to be accorded. He further noted that the receipt of a PCT request form by an Office could be considered an implicit indication that a patent is being requested for the purposes of Article 5(1)(i).

280. *The PRESIDENT, noting that there were no further comments regarding Rule 3(2), declared Rule 3(2) adopted in substance, with the understanding that the Conference may return to the provision depending on the result of the discussion on the term form and format, and referred to the Drafting Committee.*

Article 6: Application

281. The PRESIDENT noted that, since the Delegation of Finland had indicated that it would be submitting a proposal with respect to Article 6(3), discussion of that Article should be deferred.

282. Mr. LEWIS (WIPO) introduced Article 6(4). He commented that it was the normal practice of most Offices to require an application fee.

283. Mr. VIDAURRETA (Argentina) said that a proposal was being drawn up for Article 5, and therefore requested deferment of the consideration of that Article to a later stage.

284. The PRESIDENT noted that, in view of the intention of the Delegation of Argentina to submit a proposal with respect to Article 6(4), discussion of that Article should be deferred. As regards Article 6(5) and related Rule 4, he noted that, although the Delegation of the United Kingdom had indicated that it intended to make a proposal regarding an agreed statement relating to access by third parties to priority documents, he was of the view that consideration of Article 6(5) and related Rule 4 could proceed with regard to other issues contained therein. He invited the International Bureau to introduce Article 6(5).

285. Mr. LEWIS (WIPO) introduced Article 6(5) by noting that it provides that, where the priority of an earlier application is claimed, the Contracting Party may require a copy of that earlier application and a translation. He also noted that they must be filed with the Office in accordance with the requirements prescribed in the Regulations, namely Rule 4.

286. Mr. STEWART (FICPI) welcomed the efforts to reduce the burden of procuring and filing priority documents, but also noted that priority documents for every first-filed application must be available to the applicant or patent owner and third parties for many years after the filing date. He therefore proposed that each applicant have the option of filing a request with the Office of the first-filed application that it be stored by the Office in electronic or paper form for access by interested third-parties at any time during the life of a patent, thereby reducing the number of priority documents mailed and filed around the world. He explained that, in order to claim priority, an applicant could simply notify the Contracting Party of the identity and the location of the storage copy. He emphasized the value of such a practice in the case of bio-technology applications, the pages of which might run into the thousands or hundreds of thousands, and suggested that the procedure would be equally applicable to worldwide, digital intellectual property libraries when they become available.

287. Mr. BOGDANOV (Russian Federation) agreed with the Representative of FICPI that access to priority documents was important and should be facilitated. He stated that, while the Treaty gave certain and substantial advantages to applicants in that they do not have to submit a translation of the priority document every time, it did not take due account of the reasonable interest of third parties who wish to

become familiar with the relevant priority document either in the Office where the documents were filed or where a priority claim was made. He stated that the Russian Federation would submit a written proposal regarding Rule 4(4) in respect of this matter.

288. The PRESIDENT proposed that discussion of Rule 4(4) be set aside until the proposal by the Russian Federation is received, and that the general discussion regarding Article 6(5) and its related rules continue by turning to Rules 4(1) to (3).

289. Mr. BOUCOUVALAS (Greece) supported the comments of the Delegation of the Russian Federation regarding the need for translations of priority documents. He stated that a Contracting Party should be able to require translation of the priority documents so third parties can check the validity of the priority claim or evaluate the state-of-the-art.

290. Mr. HIDALGO LLAMAS (Spain) endorsed what had been said by the previous two delegations concerning Rule 4(4), as he did not share the arguments for the restrictions on translations imposed by the Rule. He said that, if the Rule were to be discussed later, he would not express his Delegation's position until the appropriate time.

291. Mrs. AFONSO (Portugal) said that her Delegation, which had already expressed its point of view at earlier meetings, had submitted a written proposal and wished to maintain its reservation on Rule 4(4). The Portuguese Delegation shared the opinion of previous delegations, according to which the earlier application could be revised if necessary, for all procedures at the Office's discretion, and not only for the validity of the priority claim, where it had implications for deciding whether or not the invention concerned was patentable.

292. The PRESIDENT, referring to the previous intervention, proposed that such discussion be set aside until the proposals regarding Rule 4(4) from the Delegations of the Russian Federation and Portugal are received.

293. Mr. MELLER (ABA) supported the comment of the Representative from FICPI regarding Article 6(5). He stated that little was to be gained by filing translations of priority documents which were never used. He stated that such translations had no relevance to the patent granting process and should not be required.

294. Mr. NIIMURA (JIPA) welcomed the provisions of Article 6(5) and said that his Association expected a reduction of the translation costs of priority documents since they would not always be required.

295. *The PRESIDENT, noting that there were no objections regarding Article 6(5), declared it adopted and referred to the Drafting Committee.*

Rule 4: Availability of Earlier Application Under Article 6(5) and Rule 2(4) or of Previously Filed Application Under Rule 2(5)(b)

296. *The PRESIDENT invited the International Bureau to introduce Rule 4(1) through (3).*

297. Mr. LEWIS (WIPO) prefaced his comments to Rule 4 by noting that, inasmuch as Rule 4 is related to Rules 2(4) and 2(5)(b), any presumptions regarding the related Rules are conditional upon their being adopted in their present form. He noted that the time limit under Rule 4(1) of not less than 16 months for filing the copy of the early application from which priority is claimed was consistent with PCT Rule 17.1. He also noted that Rule 4(2) maintained the right of a Contracting Party to require certification of a copy of the early application and of the date of filing which is provided under Article 4D(3) of the Paris Convention. He explained that Rule 4(3) provides two situations in which an early application could not be requested: first, where the early application was filed with the Office of the Contracting Party concerned, and second, where, in the future, a copy of the early application was available to the Office in a "legally accepted electronic format from a digital library." He stated that, after further consideration, it was the opinion of the International Bureau that the words "in a legally accepted electronic format" were unnecessary and should be deleted.

298. *The PRESIDENT, noting that there were no comments regarding Rule 4(1), declared it adopted and referred to the Drafting Committee.* He invited comments on Rule 4(2).

299. Mr. PESSANHA CANNABRAVA (Brazil) informed the other delegations that, with regard to Rule 4(3), Brazil did not accept an application in electronic format yet, and sought clarification on the implications of that provision to countries in this situation.

300. *The PRESIDENT, noting that there were no comments regarding Rule 4(2), declared it adopted and referred to the Drafting Committee.* He invited the International Bureau to respond to the comments of the Delegation of Brazil regarding Rule 4(3).

301. Mr. TRAMPOSCH (WIPO) explained that Rule 4(3), which refers to the case where the copy of the early application is available to the Office from a digital library which is accepted by the Office, implies no obligation on the part of the Office to accept copies in electronic form or to subscribe to a digital library as soon one is available. He also noted, however, that if an Office were to subscribe to a digital library it must utilize the copies in that library and could not ask for another copy.

302. Mr. PESSANHA CANNABRAVA (Brazil) stated that the explanation provided by the Secretariat was acceptable to Brazil.

303. Mr. SHALIT (Israel) suggested that Rule 4(3) could be clarified by adding "for this purpose" at the end of the last sentence since the digital library might be accepted for the Office for some other purposes.

304. Mr. TRAMPOSCH (WIPO) stated that the suggestion by the Delegate of Israel was well-taken. He also noted that the International Bureau has also suggested that the words "in a legally accepted electronic format" be deleted from Rule 4(3).

305. The PRESIDENT summarized the proposed changes to Rule 4(3), namely, that the last portion of the sentence be amended to read "or is available to that Office from a digital library which is accepted by that Office for that purpose."

306. Mr. HERALD (Australia) supported the proposed amendment but noted that that the reference even to a "digital library" was unnecessarily restrictive with regard to future technology developments. He suggested the use of "a document depository which is accepted by the Office" or words to that effect.

307. Mr. TRAMPOSCH (WIPO) noted that, although the term "digital library" might soon be outmoded, its meaning was currently clear. He also noted that any future modifications of this provision could be made by the Assembly. In addition, he suggested that the proposed amendment to Rule 4(3) be modified by replacing the word "that" with the word "the." The proposed amendment would thus read "or is available to that Office from a digital library which is accepted by the Office for that purpose."

308. Mr. AHLERT (ABAPI) inquired whether WIPO was thinking of working on a standard format of digital libraries to be used by national Offices as contemplated in the proposed language.

309. Mr. THOMAS (WIPO) stated that a document exchange format was being looked at in the context of the PCT and the Standing Committee on Information Technologies (SCIT). He noted that the trend was to establish formats for documents so that they could readily be exchanged between Offices. He said that more specific information could be conveyed outside the meeting for the Representative of ABAPI.

310. *The PRESIDENT, noting that there were no further comments regarding Rule 4(3), declared it adopted and referred to the Drafting Committee with the amendment as last read by Mr. Tramosch, namely, by changing the last portion of the sentence to read "or is available to that Office from a digital library which is accepted by the Office for that purpose."* He noted that Rule 4(4) would be set aside until written proposals were received from the Delegations of the Russian Federation and Portugal.

Article 6: Application

311. The PRESIDENT invited the International Bureau to proceed with the introduction of Article 6(6).

312. Mr. LEWIS (WIPO) introduced Article 6(6) by stating that it provided that a Contracting Party might require that evidence be filed in the course processing of the application only where the Office might reasonably doubt the veracity of any matter referred to in Article 6(1) or the accuracy of any translation. He noted that evidence only where there was a need was part of the streamlining of the system. He also

noted that it was important for the Office to state in accordance with Rule 5 why evidence was required so that the applicant could produce only what was needed. He stated that the wording could be improved and proposed that the text of Article 6(6) be modified to read in its entirety: "A Contracting Party may require that evidence in respect of any matter referred to in paragraph (1), or in a declaration of priority, or any translation referred to in paragraph (3) or (5), be filed with its Office in the course of processing of the application only where that Office may reasonably doubt the veracity of that matter or the accuracy of that translation." He explained that the amended text expressed the intention of the provision more accurately and did not change the meaning.

313. Mr. FICSOR (Hungary) requested clarification as to why the reference to Article 6(2) had been omitted.

314. Mr. LEWIS (WIPO) explained that the reference to Article 6(2) was deleted because it did not actually deal with any contents as such, but rather with the form, i.e., with only the pre-printed document. He noted that the evidence in question would be requested in relation to the contents that the applicant filled in the form and not to the form itself.

315. Mr. TRÉPANIÉ (Canada) questioned whether the reference to the declaration of priority should be kept in this paragraph.

316. Mr. LEWIS (WIPO) noted that, although the reference had been deleted in one portion of the text, it was reinserted in another. He restated the proposed amendment in its entirety.

317. Mr. TRÉPANIÉ (Canada) questioned whether the proposed text by the International Bureau correctly referred to the "declaration of priority."

318. Mr. LEWIS (WIPO) suggested the deletion of the comma at the end of the phrase "in respect of any matter referred to in paragraph (1)," so that the proposed amendment would read, in its entirety, "A Contracting Party may require that evidence in respect of any matter referred to in paragraph (1) or in a declaration of priority, or any translation referred to in paragraph (3) or (5), be filed with its Office in the course of processing of the application only where that Office may reasonably doubt the veracity of that matter or the accuracy of that translation." He noted that the modification would allow the desired reference.

319. Mr. NIYONKURU (Burundi) shared the concerns expressed by the Delegation of Canada regarding the amendment proposal, or at least its French version, which, far from providing clarifications, made the understanding of the paragraph somewhat ambiguous. The first version, which referred to "*toute traduction*" ("any translation") had the merit of clarity, and an attempt to improve the form, while retaining the International Bureau's intended meaning, was desirable.

320. The PRESIDENT noted that the concern of Burundi could be referred to the Drafting Committee.

321. Ms. SÜMEGHY (Hungary) stated that she did not fully understand why the specific reference to paragraph (2) of Article 6 in the amendment proposed by the International Bureau was superfluous. She stated that it was also a question of content and that it could refer, for example, to the declarations under new Rule 4.17 of the PCT.

322. Mr. TRAMPOSCH (WIPO) stated that, since there would be no harm in retaining a reference to paragraph (2), and since there was no consensus on whether it would be harmful to delete it, it may be best to accept the proposal of the Delegation of Hungary and retain the reference to paragraph (2).

323. The PRESIDENT noted that the proposal was to add, after the words "paragraph (1)", the words "or (2)" so that the text in its totality would read "A Contracting Party may require that evidence in respect of any matter referred to in paragraph (1) or (2) or in a declaration of priority, or any translation referred to in paragraph (3) or (5), be filed with its Office in the course of the processing of the application only where that Office may reasonably doubt the veracity of that matter or that accuracy of that translation."

324. The PRESIDENT, noting that there were no further comments regarding Article 6(6), declared it adopted and referred to the Drafting Committee as just recited in its entirety.

Rule 5: Evidence Under Articles 6(6) and 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6) and 18(4)

325. The *PRESIDENT*, noting that there were no comments regarding Rule 5, declared it adopted and referred to the Drafting Committee subject to any need to return to Rule 5 should the discussion of other provisions necessitate further change.

Article 6: Application

326. The *PRESIDENT* invited the International Bureau to introduce Article 6(7) and related Rule 6(1).

327. Mr. LEWIS (WIPO) stated that paragraphs (7) and (8) of Article 6 would have to be discussed together, in view of what would be proposed in respect to Rule 6.

328. In regard to Article 6, he noted that paragraphs (7) and (8) were typical of a number of provisions throughout the treaty; that paragraph (7) provided for notification where any of the requirements which were applied by the Contracting Party were not complied with, or where evidence was required and the Office notified the applicant and gave an opportunity to comply with the requirement and to make observations within the time limit prescribed in the Regulations; and that paragraph (8) dealt with the situation where, notwithstanding notification, the applicant still did not comply with the requirements. He also noted that paragraphs (7) and (8), as they appeared in other treaty provisions, differed from Article to Article depending on the subject matter of the Article. Where any of the requirements under paragraphs (1) to (6) are not complied with, the Contracting Party may, subject to subparagraph (b) which we would come on to in Article 5 concerning the filing date, apply how a sanction is provided for in its law, in particular, it could refuse the application. Article 6(8)(b) provides though, when the priority claim may be considered non-existent, no other sanctions may be applied.

329. In regard to Rule 6, which provides the time limits concerning the application under Article 6(7) and (8), he noted that, under paragraph (1), the time limit should be not less than two months from the notification referred to in Article 6(7). Under paragraph (2), the time limit for compliance with the requirements and also making any observations should be not less than two months from the notification, or in a case where there is no notification, three months from the first day of the receipts of the elements under Article 5(1)(a), that is the basis for according of filing date. He also noted that the applicant had in general not less than two months to comply with the requirements and if he did not do so then the Office might apply such sanctions as it wished, except in respect of a priority claim. He also noted the special situation where in fact no notification was possible, for example because the applicant had not given the necessary indication for him to be contacted and in which case the time limit was three months.

330. He proposed that the following amendments to Rule 6: the title of Rule 6(1) would be amended to read:

“(1) [*Time Limits Under Article 6(7) and (8)*] Subject to paragraph (2), the time limits referred to in Article 6(7) and (8) shall be not less than two months from the date of the notification referred to in Article 6(7).

(2) [*Exception to Time Limit Under Article 6(8)*] Where a notification under Article 6(7) has not been made because indications allowing the applicant to be contacted by the Office have not been filed, the time limit referred to in Article 6(8) shall be not less than three months from the date on which one or more of the elements referred to in Article 5(1)(a) were first received by the Office.”

331. He also stated that, if these amendments were accepted, the International Bureau would propose analogous amendments in other Rules, in particular in Rule 2 and parts of Rule 7 and Rule 11.

332. Mr. KHAFAGUI (WASME) wondered about the notification process provided for in Article 6(7). Did the Office give notification by ordinary mail, recorded delivery, registered letter or some other means? How was the patent applicant's receipt of the notification to be guaranteed, in order to avoid the possibility of his claiming non-arrival of the notification so as to evade the sanctions provided for in the Treaty or its Regulations. He thought that it was appropriate to include a provision in the regulations containing details of the terms and means of notification, based in particular on the provisions of national legislation.

333. With regard to the discretionary power given to the Office in paragraph 8 (b), WASME considered that such a provision could lead to arbitrary action, and advocated a solution that left it to national legislation to settle the problem, either by removing this sanction from the treaty or by replacing the word "may" with the word "shall." Finally, WASME preferred the notification by the Office for reasons that caused the application to be regarded as not having been filed to occur prior to the rejection of the application, by way of warning.

334. Mr. SHALIT (Israel) asked whether an Office would have to follow a formal procedure in order to fulfil its obligation, under Article 6(7), to give applicants an opportunity to make observations.

335. Mr. TRAMPOSCH (WIPO) replied that Offices were free to determine the nature and context of the observations referred to in this and other provisions of the Treaty, because such procedures were typically governed by rules of procedure which also apply outside of the context of patent law.

336. *The PRESIDENT declared Article 6(7) adopted in substance and referred to the Drafting Committee*

337. Mr. VIDAURRETA (Argentina) requested clarification regarding Article 6(8)(a), which provided that, where the requirements specified in paragraphs (1) and (6) of the Article were not met, the Contracting Party could apply the sanction provided for in its legislation. His Delegation agreed to the paragraph as contained in the Basic Proposal, as national legislation was left free to determine the appropriate sanction. He noted that Explanatory Note 6.21, relating to paragraph (8), said that the sanction applicable under the provision could include rejection of the application, but that a Contracting Party could not revoke a filing date for non-compliance with the requirements mentioned in the provision. He asked what the origin was of the interpretation that prevented a Contracting Party from regarding an application as not having been filed for the purposes of obtaining a filing date, if any of the requirements provided for in Article 6(1) and (6) were not complied with.

338. Mr. TRAMPOSCH (WIPO) replied that, while an application that did not comply with the provisions of Article 6 could be rejected, the filing date could not be revoked if the provisions of Article 5(1) were complied with. He stated that this could be clarified in the Notes.

339. *The PRESIDENT declared Article 6(8) adopted in substance and referred to the Drafting Committee.*

Rule 6: Time Limits Concerning the Application Under Article 6(7) and (8)

340. The PRESIDENT recalled that the International Bureau had suggested a number of amendments to Rule 6 which would now read as follows:

"(1) [Time Limits under Article 6(7) and (8)] Subject to paragraph (2), the time limit referred to in Article 6(7) and (8) shall be not less than two months from the date of the notification referred to in Article 6(7).

(2) [Exception to Time Limit Under Article 6(8)] Where a notification under Article 6(7) has not been made, because indications allowing the applicant to be contacted by the Office have not been filed, the time limit referred to in Article 6(8) shall be not less than three months from the date on which one or more of the elements referred to in Article 5(1)(a) were first received by the Office."

341. Mr. MENGISTIE (Ethiopia) asked for clarification on the meaning of the reference, in Rule 6(1), to Article 6(7). He also asked whether the time limit would start to run when the notification had been sent by the Office, or when it had been received by the the applicant.

342. Mr. LEWIS (WIPO) replied that Rule 6(1) referred to the notification mentioned in Article 6(7). He stated that the date of the notification was difficult to harmonize because it was governed by different rules of procedures in different countries. Thus, the applicable date could be the date of receipt by the applicant, the date on which the notification was sent, or the date on which the applicant should have received the notification under normal conditions. These details had been left to national law, and only the time period of two months itself had been harmonized.

343. *The PRESIDENT declared Rule 6 adopted in substance and referred to the Drafting Committee.*

Article 8: Communications; Addresses

344. Mr. LEWIS (WIPO) introduced Article 8(1). He explained that subparagraph (a) provides a basis for the Regulations, and in particular Rule 8, while the other subparagraphs precluded certain interpretations or amendments of the Regulations by providing that no Contracting Party was obliged to accept electronic filing (subparagraph (b)), to exclude the filing of communications on paper (subparagraph (c)), and that a Contracting Party shall accept the filing of communications on paper for the purpose of complying with a time limit (subparagraph (d)).

345. He also introduced some of the changes proposed in Annex V of document PT/DC/6, indicating that all occurrences of the word "filing" in paragraph (1) would be changed to "transmittal", and that, after the words "under Article 5(1)" the words "and subject to Article 6(1)" would be inserted. He explained that the latter amendment was proposed in order to make sure that the provisions of the PCT, which are incorporated by reference in Article 6(1), would prevail.

346. Mr. TRAMPOSCH (WIPO) introduced further amendments proposed in document PT/DC/6. He stated that it had become apparent, in the discussions leading up to the PCT Assembly meeting in March 2000, that the words "form", "format", and "means" were used in diverging and sometimes in conflicting ways in the Treaty and in the PCT. He explained that one way to avoid interfering with the current evolution of these terms in the context of the PCT, in particular with regard to electronic filing, was to avoid defining them in the Treaty, because otherwise their meaning could only be changed by way of a Diplomatic Conference. Therefore, the International Bureau had suggested in document PT/DC/6, paragraph 27, deleting the word "format" from the Treaty. He also stated that, rather than defining the term "form", it appeared preferable to use illustrative examples in the Notes. He said that the terms could be incorporated into the Treaty as soon as electronic filing had matured in the context of the PCT, thus achieving complete harmony between the Treaties.

347. Mrs. BOLAND (United States of America) strongly supported the suggested insertion of the phrase "and subject to Article 6(1)" in Article 8(1)(a), pointing out that it would be of great help in relation to electronic filing, and more specifically with respect to genetic sequence information.

348. Mr. KUNIN (United States of America) supported the deletion of the word "format" in Article 8(1)(a). He also supported the suggestion not to define the term "form."

349. *The PRESIDENT declared Article 8(1)(a) adopted in substance and referred to the Drafting Committee.*

350. Mr. TRÉPANIÉ (Canada) asked why the International Bureau had not suggested to replace, in subparagraphs (b), (c) and (d), the phrase "filing of communication" by "transmittal of communication" as it had done with regard to Article 8(1)(a).

351. Mr. TRAMPOSCH (WIPO) replied that the proposal did not refer to the phrase "transmittal of communications", but rather to the phrase "means of transmittal." He explained that the term "filing" was used as a generic term for getting the communication to the Office, while "transmittal" of a communication referred to the way of achieving the filing of that communication.

352. *The PRESIDENT declared Article 8(1)(b), (c) and (d) adopted in substance and referred to the Drafting Committee.*

Article 6: ApplicationRule 3: Details Concerning the Application Under Article 6(1) and (2)

353. The PRESIDENT reopened the discussion of Article 6(2) and Rule 3(2) in order to discuss ways of accommodating the decisions on the terms "form" and "format" taken in the context of Article 8.

354. Mr. TRAMPOSCH (WIPO) suggested deleting all occurrences of the word "format" in Article 6(2)(a), so that the provision would read as follows:

"(2) [Request Form] (a) A Contracting Party may require that the contents of an application which correspond to the contents of the request of an international application under the PCT be presented on a request Form prescribed by that Contracting Party. A Contracting Party

may also require that any further contents allowed under paragraph (1)(ii) or prescribed in the Regulations pursuant to paragraph (i)(iii) be contained in that request Form."

355. He also suggested to delete, in subparagraph (b), the phrase ", or in a format," so that this subparagraph would read:

"(b) Notwithstanding subparagraph (a) and subject to Article 8(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) on a request Form provided for in the Regulations."

356. Mr. HERALD (Australia) sought clarification on the significance of the capital "F" in "Form", and how this usage related to electronic filing.

357. Mr. TRAMPOSCH (WIPO) explained that the word "form" was used with a capital "F" only in connection with the Model International Form or the request Form under the PCT, and that its usage had no implications for electronic filing.

358. Mr. KUNIN (United States of America) asked whether the use of the term "form" with a capital "F", in this provision as well as in Article 6(1), was sufficiently encompassing so as to envision the evolution of a PCT Form which would permit Offices to scan the paper for conversion into electronic form.

359. Mr. TRAMPOSCH (WIPO) said that it was intended to provide the necessary flexibility in the PLT to accommodate electronic communications, including electronic applications, because, under the PLT, any electronic submission conforming to a Model International Form would be accepted by an Office, provided that the Office accepted electronic communications.

360. Mr. THOMAS (WIPO) added that the PCT request Form presently had two allowable formats, namely, on the one hand, the traditional printed request Form, and, on the other hand, the request Form generated by the PCT EASY software. In the future, the request Form might be scanned for capture of data. He expressed the view that all of those possibilities would be encompassed within the meaning of the words "request Form".

361. Mr. VIVAS EUGUI (Venezuela) said that his Delegation's interpretation was that the requirements contained in Article 6 did not apply to formalities or requirements imposed by national or international provisions on foreign investment or government procurement. He requested that clarification be provided, in the explanatory notes to Article 6, perhaps in Note 6.03, that the formalities of a patent application, dealt with in Article 6, were separate and not confused with the formal requirements of the authorities for foreign investment or public procurement.

362. Mr. TRAMPOSCH (WIPO) suggested to include these references in Note 6.03 of document PT/DC/5.

363. *The PRESIDENT declared Article 6(2) adopted in substance and referred to the Drafting Committee.*

364. The PRESIDENT reopened the discussion of Rule 3(2).

365. Mr. TRAMPOSCH (WIPO) suggested to delete, in the title of the paragraph, the words "or format", so that the title would read "*Request Form Under Article 6(ii)(b)*". He also suggested the deletion of item (iv).

366. *The PRESIDENT declared Rule 3(2) adopted in substance and referred to the Drafting Committee.*

Rule 8: Filing of Communications Under Article 8(1)

367. Mr. LEWIS (WIPO) introduced Rule 8(1). He explained that subparagraph (a), which guarantees the rights of applicants, owners and other interested persons to file communications on paper for a period of 10 years from the date of entry into force of the Treaty reflected the compromise reached at the Standing Committee on the Law of Patents. After the expiration of that period, any Contracting Party would be free to exclude the filing of communications on paper, but would not be under any obligation to do so. He also stated that this would be subject to the provisions of Article 5(1) for the purposes of filing date, and of Article 8(1)(d) for the purposes of meeting a time limit. With regard to subparagraph (b), he said that this provision gave a Contracting Party the freedom to prescribe a Form. He referred to the changes

suggested in Annex V of document PT/DC/6 to introduce a new subparagraph (c), and to amend subparagraph (b) in order to make that subparagraph subject to Article 8(3) and to subparagraph (c).

Fifth Session

Wednesday, May 17, 2000

Morning

368. The PRESIDENT opened discussion on Rule 8(1), based on a revised version of that Rule as published in Annex V of document PT/DC/6.

369. Mrs. BOLAND (United States of America) declared that her country had, since the last SCP in September 1999, reconsidered the provisions of the Basic Proposal on electronic filing. It had come to the conclusion that it could not support the current draft of Rule 8. As a result, her Delegation proposed two changes to Rule 8. The first change was a change of the time period of ten years to five years. The second was the addition of a new subparagraph (c) to require the filing of communications in another form, or by other means of transmittal, under circumstances in which the filing and processing of those communications on paper was deemed not to be practicable. The Delegation noted that over the last year, electronic filing technology had evolved very rapidly and, in its view, the ten year period currently provided in Rule 8(1)(a) of the Basic Proposal would be counter-productive. Contracting Parties that were currently moving towards electronic filing would only be able to do so successfully if the possibility existed to mandate electronic filing. The United States of America wished to swiftly migrate to electronic filing and the ten year period was considered too long. Moreover, the ten year period would only discourage the adoption of electronic filing throughout the world. The Delegation observed that certain provisions, which ensured that a Contracting Party would not be required to adopt or mandate electronic filing were already enshrined in Article 8. In particular, Article 8(1)(b), provided that all Contracting Parties were allowed not to mandate electronic filing. Safeguards were also in place for all applicants in all countries. Thus, Article 5(1)(a) provided for filing of applications on paper. There was also the assurance of the ability to meet all time limits by the filing of communications on paper in Article 8(1)(d). It should also be kept in mind that applicants from any countries, especially developing countries would not be disadvantaged in the way they had to file electronically in other Contracting Parties, because they would always have the benefit of representation before the offices of those other Contracting Parties. In essence, the Delegation felt that the current structure of Article 8 provided the safeguards that were necessary to deal with this issue in a situation in which certain countries and certain applicants were ready to adopt electronic filing, and others not. Furthermore, the delegate stated that a relatively new concern had led her Delegation to make that proposal. The Office of her country had been confronted with new types of patent applications that dictated a different solution than the one set out in the Basic Proposal for Rule 8. For example, the United States Patent and Trademark Office recently received a patent application that was 400,000 pages in length. The administrative burdens of handling and processing such an application on paper were overwhelming. The Delegation said that it could not wait ten years to mandate that such an application be filed electronically. It also had similar concerns with the need to provide some of its applicants with enhanced publication mechanisms, since the United States of America was moving towards publication of patent applications, in which amendments may be permitted up to a very late stage if submitted in electronic form that was ready for publication. The Delegation also wished to accommodate the submission of genetic sequence information, most of which came to the Office currently with a paper copy as well as in electronic form, and to process some sequence applications only electronically. There were other concerns with what was called throughout the world "jumbo" or "mega" applications, many of which could not be handled on paper. The Office also had to be able to accommodate submissions of computer program listings that could not be handled or processed on paper. Rule 8(1)(a) in its current wording would discourage the adoption of electronic filing. It would also preclude offices from accommodating the needs of those new types of applications. For those reasons, the Delegation felt very strongly that both the ten year period in Rule 8(1) needed to be changed and that some accommodation of the ability to immediately mandate electronic filing should also be provided.

370. The PRESIDENT asked for comments on subparagraph (a) of Rule 8(1).

371. Mr. WEARMOUTH (United Kingdom) said that his Delegation recalled previous discussions on the provision under consideration at earlier meetings of the SCP, and that it was sensitive to the concerns expressed then. However, it should be noted that, going from a ten year period to a five year period as

proposed by the United States of America, did not mean that this provision would take effect on June 3. The clock only started ticking when the Treaty entered into force. Certainly, in the case of the United Kingdom, this would require changes to national legislation and the Delegation expressed its belief that, as in the case of many delegations present, this could take at least five years, possibly longer. The delegate recalled that, under this provision, only those offices that wished to accept electronic communications needed to do so. More importantly, this provision did not place an obligation on other offices to do the same. This was clearly spelt out in Article 8 (1)(b). However, for those offices that wished to do so, but did not have the necessary infrastructure in place, he said that his Delegation hoped that technical assistance would be available through WIPO. The Delegation recalled that the opening statement of the Delegation of the European Patent Office indicated its willingness to offer technical assistance in such circumstances. He stated further that, when considering electronic communications, it would be too easy to consider it as being restricted to on-line transactions. However, it believed that it also covered situations when the application was stored on a floppy disk that was subsequently mailed to an office. Since, in most cases, documents were word-processed, this would not seem to place a significant burden on applicants. In conclusion, the Delegation said that it did not believe that it was unreasonable to seek a reduction of the ten year period to five years and, therefore, fully supported the proposal of the Delegation of the United States of America for amending Rule 8(1)(a).

372. Mr. LEE (Republic of Korea) declared that the Korean Industrial Property Office had launched its Internet on-line filing system in January 1999. At the time of the Conference, the rate of patent applications using the electronic filing system reached more than 80%. Korean applicants were more and more choosing to use the Internet on-line filing system for reasons of cost reduction and time saving. In order to give all applicants around the world and, especially, those applicants from countries that were not familiar with information technology, the benefits of electronic filing, that option had to be developed as soon as possible. Furthermore, he said that his Delegation believed that the issue to shorten the grace period from ten years to five years was directly related to the progress of WIPONET. WIPONET could help applicants all over the world to file through electronic means within a reasonable time period. In this context his Delegation supported the proposal of the Delegation of the United States of America.

373. Mr. IWASAKI (Japan) stated that his Delegation reserved its right to express its position on whether a ten year period was proper or not. However, the Delegation wished to explain the experience that the Office of its country had gained with electronic filing over a period of ten years, to illustrate its importance. The Japan Patent Office (JPO) started to operate the electronic filing system ten years ago. At the first year the rate for using electronic filing was 91%. In April 1998, the JPO started to accept on-line application from conventional personal computers. At the present stage, JPO received 96% of the patent application out of a total of about 400,000. Since January, the JPO had also accepted on-line applications from personal computers for design applications, trademark applications, appeal, trial procedures and procedures for international patent applications in the national Office. Its ten year experience showed that the electronic filing system had enabled the applicants to deal with patent applications more easily and more cheaply. From the viewpoint of the Patent Office, the electronic filing system was the starting point for the streamlining of all patent related procedures. This kind of paperless system, from the filing to the dissemination of patent related information, had provided users with many benefits such as, for example, better access to patent related information via the Internet. The most important thing that needed to be considered was the future direction of electronic filing systems, and to take into account the rapid development of Information technology. For example, the prices of microprocessors were constantly decreasing, and the traffic via electronic communication lines was getting much speedier and secure. In conclusion, the decision whether a ten year period was proper or not depended upon the evaluation on how rapidly information technology was expected to develop. The Delegation expressed its hopes that its intervention explaining the experience of Japan would be beneficial for further consideration on that issue.

374. Mr. BOGDANOV (Russian Federation) recalled that the question of whether an office should accept documents filed on paper was a matter that should be resolved not just from the point of view of the willingness or readiness of an office to move to paper-free technology for processing applications, but also from the readiness and willingness of the user to make use of such technology. Furthermore, it was particularly important to consider applicants from other countries with different levels of development in terms of electronic technology. His Delegation understood the concern that was raised by the Delegation of the United States of America. However, moving to paper-free technology should be looked at as a possibility both in terms of the applicants themselves and in terms of the Contracting Party's willingness and readiness. If a Contracting Party had an appropriate level of development of its electronic filing system to allow its own applicants to make use of that technology, the solution would be acceptable.

Furthermore, the Delegation stated that it could accept, in principle, either of the proposed time limits, if the second part of the proposal, where reference was made to the fact that after that period had expired, any Contracting Party may exclude the filing of communications on paper, could be amended without the requirement for unanimity. In that case, the Assembly, after the expiry of a period of 5 or 10 years, could look at this matter again. That decision could be taken by majority or perhaps by consensus and it could be decided whether there was a need to prolong the deadline or not, or to decide to omit the Rule all together. Concerning the proposal of the Delegation of the United States of America to add a new sub-paragraph (d) to Rule (1), allowing an office to refuse to accept the documents on paper in certain circumstances, the Delegation said that, in principle, it could accept the inclusion of that subparagraph in this rule.

375. Mr. BADRAWI (Egypt) said that his Delegation had listened very carefully and with great interest to what was said by the Delegation of the United States of America and by other delegations that had expressed support for that proposal. The Delegation felt that a transitional period was extremely important. In many international treaties, particularly in the TRIPS Agreement, provision was made for a transition period, because these treaties recognized different levels of development and different types of infrastructure. They recognized that there was a difference between developed, developing and least developed countries. This showed that transition periods were important. However, the question was how long that transition period should be: ten or five years. The delegate thought that ten years was a length of time barely sufficient for LDC and developing countries to make the required changes. The countries which had a great deal of expertise and equipment available to them, must take into account that others did not. Therefore, developing countries must be assisted in getting through this transition period. The delegate expressed his preference for a period of ten years and said that, if real progress were to be made and if the infrastructure in developing countries was to be developed, developing countries may be able to accept reduction of that period. Regarding the reference of the Delegation of the United Kingdom to technical assistance, his Delegation noted that Article 67 of the TRIPS Agreement, which provided that developed countries should assist developing countries in training and other matters, had been in force for several years now. He queried whether that Article truly been put into practice, and whether the infrastructure of developing countries and LDC's had improved in such a way as to allow those countries to effect the kind of technological improvement that was required. In conclusion, the Delegation expressed its preference for the 10 years period, and to include a provision for reducing this period at some future date.

376. Mr. BARTELS (Germany) stated that his Delegation understood very well that an office wished to use existing technology which simplified its procedures. He observed that no State would be obliged to introduce electronic filing. However, the Delegation expressed concern that the absence of a standard for electronic filing could be a hindrance. It could be very problematic and costly to transfer electronic filings from one system to the other. He queried whether the proposed reference to Article 6 would mean the acceptance of the standard on electronic filing on which there existed consensus in the PCT. He also sought clarification whether proposed new subparagraph (c) would relate to all paper filings, or only to such filings where the communication of papers was deemed not to be practicable. Furthermore, he queried whether if that new subparagraph (c) were adopted, there was a need for the reduction of the period from 10 years to 5 years.

377. Mr. THOMAS (WIPO) explained that the PCT Assembly which was held in March had considered the question of electronic filing. In conjunction with the formal PCT Assembly meeting, the International Bureau had entered into a consultation discussion with Contracting States in relation to some draft Administrative Instructions under the PCT which would in fact set up both the legal framework and the technical standards which would be put in place to enable electronic filing under the PCT. Although there was no formal agreement as to the applicable standard at present, the International Bureau had recently released a revised version of the legal framework aspect of that standard, and hoped to be in a position soon to release a revised proposal for details of a technical standard. Without going into all details of the proposal, its aim was not to impose one system of filing electronically on every applicant and every office, but to allow flexibility and to establish a system under which there would be one possibility for filing which could be used by all applicants in filing with all offices. The PCT membership was at present 106 States, representing a large proportion of the intellectual property community. Through the incorporation of PCT standards into national laws via the PLT, the PCT standard would become available as a standard for national offices of the countries which join the PLT. Although there was no standard in place at this time, it was the aim, not only of the International Bureau, but also of the PCT Contracting States that a standard would be put in place as soon as agreement could be reached. In recent months,

progress had been made on the establishment of both a legal framework for electronic filing and the technical details of a standard.

378. Mr. RODAS POZO (Ecuador) considered that it was more important to determine how quickly developing countries could adapt to the pace of the countries progressing more rapidly than to decide whether the transition period would be five or ten years. Technical assistance was therefore essential since, in this case, developed countries, and one of them in particular, needed to ensure that developing countries could, as far as possible, progress at the same rate. Otherwise, developing countries would be more marginalized than they were currently.

379. Mrs. BOLAND (United States of America) said that, in the understanding of her Delegation, the reference to Article 6(1) would require adoption of the PCT standard of electronic filing by all Contracting Parties. She felt that this was a very important incorporation in Article (8) and the only reasonable and practicable means of approaching this issue throughout the world. She stated that her Delegation could not accept the possibility that users would have to set up different electronic filing systems for different countries and that the system that would be put in place through PLT was the only reasonable means to achieve this. There was a need to provide users with the ability to put their patent applications into a single electronic format and use that format it throughout the entire world. That was the objective that the Delegation had been striving for many years. Both the change from 10 to 5 years and the proposed new subparagraph (c) were considered necessary. The provision proposed in subparagraph (c) was for special circumstances to be immediately accommodated. The change from 10 to 5 years was felt necessary to permit the migration of full electronic filing reasonably soon. The delegate emphasized that there would be no requirement on any Contracting Party to put in place or to mandate electronic filing. The period would only have the effect of delaying the implementation of electronic filing in those countries that wanted to go in that direction. Regarding the issue of technical assistance, the delegate reiterated that the United States of America regarded its obligations to provide technical assistance as real and significant and that it was committed to them. The United States of America government was spending many millions of dollars to help countries implement both their TRIPS obligations and other obligations, and she stated that the country was seriously committed to continuing to do so.

380. Mr. THOMAS (WIPO) announced that the revised draft of the implementing administrative instructions and technical standards for PCT filing would be discussed at an informal consultation meeting in July. The consultation meeting had been convened in the same week as a meeting of the Standing Committee of Information Technology (SCIT). All the States which were invited to the SCIT meeting were also invited to the informal consultation meeting on the PCT administrative instructions, including States which were not presently party to the PCT.

381. Mr. HIEN (Burkina Faso) reiterated the terms of his introductory statement according to which the Diplomatic Conference should take account of the development levels of the different countries that were in the process of negotiating the Treaty, a proposal that appeared to have been accepted by all the Conference participants. Having followed with interest the statement made by the Delegation of the United States of America, he expressed full support for electronic filing, but considered that it was necessary to allocate more time for the LDCs to adapt to the process, in particular as regards related information, awareness-raising and training activities, as well as the process of ratifying the Treaty.

382. He subscribed to the arguments put forward by the Delegation of Egypt and, in the light of the experience acquired in bringing the legislation of the LDCs into line with the TRIPS Agreement, expressed support for retaining the ten-year time limit.

383. Mrs. BOLAND (United States of America) declared that the nature of the provision in Rule 8(1)(a) was not at all similar to the transition periods of the TRIPS Agreement and that Rule 8(1)(a) would only have the effect of delaying the implementation of electronic filing in those Contracting Parties that wanted to move forward more rapidly than the 10 period. It did not require the eventual adoption at any point in the future of electronic filing in any country. In addition, for those applicants from the countries that did not rapidly adopt electronic filing, the availability of representation in those other countries was always there to facilitate a filing by any means that was required by a given Contracting Party.

384. Mr. OMOROV (Kyrgyzstan) declared that, as regards the length of the transition period, his Delegation supported a period of ten years, and aligned the position of his Delegation with the position of the Delegation of Japan. He further stated that technical assistance was necessary from WIPO Member States, from the EPO and from the offices of developed countries. This assistance was necessary to allow

the process as a whole to be developed in all countries. Concerning the proposal made by the Delegation of the United States of America, concerning the inclusion of a new subparagraph (d), the Delegation supported that proposal, if it would specifically refer to "jumbo" or "mega" applications.

385. Mr. CAVAZOS TREVIÑO (Mexico) said that, taking into account the technological barrier that the electronic filing of patents may represent for national inventors from developing countries, his Delegation was uncertain whether even a period of ten years would be sufficient to create equal levels of access to electronic media in developing countries, so that inventors from these countries could seek protection in them, which excluded the filing of paper applications. The important thing was not for certain countries to achieve this aim before others, but for all countries to do so at the same time. For this reason, his Delegation could not support the position of the United States of America, and proposed instead that the period in question should be extended.

386. Mr. BOUHNİK (Algeria) said that his Delegation supported the Delegation of the Russian Federation in as much as electronic filing concerned not only offices but also users, was not limited to the patents sector, and depended greatly on the development of communications. Providing at the national level a global text incorporating the other sectors and measures relating to electronic signatures, would probably require longer time limits. He shared the viewpoint of the Delegation of Egypt concerning the time limits imposed within the TRIPS Agreement which, with a five-year time limit within the current Treaty, were likely to be difficult to achieve. As regards the assistance provided for developing countries by WIPO or by States, as part of the implementation of this measure, he feared that in the light of the experience gained in applying Article 67 of the TRIPS Agreement, that positive results would not be achieved. Consequently, his Delegation considered that five-year time limits were unsatisfactory and that ten-year time limits should be retained.

387. Mr. MOUKOURI (Congo) said that, in accordance with the observations made by the Delegations of Burkina Faso and Mexico, accepting the actual principle of electronic filing did not exempt States from the right to request appropriate time limits for making their industrial property structures compatible with the new context that was developing, in particular as regards the WIPONET and other subregional projects, such as that of the OAPI of computerizing all industrial property structures between the present and the beginning of the year 2000 (sic?), which had not yet seen the light of day. He expressed satisfaction with the assistance mentioned by the Delegation of the United States of America for developing countries and hoped that such assistance would be provided under the auspices of WIPO. In conclusion, he supported a time limit of ten years.

388. Mr. STOHR (EPO) commented that the issue of technical standards and the possibilities of having equal access to these on a worldwide basis required for a comprehensive discussion and flexible solutions. During the work of the SCP, it had been agreed that Rule 8(1)(a) provided for a reasonable balance between those who wanted to go forward with electronic filing and those who need more time to do so. However, the speedy development of information technology, and the recent experiences which some of the so-called "mega applications" had shown that the 10 year period which in practice would mean a 15 year time period from the Diplomatic Conference was too long. Therefore, the Delegation fully supported the United States of America proposal with regard to Rule 8(1)(a), as well as the suggested addition of a new subparagraph (c) to this Rule.

389. Mr. STAAB (EPO) informed the Committee that the EPO recently received two mega applications. One had a content of more than 10,000 pages, the other more than 50,000 pages. Taking into account the priority documents of the second application, the overall number of pages of this application amounted to more than 600,000 pages. The size of such applications created major problems with regard to their publication.

390. Mr. HERNÁNDEZ VIGAUD (Cuba) said that his Delegation preferred Rule 8.1(a), as worded in the Basic Proposal, since that rule had already been the subject of broad debate and represented an acceptable compromise solution. Although he shared the sentiment expressed by the Delegation of Mexico, whereby even the ten-year period would be insufficient, he could nevertheless accept such a period. The Treaty should not exclude any class of applicants and the fact that it was possible to exclude the filing of applications on paper within such a short period would lead to the exclusion from the system of many applicants from developing countries who did not have access to electronic forms of communication.

391. Mr. SESE (Kenya) said that his Delegation joined other delegations that were supporting the electronic filing period to 10 years. This was a compromise period, taking into consideration all levels of development in our various States. The Delegation of Egypt and others had mentioned the difficulties which developing countries were facing during the implementation of the TRIPS Agreement, and difficulties could similarly arise in a transition of those countries to electronic filing. Regarding technical assistance, the delegate stated that developing countries were facing difficulties in obtaining technical assistance under Article 67 of the TRIPS Agreement. Most of the technical assistance to developing countries had come from WIPO itself, not from those Member States who have committed themselves.

392. Mrs. BERENDSON (Peru) said that her Delegation considered that the ten-year period currently envisaged in Article 8(1) could prove to be insufficient for applicants from developing countries. It could, however, accept this period, since it was the product of negotiation. It considered that greater technical assistance should be provided for developing countries so that they might gain access to the technology and infrastructure necessary in concluding this ten-year period, and using electronic media appropriately when required.

393. Mr. TRÉPANIÉ (Canada) said that his Delegation supported the American proposal to reduce the time limit from ten to five years, insofar as this limit would not apply immediately but once the Treaty had come into force. Moreover, since the Canadian Office had received an application containing 77,000 pages requiring special measures for processing it, electronic filing quickly proved to be necessary in order to simplify the task facing offices.

394. Mrs. EL MAHBOUL (Morocco) said that during the introductory statements almost all the speakers had expressed satisfaction with the draft Treaty which aimed at simplification and harmonization, and had considered that the Treaty would encourage inventors and provide them with a great deal of protection. Based on the experience of implementing the TRIPS Agreement, she said that her Delegation considered the current version of Rule 8 to be satisfactory insofar as the Rule took account of the situation of countries from the South, despite the fact that the ten-year moratorium might be regarded by certain people as quite short. She feared that rejecting the ten-year moratorium and reducing it to five years led to two situations: either countries would accede to the agreement but with a large number of reservations, or the majority would not accede thereto. Consequently, her Delegation considered that the ten-year period should be retained.

395. Mr. HOLMSTRAND (Sweden) expressed the support of his Delegation for the proposals made by the Delegation of the United States of America. The delegate said that he believed that countries that were in possession of sufficient technical support and which were able to guarantee the necessary safety arrangements should be allowed to exclude the filing of applications on paper as soon as possible. As to whether this term should be fixed to 10 or five years, the Delegation had come to the conclusion that the reasons for shortening the term to five years were very well founded and valid. The Delegation further associated itself with the arguments and examples raised and demonstrated by the Delegation of the EPO. These examples clearly showed that there was an immediate need for introducing a provision corresponding to Rule 8(1)(d) as proposed by the Delegation of the United States of America. In conclusion, the Delegation recalled that any transitional period, whether fixed to five or ten year period, did not impose a sunset clause, meaning that no country would be obliged to waive the possibility of accepting filings on paper. Any country would be free to carry on according to the present regime, even after the expiration of the transitional period.

396. Mr. GRIGORIEV (EAPO) said that, as a transitional period under Rule 8(1), whether to choose ten or five years was a rather complex question. Resolving this matter today did not seem to be possible. As had already been underlined by many preceding speakers, this question had to be considered from the point of view of the willingness of the Patent Office to accept paperless technology and to work on that basis and from the point of view of the willingness and readiness of the user to apply this technology and to make use of it in its interaction with the Patent Office. From the point of view of the Patent Office, the Delegation had the impression that it could be fair to talk about a period of less than ten years if the said Patent Office was given assistance within the framework of WIPO and, if the necessary standards were developed and the necessary software was made available. From the point of view of applicants, and, in particular from their possibilities to make use of paperless technology, the Delegation was certain that most people did not have this possibility, because that option depended to a large extent on national infrastructure and on the level of development of that infrastructure. However, it was not possible to say what the situation in each single country would be in five years or what would happen in ten years. Therefore, it was deemed appropriate to support the proposal made by the Delegation of the Russian

Federation, namely, not to take a firm stance on the deadline, but to defer the decision on this issue for a minimum of five years and then come back to it.

397. Mr. HERALD (Australia) said that his Delegation considered the provisions of Article 8 (1) (d) were most important. So long as it was present, his Delegation could support a reduced time period under Rule 8 (1)(a). One of the key issues for the Delegation was to ensure that people, who did not have access to means of electronic filing, did not lose their patent rights, merely because they could not respond in time by electronic means. Furthermore, the Delegation said that it had sympathy for the position of the Delegation of the United States of America. One of the things which was of concern for the Delegation was the current wording of Rule 8, and, in particular, the uncertainty of the starting point for calculating that period. The Delegation said that a possible solution for the dilemma with Rule 8 could be, instead of ten years from the date of entry into force of the Treaty, to set a specific date that conveniently would be 10 years from the last date of the Conference, i.e., during a period before June 2, 2010.

398. Mr. TRAMPOSCH (WIPO) stated that the SCP found a solution on this controversial issue but the Diplomatic Conference was entitled to review every provision in negotiating the Treaty at this Conference. The Secretariat understood the concerns of the various delegations and the practical necessities that were being imposed on offices by the filing of very large applications and very complex applications. It also understood the concerns raised by the delegations of countries that might not be ready at this point or in the near future to work in electronic filing environment. In negotiating this Treaty, the question of how to create a single global Treaty that covered the wide range of technological capabilities in all the countries around the world was always a difficult one. A number of delegations mentioned the TRIPS Agreement, which had recognized a differentiation in the level of development among the adherence to that Treaty, and it appeared that this was perhaps one issue where WIPO might find it very beneficial to expressly recognize a differentiation in the level of development among the member countries, at least for some transitional period. The Secretariat therefore offered a suggestion as a possible compromise that could, during the transition period, fulfill the needs of all the offices whose representatives had taken and would take the floor. The drafting proposal was very simple but the concept was a significant one. The suggestion was to at least consider the possibility of modifying, at the end of the first sentence of Rule 8(1)(a) as follows: "During a period of ten years from the date of the entry into force of the Treaty, a Contracting Party shall permit the filing of communications on paper by nationals of developing countries and of countries in transition." This would have to be checked with WIPO's Legal Counsel because the provisions should cover the correct countries, namely developing countries and countries in transition, and in such a way as to be acceptable to them. This was put out simply as a suggestion that could be considered along with the others suggestions that the delegations had put forward.

399. Mrs. BOLAND (United States of America) said that the statement by Mr. Tramposch, the interventions of the Delegations of Australia and the EAPO following upon the intervention of the Delegation of the Russian Federation appeared to be moving in the direction of a viable compromise. The Delegation as well as others felt that the objective of everyone here was to develop a single electronic filing solution and implement that solution effectively throughout the entire world. Getting to the issue of ten years versus five years, she still felt that ten years in this Rule would slow the development of such a solution and, in turn, slow the implementation of an electronic filing solution throughout the world. A five year period would force a solution more quickly and would in turn force more technical assistance sooner to those countries that needed it. A ten year period would delay the solution and would also delay technical assistance. She further felt that, again, safeguards were in place, but to deal with the issues that had been raised in the position taken in the Delegation's proposal, she just wished to emphasize that the ten year period was not a safeguard and was not truly any type of transition. The wording in the current draft made it merely a hindrance on progress and a solution. The Delegation would be interested in seeing written proposals along the lines of that raised by the Delegations of EAPO and the Russian Federation. Concerning the proposal of the Delegation of Australia and that offered by Mr. Tramposch, her Delegation would be willing to consider those as the discussion moved forward.

400. Mr. ZOUA (Cameroon) said that his Delegation had, from the very beginning of the preliminary discussions by the Standing Committee on Patents, expressed reservations concerning paper filing as opposed to electronic filing: both subjects were dealt with by Article 8(1) and Rule 8(1). He noted that the time limit was less significant than the assistance to be provided for human resources training and as regards the implementation of appropriate infrastructures, so that developing countries might respond rapidly to electronic filing as instructed by WIPO. Referring to the introductory statement made by the African Group, he said that for practical reasons linked to the application of the PLT in the course of

negotiations, he agreed to coordinate the implementation of the Treaty jointly, irrespective of the differences in the technical and financial resources of the different countries that were potential parties to the Treaty.

401. The Delegation of Cameroon, which had expressed reservations during previous preparatory sessions as regards Article 8(1), including Rule 8(1), wished nevertheless to support the amendment that had just been proposed by the International Bureau and, subject to these conditions, withdraw its reservations with a view to achieving a constructive balance with the other provisions of said Treaty.

402. Mr. BARTELS (Germany) recalled that the discussion here concerned the adoption of the PLT and that the subject matter of the present discussion was innovation. In all its discussions, this Committee should not tend to hinder innovation. For the Delegation, the reference to the PCT was very important. His Delegation understood that, under the PLT, there would be no obligation for the applicant to use electronic filing which did not comply with the PCT standards. This was clearly expressed in Article 6(1), as adopted. With that understanding, the Delegation of Germany fully supported the reduction of the period from ten years to five years as proposed by the Delegation of the United States of America. However, it pointed out that this meant that if any agreement under the PCT Regulations concerning an international standard of electronic filing was found, the offices should accept the agreed standard under the PCT Regulations and this was not dependent on a period of time. For further clarification, it proposed another modification to Rule 8, namely, in the first sentence of Rule 8(1)(a), the time period of ten years be replaced by five years, and in the second sentence, the words "provided that electronic filing is possible under the PCT Regulations" be added at the end, so that the second sentence would read: "After that period has expired, any Contracting Party may, subject to Articles 5(1) and 8(1)(d), exclude the filing of communications on paper provided that electronic filing is possible under the PCT Regulations."

403. Mrs. MÁRQUEZ (Venezuela) said that the patents system was intended both to encourage inventive activity and to disseminate information technology. The problem expressed by some delegations regarding the number of or large volume of paper contained in applications did not merely constitute a problem of filing, but also of disclosure and dissemination of this information. Consequently, if applications were filed with tens of thousands of pages, the problem would be not only to process the application but also to disclose its content, in order to promote the development of inventive activity through its dissemination. As a result, her Delegation supported Rule 8(1), as contained in the Basic Proposal, since a reduction in the time limit would lead to major exclusion of applicants at the international level. She considered that while the ten-year period should be retained, thought should be given to efficient mechanisms for the provision of technical assistance. Such assistance should be intended not only for the actual operational infrastructure of patent offices, but also for the part external thereof, given that this was what affected most inventors, in particular small inventors from developing countries.

404. Mr. DIONG (Senegal) said that, in line with other developing countries, he supported the retention of the ten-year time limit and emphasized the need to deal with the issue of electronic filing from a global point of view, in relation to the national context of each State as regards telecommunications, and the performance and possibilities of developing countries. The concern raised by numerous delegations was real both as regards its implications for the implementation of the PLT and the difficulties linked to implementing the TRIPS Agreement. The ten-year time limit therefore appeared to be a minimum period which would allow these countries to make the necessary adjustments so as to benefit from the implementation of the planned PLT.

405. Mr. NIYONKURU (Burundi) supported the position expressed by the African Group, endorsed the provision of Article 8.1(a) concerning the ten-year period, and supported the amendment proposed by the International Bureau, which specified, in the last part of the first sentence "by the nationals of developing countries and the countries in transition." He expressed a concern shared by other delegations, but not aired by them, relating to exclusion owing to a lack of resources, and recalled the spirit of reconciliation emphasized at the beginning of the Diplomatic Conference. He confirmed that the doubts expressed by certain countries as regards the five-year period were based exclusively on the real situation and the impossibility for certain States to move forward so quickly, and regretted that the Regulations had not explicitly provided for the granting of technical assistance to countries which appeared to be unable to advance at the pace desired by some countries. As regards the risk, alleged by the Delegation of the United States of America, of a delay in the granting of technical assistance within a ten-year period, he emphasized by contrast the need for those wishing to help others to move forward more quickly to provide the resources by granting technical assistance.

406. Mr. HIDALGO LLAMAS (Spain) said that his Delegation supported the proposal of the United States of America, especially in the point added to Rule 8(1)(c). There were a considerable number of complex applications, or mega-applications, which required special conditions for processing and filing by means other than paper. As regards the time limit, a period of five years was considered appropriate, taking into account that the Treaty would probably not come into force for another five years. As to the Australian proposal, he said that any period that might be established should start from the date of the Treaty's entry into force, since a period beginning from the date on which the Diplomatic Conference ended would not contribute to legal security. The Secretariat's proposal for Rule 8(1) was acceptable, although taking into account that in all countries there were individuals with limited economic resources, it would be appropriate to adopt, as a criterion, the capacity of a particular inventor or small entity in order to benefit from the five or ten-year period, or even a longer period, since this would take into account the ability or scope of the inventor (enterprise) more than its nationality.

407. Mrs. OVIEDO ARBELAEZ (Colombia) said that her Delegation acknowledged the benefits and advantages of using electronic means in processing patent applications. However, it viewed with concern the fact that paper applications were excluded, since this would limit access to the patent protection system for inventors from developing countries. It would be preferable to include a broader standard which did not contain exclusive references.

408. Mr. CHAOUCH (Tunisia) expressed support for retaining a ten-year period as originally envisaged or, alternatively, suggested keeping this period at least for developing countries and the countries in transition, as proposed by the International Bureau, in as much as the countries concerned would be unable to put in place the requisite resources, be they material, legislative or otherwise in a five-year period.

409. As regards the proposal that, in addition to a five-year time limit, assistance should be provided for developing countries by developed countries, or as part of the WIPONET project, he noted that such assistance would essentially concern patent offices, whereas electronic filing also concerned applicants (individual inventors, SMEs, SMIs, universities, researchers and students) who risked being penalized by an electronic filing system.

410. Mr. VAN DER EIJK (Netherlands), in order to clarify the item being discussed, wished to briefly define the way his Delegation saw the problem. Article 8 of the Treaty said that no Contracting Party was obliged to accept filing of communications other than on paper and Contracting Parties were not obliged to exclude the filing of communications on paper. The draft Treaty did not impose anything on any office of a Contracting Party, and Rule 8 was only intended to prevent offices from doing away with paper for a certain time. The reason why offices which had turned to electronic communication might wish, at a certain date, to end the possibility of filing applications on paper was understandable, and this possibility for the Contracting Parties should not be limited any longer than was strictly necessary. On the other hand, of course, there was the possibility that applicants from certain countries were not yet ready to communicate by electronic means. In that light, he thought that the suggestion of Mr. Tramposch (WIPO) was very useful to take account of the difference in development among the countries. As to the time period, he felt a little uneasy to fix it at this point. About five or ten years from the entry into force of the treaty meant some 10 or 15 years from now, and it was therefore difficult to say whether at that time electronic communication would be globally available. Thus, he had a certain sympathy for the suggestions of the Delegation of the Russian Federation and other speakers for not fixing a time limit at this moment. For example, one could consider the possibility of leaving it to the Assembly to fix such a period but to limit it to a maximum of ten years from the entry into force of the Treaty. This would give the Assembly the possibility of fixing an even earlier date according to the developments in the coming years. This might be a good compromise between the different approaches.

411. Mr. BOUHNİK (Algeria) said that his Delegation opposed the proposal made by the Delegation of Australia relating to entry into force from the date of the current meeting, and said that it preferred the usual formula, "from the date of the Treaty's entry into force." He also stated that the proposal made by the International Bureau was questionable, but expressed support for the request and remarks of the Representative of Burundi, to which he subscribed.

412. Ms. WEN (China) believed the objective of the PLT was to enable applicants to reduce costs by using electronic filing. On the other hand, this was a very complex issue, especially in view of the great differences between developing countries and developed countries. This referred to the resources at a

technical level and also as far as experts are concerned. Therefore, her Delegation was of the view that ten years was an acceptable time period. However, at this point, it was not known whether a ten year period was appropriate considering the possible improvements that might intervene. The proposal put forward by the Delegation of Australia could therefore be considered and, in addition, the proposals by the Delegation of the Russian Federation and EAPO could be acceptable. This was a realistic attitude to deal with this problem. At the same time, she believed that the proposal by the Delegation of the United States of America to reduce the 10 years to 5 years for instance was not a practical solution to the problem. She also noted that viewing from the quick appearance of "jumbo" or "mega" applications especially in such technical fields as computer and biotechnology, China supports in principle the United States of America proposal to add Rule 8(1)(c). But the phrase "deemed not practicable" in the proposal is too vague to prevent abuse of right.

Sixth Session

Wednesday, May 17, 2000

Afternoon

413. Ms. NÆSGAARD (Norway) supported the proposals made by the Delegations of the United States of America and Australia.

414. Mr. BÜHLER (Switzerland) said that his Delegation associated itself with the remarks made by the Delegation of Australia and considered that the solution it had proposed had particular merit as regards the security aspect in determining the time limit. As regards the legitimate concerns of developing countries, he emphasized that under Article 8(1)(d), Contracting Parties would also be obliged to accept the filing of applications on paper for the purposes of respecting a time limit. Finally, he asked the International Bureau for more information on whether this proposal complied with the TRIPS Agreement.

415. Mr. TRAMPOSCH (WIPO) said that the possible difficulty with the TRIPS Agreement did not relate to the national treatment obligation, but rather to the obligation to grant most-favoured-nation treatment. He referred to Article 5 of the TRIPS Agreement which grants an exemption to these obligations for procedures provided in multi lateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

416. Mr. MORENO PERALTA (Panama) said that his Delegation appreciated the usefulness of electronic media in processing patent applications. It favored, however, retaining the ten-year period for two fundamental reasons: firstly, based on the principle of timeliness which would allow gradual adaptation by the least advanced national offices in order to share modern technologies. Secondly, the ten-year period "could avoid" the exclusion of innovators or applicants who did not possess suitable electronic media for being able to use fully the new electronic procedures in place. In conclusion, he emphasized the need to receive technical and economic assistance as a necessary element in achieving the aims of the Patent Law Treaty.

417. Ms. FRANCISCO (Philippines) said that harmonization should aim less at increasing the convenience of offices than at the benefits for the users of the patent system. She explained that access to electronic means was not readily available to nationals of a developing country like the Philippines, and that this might cause a loss of rights. She therefore supported the present draft, noting that this matter could be reviewed by a future PLT Assembly. She also supported the suggestion by the International Bureau, and further proposed to add the following words at the end of the second sentence of Rule 8(1)(a): "by nationals of Contracting Parties that are developed countries or countries that may wish to be so covered."

418. Mr. EL FAKI ALI (Sudan) stated that there were objective reasons why developing countries needed a period of at least ten years, and that he was therefore in favor of retaining the ten year period which, together with the amendment suggested by the International Bureau, provided a balanced compromise.

419. Mr. KAUDYROV (Kazakhstan) supported the suggestion made by the International Bureau, but asked whether it might be preferable to replace the word "nationals" by the word "subjects" in order to include both nationals and other legal entities.

420. Mr. TRAMPOSCH (WIPO) explained that the term “nationals” had been suggested because it was used in the Paris Convention and was understood to cover natural and legal entities.

421. Mr. BADRAWI (Egypt) noted that the addition suggested by the International Bureau would introduce a personal concept, namely the nationality of the applicant. Under this concept, an applicant might benefit from the ten year period irrespective of where in fact he had filed the application. He said that it would seem more important to focus on organizational criteria by allowing the Office with which the application is filed to decide whether it wants to accept filings on paper only, or also in electronic form.

422. Mr. HABIBI (Libyan Arab Jamahiriya) supported the suggestion made by the International Bureau regarding Rule 8(1).

423. Mr. TRAMPOSCH (WIPO) explained that the effect of the proposal would be that any national of a developing country or country in transition would be entitled to file and process its application on paper during the entirety of the ten year period in the Office of any Contracting Party to the Patent Law Treaty.

424. Mr. BADRAWI (Egypt) asked whether offices in developing countries would be obliged to accept digital communications from developed countries during the period of ten years. If this was not the case, he suggested to clarify this in the provision.

425. Mr. TRAMPOSCH (WIPO) referred to Article 8(1)(b) of the draft Treaty which guarantees that no Contracting Party will ever be required to accept electronic communications.

426. Mr. BADRAWI (Egypt) stated that, if offices in developing countries were not obliged to accept electronic communications, the amendment suggested by the International Bureau would not seem necessary. If, however, the suggested addition was retained, it should be modified to make that fact clear.

427. Mr. TRAMPOSCH (WIPO) explained that Rule 8(1)(a) applied only to Contracting Parties which accepted electronic filing, and that, under Article 8, no country would ever be obliged to accept electronic filing. Thus, Rule 8(1)(a) would not apply to an office in a developing country which does not accept electronic filing.

428. Mr. BADRAWI (Egypt) asked for confirmation that the text enabled the Egyptian Patent Office to accept communications solely on paper.

429. Mr. TRAMPOSCH (WIPO) confirmed that the text would allow any to accept applications on paper only. He added that the text as it stands would allow any office either to accept applications on paper only, or also in electronic form, and that this would be the case even after the ten-year period.

430. Mr. BADRAWI (Egypt) stated that this would have to be spelt out clearly in the Notes.

431. Mr. TRAMPOSCH (WIPO) referred to Note 8.03 and said that a sentence would be added in order to clarify that offices are free to decide whether they wanted to accept filings on paper only, or also in electronic form.

432. Mr. JONG (Democratic People's Republic of Korea) stressed the need to take account of the technical capability of developing countries to introduce means of electronic communication. He referred to Rule 8(9*bis*)(i)(b) and (d) of the PCT Regulations according to which electronic filing and processing were optional for Contracting States. He stated that his Delegation supported Rule 8(1)(a) as contained in the Basic Proposal. He also supported the proposal made by the International Bureau to add a reference to developing countries and countries in transition.

433. Mr. MENGISTIE (Ethiopia) endorsed the proposal made by the International Bureau, since it took account of the problems of applicants from developing countries to file applications in electronic form.

434. Mr. RAJAN (Ireland) stated that, in light of the fact that electronic filing would become increasingly popular in the not too distant future, the ten year period referred to in Rule 8(1) would be too long, especially because it would be counted from the date of entry into force of the Treaty. Thus, that a country would not be able to exclude paper filing for about 15 years from now. Referring to the concern

of developing countries that their nationals might be at a disadvantage, he said that such disadvantage would seem more apparent than real, because applicants would, in practice, appoint a local patent attorney to process their applications, for example in the United States Patent and Trademark Office, the Japanese Patent Office or the European Patent Office, irrespective of whether the filing was made electronically or on paper. He emphasized that all these offices were obliged to accept documents for the purpose of a filing date under Article 5(1) even beyond the time provided for in Rule 8. For these reasons, he supported the proposal made by the Delegation of the United States of America.

435. Mrs. BOLAND (United States of America) supported the proposal made by the Delegation of Germany to insert the following phrase at the end of the second sentence of Rule 8(1)(a): "under the condition that electronic filing is possible under the PCT Regulations." She said that such a clause would clearly express the need for a single electronic filing solution that would be available to and used by all applicants throughout the world.

436. She also emphasized that, contrary to what had been stated earlier by some delegations, technical assistance throughout the world from developed countries to developing and less developed countries was working well. She emphasized that the United States of America, for example, were deeply involved in providing assistance throughout the world in fulfillment of their obligation under Article 67 of the TRIPS Agreement.

437. Mr. BOUCOUVALAS (Greece) expressed his support for the proposal made by the Russian Federation. With regard to the addition proposed by the International Bureau, he said that the obligation of offices to accept filings on paper could not be limited to nationals of developing countries and countries in transition, but this provision should have effect also for nationals of developed countries.

438. Mrs. BANYA (Uganda), speaking on behalf of the African Group, said that the proposal made by the Delegation of United States of America to reduce the period during which offices would be obliged to accept filings on paper to five years would not be in the interest of developing countries, and in particular least developed countries. She said that Africa as a continent was in need of technical assistance in order to be able to participate actively in the electronic and information technology era. In this regard, she welcomed the statement made by the Delegation of the United States of America that technical assistance was still "alive" and expressed the hope in seeing this statement reflected in practical terms. In light of the difficulties facing Africa, she reiterated the African Group, pointed that a period of 10 years would be more convenient and realistic.

439. Mr. GAL (France) said that his Delegation continued to favor the proposal put forward by the United States of America – prohibition to provide for electronic filing for a five-year period – but, emphasizing the need to take account of the interests of all Contracting Parties and applicants, hoped that the International Bureau's proposal would meet with universal approval. In view of the difficulties in foreseeing the advances made in the area of electronic filing in five, ten or 15 years' time, other possible approaches should be tested, in particular that proposed by Spain, and supported by the Delegation of Greece, which was designed to allow small inventors and small and medium-sized enterprises to benefit from this exemption.

440. Mr. ZANGENEH (Islamic Republic of Iran) proposed to add, by way of compromise, the following phrase after the words "on paper" in Rule 8(1): "without prejudice to the other provisions of this Treaty, the Contracting Parties are allowed to arrange bilateral or multilateral agreements for electronic filing between themselves."

441. Mr. BROWN (CIPA) supported the proposals made by the Delegations of the United States of America and Germany. He said that a term of five years from entering into force of the Treaty would add up to at least 10 years from now before a Contracting Party could, but would of course not be obliged to, exclude paper filing. And even then, no Contracting Party could exclude paper filing in respect of Article 5(1) on the filing date and Article 8(1)(d).

442. Mr. KHAFAGUI (WASME) noted with interest that a Contracting Party could exclude the filing of applications on paper once a period of ten years from the date of the Treaty's entry into force had expired, and that, according to the Delegation of the United States of America, a ten-year period would serve to discourage the adoption of electronic filing throughout the world. He said that the time limits – even if they were two years – did not constitute the heart of the matter, which basically lay in countries' financial possibilities and resources as well as in their need for suitable equipment and competent experts

providing training in these new techniques. Countries' financial possibilities and the time limits for obtaining the requisite funding would determine the time limits for establishing an electronic filing system, and it was only if this condition were taken into account that non-paper filings could develop.

443. In conclusion, WASME proposed either deleting this text and leaving each country the task of deciding its own position on the basis of its financial circumstances, or that western countries should contribute, by granting developing countries aid and subsidies, to the development of electronic means or the dispatch of experts working in the field of electronics.

444. Mr. STEWART (FICPI) informed delegates that the "mega cases" referred to by the Delegation of the United States of America already existed, particularly in the field of biotechnology. He explained that most of these types of inventions, especially in the field of biotechnology, were created on computer, and were only searchable by computer. He stated that electronic filing and processing would, therefore, have to become a practical reality for Patent Offices in developed and developing countries. He emphasized that it was important to remain flexible and to permit electronic filing by those applicants who had the means to do so. He also stressed that serious consideration should be given to Rule 8(1)(d), as proposed by the Delegation of the United States of America in document PT/DC/8 under paragraph (11)(c), but suggested to amend the first part of the proposed subparagraph to read: "Where the filing or processing of communications on paper is deemed not practicable in a particular case..."

445. He stated that applicants were protected by Articles 5(1) and 8(1)(d) of the draft Treaty, according to which a communication could always be filed on paper for the purposes of obtaining a filing date and for meeting a time limit by filing communications on paper. Recognizing the need for offices and practitioners to take advantage of technological improvements, he nevertheless noted that many issues relating to their implementation remained to be settled by the courts. Given that nothing would prohibit the early implementation of electronic filing, he stated that a ten year horizon would be a practical time.

446. Mr. PANTULIANO (AIPLA) supported the suggestion made by the International Bureau, and the proposal put forward by the Delegation of Australia. He also agreed with the statement of the Delegation of the United States of America that technical assistance in the area under discussion would be much more likely to flow from developed countries to developing countries if the Rule provided for a shorter period of time.

447. Mr. TAKAMI (JPAA) supported the proposal made by the Delegation of Australia. He informed delegations that, in the course of the last ten years, the system of electronic filing in Japan had provided a very effective means of communication between the Patent Office and patent attorneys and that it had considerably reduced the administrative burden for Patent Offices, patent attorneys and applicants alike.

448. The PRESIDENT noted that many delegations had spoken in favor of maintaining the initial text, while a number of delegations had supported the proposal made by the Delegation of the United States of America to reduce the term to five years, or the compromise proposal put forward by the Delegation of Australia, according to which the ten-year-period would start on June 2, 2000. He stated, however, that it seemed difficult to find a compromise based on time alone. Referring to the proposal of the Delegations of the Russian Federation and the EAPO to provide a mechanism allowing to take a, not necessarily unanimous, decision at a later date, he noted that most of the delegations that had spoken would rather prefer to take a clear decision at this Conference. He said that the most promising course seemed to find a solution that limits the exception to situations where there is a clear need, as had been suggested by the International Bureau or the Delegation of Spain. He asked delegations whether they were in a position to indicate whether they could support the suggestion of the International Bureau as a compromise, or whether they needed additional time.

449. Mr. BAHARVAND (Islamic Republic of Iran) said that, while he appreciated the suggestion made by the International Bureau, there nevertheless remained some problems, such as defining "developing countries", "countries in transition", or "nationals". He explained that most inventions by nationals of developing countries were made in the developed world and asked whether such cases would be excluded. He referred to the proposal made earlier by his Delegation, that countries having the capability of introducing electronic filing could agree to mutually accept electronic communications from applicants based in these countries, and stated that this proposal would avoid the above mentioned difficulties, while taking into account the different levels of development that might persist beyond any time limit provided for in the Treaty.

450. Mr. TRAMPOSCH (WIPO) said that allowing bilateral agreements on electronic filing would seem to exacerbate the problem of determining who is a "national". He referred to the PCT schedule of fees which provides for a fee reduction of 75% for international applications filed by any applicant who is a natural person and who is a national of and resides in a State whose per capita national income is below \$3,000. He also pointed out that WIPO had clear criteria to determine which countries were "developing countries" or "countries in transition to a market economy".

451. Mr. TRÉPANIÉ (Canada) favored the proposal made by the Delegation of Spain of allowing "small entities" anywhere in the world to file on paper for the next ten years. He said that this proposal would avoid the problems of determining concepts such as "nationality" or "developing country."

452. Mr. HAMDÍ (Tunisia) asked how, once the time limit to be specified (either five or ten years) had expired, disputes would be settled between on the one hand a country that was not party to the PLT and from which an applicant wished to file a patent on paper in a country which excluded paper and, on the other hand, a country that was party to the PLT. The applicant would avail him or herself of the treaties binding in his or her country, such as the Paris Convention or the TRIPS Agreement, while a country which refused to accept paper filing would base itself on the PLT.

453. Mr. BAECHTOLD (WIPO) responded that in such a case, the office in question would be obliged to grant a filing date to the applicant, but would be entitled to request the applicant to refile his or her application in electronic form, or to convert it into electronic form, and possibly to demand a fee.

454. Mrs. BOLAND (United States of America) expressed her preference to have more time to reflect upon the various options.

455. Mr. BOUCOUVALAS (Greece) supported the proposal made by the Delegation of Canada to focus on the type of applicant, rather than on his nationality. He proposed that SME's and natural persons should be considered irrespective of their country of origin.

456. Mr. CAVAZOS TREVIÑO (Mexico) considered that the proposal put forward by the International Bureau was a compromise which his Delegation would be prepared to accept, since it recognized that the principal problem was not that a developing country necessarily had to adopt electronic filing, but the fact that national inventors from developing countries were granted access to protect their inventions in other countries. In that connection, his Delegation supported the provision suggested by the International Bureau.

457. Mr. HE (China) asked whether the proposal by the International Bureau regarding Article 8(1)(a) meant that an office of any country could not refuse paper filing from a developing country ten years after the PLT enters into force. He also asked whether there was any time limit with regard to a developed country.

458. Mr. TRAMPOSCH (WIPO) stated that, under the proposal, if a country, after the entry into force of the Treaty, or even before the entry into force, wanted to introduced 100% electronic filing, it could do so subject to the proviso that it would still have to process paper applications for nationals of developing countries, but would be allowed to preclude paper filing from nationals of developed countries.

459. Mr. STOHR (EPO) stated that he preferred the concept used under the PCT for defining whether fee reductions were available to certain applicants. He also stated that he still had doubts whether a mere harmonization treaty like the PLT was covered by the exemption of Article 5 of the TRIPS Agreement were available to certain applicants.

460. Mr. HERALD (Australia) stated that Australia hoped to have enabled electronic filing in its national Office in the next year or two, but that Australia would not require all applications to be filed electronically for a very long time, if ever. He stated that the issue for Australia was not so much what a country does in its own national Office, but what the effect is on Australian applicants when filing abroad. He noted that, since Australia was not a developing country, Australian applicants would only benefit under a "small entity" versus a "developing country" threshold, and hoped that it was possible to have a simple and generally agreed definition of "small entity", which also addressed issues that arise with developing countries.

461. The PRESIDENT summarized the discussion by indicating that the most promising possibilities for a compromise involved limiting the effect of the provision in Rule 8(1)(a) to nationals of developing countries and of countries in transition, or in some other way to those who actually needed the benefit of the restriction, e.g., small entities. He stated that he would try, through informal consultations, to get a sense from the delegations as to when they would be ready to tackle these issues again.

462. The PRESIDENT noted the slow pace at which the work was progressing and the possible need for extra sessions. He informed the delegations that it was possible to work on Friday from 10:00 a.m. until 1:00 p.m., 2:30 p.m. until 5:30 p.m., and 7:00 p.m. until 10:00 p.m. and on Saturday from 2:00 p.m. to 6:00 p.m. He noted that a decision would have to be made tomorrow (May 18) by the end of the day.

463. He proposed discussing Rule 8(1)(b) and (c) together, followed by the proposal of the United States of America for a new Rule 8(1)(c), which, would be renumbered Rule 8(1)(d), if Rule 8(1)(b) and (c) were retained. He reminded the delegations that the International Bureau had proposed changing the text on Rule 8(1)(b) as it appears in PT/DC/6, Annex 5, page 2, from "subject to Article 8.3 and paragraph (c) to "subject to Article 8(3) and subparagraph (c)".

464. Mr. STEWART (FICPI) asked whether the new words should be, "subject to Article 8(3) and Article 1, subparagraph (c)."

465. Mr. TRAMPOSCH (WIPO) stated that the reference was to subparagraph (c) of the same paragraph.

466. *The PRESIDENT, noting that there were no further comments, declared Rule 8(1)(b) and (c) adopted, with the modification suggested by the International Bureau, and referred to the Drafting Committee.*

467. He invited the delegations to comment on the proposal of the United States of America regarding Rule 8(1)(c), which would now be renumbered as Rule 8(1)(d), in Document PT/DC/8.

468. Mr. FICSOR (Hungary) stated that he could support the substance of the proposal of the Delegation of the United States of America regarding new Rule 8(1)(d). He stated that the new provision apparently was intended to address the need to immediately accommodate certain types of communications, but that its language was broader than necessary and might be construed to cover all communications irrespective of their length, complexity or other special features. He proposed that the words "certain types of" be inserted before the word "communications" so that the provision should read, "Where the filing or processing of certain types of communications on paper is deemed not practicable..." He also proposed that the Regulations contain some explanation as to the types of communications that might fall under the scope of that provision.

469. Mr. BADRAWI (Egypt) stated that Rule 8(1)(d) was too general and needed clarification in that, *inter alia*, it must first be decided who will determine whether or not communications on paper were practicable. He also noted that the proposal opened the door to the possibility of imposing digital forms for communications, a possibility which is not in line with the interests of developing countries.

470. Mr. BOGDANOV (Russian Federation) stated that he supported the proposal in principal: however, he noted that the proposed wording should be made more specific. He proposed that after the words "on paper" the words "because of its nature" or "due to its character" be inserted: that the word "filing" in the first line of the paragraph be replaced by the word "receiving": and that the word "communications" be replaced by "communication" in the singular.

471. The PRESIDENT noted that the proposal of the Delegation of the Russian Federation could be clarified by inserting the word "a" before the word "communication" in the singular, and noted the assent of the Delegation of the Russian Federation to that suggestion. He recited the proposal, including the proposal of the Delegation of the Russian Federation, as follows: "Whether receiving or processing of a communication on paper due to its character is deemed not practicable, Contracting Parties may, notwithstanding paragraph (1)(a) and as prescribed in the regulations, require the filing of communications in another form or by other means of transmittal for those communications."

472. Mr. DAVIES (Canada) noted that the proposal of the Delegation of the United States of America regarding Rule 8(1)(c), renumbered as Rule 8(1)(d), as it appeared in document PT/DC/8, contained the

following words in square brackets: "[form][medium]" and "[transmittal][delivery]." He asked if the combinations that were read by the President were the ones under consideration.

473. The PRESIDENT stated that the modified proposal regarding Rule 8(1)(d) reflected the choices of the Delegation of the Russian Federation regarding the words in square brackets.

474. Mr. BADRAWI (Egypt) stated that the proposal regarding Rule 8(1)(d) should be modified as follows: "In compliance with paragraph (1)(a) and in line with the Regulations when the filing of processing of communications on paper is deemed not practicable due to its nature, the Contracting Parties may, notwithstanding paragraph (1)(a) and as prescribed in the Regulations, require the filing of communications in another form or by other means of transmittal for those communications."

475. Mr. HE (China) repeated the support in principle of the Delegation of China for the proposal by the Delegation of the United States of America to add proposed Rule 8(1)(c), but stated that the phrase "deemed not practicable" therein was vague. He proposed the inclusion of an explanation of the phrase in the appropriate place to ensure that Contracting Parties did not use the phrase abusively.

476. Mr. TRAMPOSCH (WIPO) noted that the text of the proposal of the Delegation of the United States of America for Rule 8(1)(d), which itself was a Regulation, nonetheless contained the phrase "as prescribed in the Regulations." He invited the Delegation of the United States of America to explain what it had in mind. He suggested that additional information could be inserted into the text of Rule 8(1)(d) itself without undue concern since the Rule could be modified by the Assembly.

477. Mrs. BOLAND (United States of America) noted that the presentation of its proposal as a Regulation warranted deletion of the phrase "as prescribed in the Regulations". She also stated that the Delegation of the United States of America supported the improvements to the text proposed by the Delegation of the Russian Federation and noted that those improvements addressed the issues which had been raised by other delegations.

478. Mr. HERALD (Australia) supported the improvements proposed by the Delegation of the Russian Federation as significant clarifications; and the deletion of the phrase "and as prescribed in the Regulations". With regard to the words in square brackets, namely, "[form][medium]" and "[transmittal][delivery]," he stated, referring to Article 8(1), that the appropriate words were "form" rather than "medium" and "transmittal" rather than "delivery."

479. Mr. BAHARVAND (Islamic Republic of Iran) expressed his preference for the proposal of the Delegation of Egypt. He also requested that the Delegation of the Russian Federation clarify the meaning of the word "character", perhaps by giving an example.

480. Mr. THOMAS (WIPO) stated that, solely within the context of the PCT, the International Bureau had been attempting to draft provisions which would allow the PCT system to cope with applications similar to those which are the subject of the proposal in question. He stated that it had been very difficult for WIPO to identify exactly what kind of applications were involved. He recognized that there were some very large applications where it was clear that paper filing should be discouraged or prevented. He pointed out, however, that it was difficult to determine exactly the kind of applications that might be involved. He observed that the first applications to present such a problem were those involving genetic technology where sequence of proteins and DNA segments or containing very long listings of computer software code. He pointed out, that any definition based on the kind of technology would soon be outdated. He also pointed out that any definition based on the number of pages of the application would raise the additional problem of how many pages it would take for the provisions in question to be invoked. He informed the delegations that, within the context of the PCT, one could be reasonably precise, since that component of the PCT filing fee which depends on the number of pages filed could be adjusted. He noted that the better route within the context of the PLT might be to set general principles rather than precise details of how applications should be processed. He also noted that the proposed provision was to be inserted in the PLT Regulations which, of course, could always be changed by the PLT Assembly.

481. Mr. BOGDANOV (Russian Federation) acknowledged the adequacy of the explanation by Mr. Thomas and stated that the Delegation of the Russian Federation had in mind exactly those cases. He stated that what was practicable or not practicable should be left to the determination of each Contracting Party.

482. Mr. VAN DER EIJK (Netherlands) supported the proposal by the Delegation of the United States of America, as improved by the Delegation of the Russian Federation, and noted that the query he had intended to make regarding the words in the proposed Regulation had been answered.

483. Mr. TRÉPANIÉ (Canada) supported the proposal of the Delegation of the United States of America, as modified by the Delegation of the Russian Federation, but asked whether the proposal would be more precise if it read "require the filing of that communication in another form or by means of transmittal for that communication", which would not apply for the communications.

484. Ms. FRANCISCO (Philippines), referring to the phrase "notwithstanding paragraph (1)(a)" in the proposal in question as well as the explanation given as to the word "character", asked, first, whether the form or the means of transmittal must be made at any particular stage during the process or at any particular procedure and, second, whether those requirements precluded an office from requiring applicants to submit a paper copy.

485. Mrs. BOLAND (United States of America) stated that, with regard to the second inquiry of the Delegation of the Philippines, the requiring of submission of a paper copy would not be advisable, since the purpose of this provision was to avoid the need to submit paper in those instances where it was not practicable for an applicant to do so or for an office to receive or process that paper. She stated that, with regard to the first inquiry of the Delegation of the Philippines, the provision in question must be read in light of the safeguard that the filing date and time limits could always be met on paper, throughout the examination process and would not necessarily lead to complete electronic filing.

486. Mr. HERNÁNDEZ VIGAUD (Cuba) requested clarification in relation to the proposed new Rule 8(1)(d), which used the verb "require" in the phrase "Contracting Parties may require." It might be the case that an applicant could not respond to such a requirement and preferred to file his or her application on paper. He asked what sanction, if any, would be applied to such an applicant, that of Article 6(8) or Article 8(8)?

487. Mr. TRAMPOSCH (WIPO) stated that it was his understanding that the proposal for Rule 8(1)(d) would provide an exception to Rule 8(1)(a), in that it contained the words "notwithstanding subparagraph (a)." He noted that Rule 8(1)(a) prevented a Contracting Party from requiring that certain communications be in electronic form. He also noted that, since subparagraph (d), as an exception to Rule 8(1)(a), would prevail, there would be a requirement on the applicant to file in electronic form.

488. Mr. BROWN (CIPA) supported the proposal of the Delegation of the United States of America as amended by the Delegation of the Russian Federation.

489. Mr. STEWART (FICPI) suggested that the language of the proposal in question be improved by inserting, after the words "is deemed not practicable", the phrase "due to the nature of the communication", so that the text would read "is deemed not practicable due to the nature of the communication, contracting parties may."

490. Mr. BADRAWI (Egypt) proposed the following wording for proposed Rule 8(1)(d): "Without prejudice to the provisions to paragraph 1(a) and in accordance with the Regulations and as prescribed in the Regulations". He noted that the Contracting Parties would be able to require that the filing be carried out by other means of transmittal for these communications.

491. Mr. TRAMPOSCH (WIPO) noted that the proposed drafting, as it came through the interpretation, used the phrase "without prejudice to paragraph 1(a)" whereas the proposal states "notwithstanding paragraph 1(a)," which implies prejudice. He also stated that the phrase "notwithstanding paragraph 1(a)" implies that this subparagraph would take precedence over subparagraph (a). He asked whether it was the intention of the Delegate from Egypt that subparagraph (d) would take precedence over subparagraph (a).

492. Mr. BADRAWI (Egypt) stated that his proposal was that paragraph 1(a) should not be affected because paragraph 1(a) contained a positive aspect and entailed a right, and that precedence should be given to paragraph 1a because of its importance.

493. Ms. FRANCISCO (Philippines) stated that her understanding of the response of the Delegation of the United States of America with regard to the earlier question of the Delegation of the Philippines was that the proposal would not require complete electronic filing, and that the limitations under Articles 5(1) and 8(1)(d) mentioned in paragraph 8 would subsist. She asked whether the proposal sought to address the immediate need to require another form or other means of transmittal before the period of ten years expired. She added that, if her understanding was correct, she would propose that Rule 8(1) be specifically related to the first sentence of Rule 8(1)(a) only, so that there would be no confusion with respect to the interpretation of the clause "notwithstanding" paragraph (1)(a).

494. Mr. TRAMPOSCH (WIPO) confirmed that understanding in substance. He noted that both means of drafting would have exactly the same legal effect and that, in those instances, the use of fewer words was generally viewed as best. He thus noted that, subject to the view of the Committee, the phrase "notwithstanding subparagraph (a)" could be sufficient.

495. The PRESIDENT stated that it was his sense that almost all delegations would support a text along the lines of "Where the receiving or processing of a communication on paper due to its character is deemed not practicable, Contracting Parties may, notwithstanding subparagraph (a), require the filing of that communication in another form or by other means of transmittal." He noted that other views had been expressed, but that overwhelming support for the proposal as read existed in principal. He suggested that the Committee proceed with the adoption on the understanding that it would be referred to the Drafting Committee for further.

496. Mr. BADRAWI (Egypt) asked the President to explain the difference between his proposal and the original proposal of the Delegation of the United States of America.

497. The PRESIDENT stated that the provision he just read was largely the same in substance as that proposed by the Delegation of the United States of America. He noted the deletion of the words "and, as prescribed in the Regulations" and the addition of the restriction "due to its character", which was proposed by the Delegation of the Russian Federation.

498. Mr. BADRAWI (Egypt) stated that the point under discussion was whether to use "without prejudice to subparagraph (1)(a)" or "notwithstanding subparagraph (1)(a)." He stated that it was a question of how much importance was being given to subparagraph (1)(a) over subparagraph (1)(d).

499. The PRESIDENT agreed that a decision needed to be taken on whether to use the word "notwithstanding." He stated that his sense of the discussion was that virtually all delegations which had spoken believe that there should be an exception to Rule 8(1)(a) to cover cases where paper filing is not practicable. He stated that he therefore believed that the use of "notwithstanding" was appropriate. He noted that use of the words "without prejudice" was inappropriate in the case of an exception.

500. Mr. CRECETOV (Moldova) supported the use of "notwithstanding paragraph 1(a)." He noted that the need for electronic filing concerned all countries, even Egypt, who, when faced with a very large would be obliged to ask for its submission in electronic form. He concluded that the proposal as it now stands was in the interest even of small offices, since the submission of a very large application on paper would be a disaster.

501. Ms. FRANCISCO (Philippines) stated that, although she was not sure if she was following the discussion correctly, it seemed that instead of using the phrase "notwithstanding paragraph (a)," in Rule 8(1)(d), this provision would rather be an exception to the first sentence of Rule 8(1)(a).

502. Mr. EL FAKI ALI (Sudan) stated that use of the phrase "notwithstanding paragraph 1(a)" meant that an office could reject the filing on paper for reasons of practicability. He stated that this appears not to be compatible with paragraph (1)(a).

503. The PRESIDENT noted that, given the time, there was no choice but to suspend discussions.

504. Mr. BAECHTOLD (WIPO) announced that tomorrow (May 18) morning at 10 clock, the Conference will meet in Plenary where the President of the Credentials Committees will to present the first report of the Credentials Committee, which has been distributed as Document PT/DC/17.

505. The PRESIDENT stated that the Committee would return to the discussion of Rule 8(1)(d) and then commence the discussion of Article 7. He adjourned the meeting until the next morning (May 18).

Seventh Session

Thursday, May 18, 2000

Morning

506. The PRESIDENT proposed the following provisional working arrangements for sessions of Main Committee I. On Friday, the Committee would meet from 10.00 a.m. until 1.00 p.m., from 2.30 p.m. to 5.30 p.m., and then from 7.00 p.m. till 10.00 p.m. In addition, the Committee would meet on Saturday from 2.00 p.m. to 6.00 p.m. at the main WIPO building.

507. He opened discussion on Rule 8(1)(a) and (d).

508. Mrs. BOLAND (United States of America) declared that her Delegation had given further thought to a possible compromise on Rule 8(1)(a). While the Delegation of the United States of America had a preference for a change in the time period from 10 years to 5 years, it could associate itself with the compromise proposal providing for a limitation of that rule to small entities. The definition of small entities would probably be a very difficult task, and it proposed to leave the issue to Contracting Parties to define that term.

509. Mr. BADRAWI (Egypt) stated that a period of 10 years was an appropriate transition period. His Delegation had given careful thought to the addition proposed by the International Bureau which, in the view of that Delegation related to a personal criterion. However, it took account of the nationality of the applicant and, therefore, did not meet the needs of developing countries in general. Offices had to deal with the question of filing and the concept of that Rule should reflect that. He concluded that the provision should stand as it was prior to the addition, or that the addition should make it clear that it related to an office and not to a person, whether from a developing country or a country in transition.

510. Mr. TRAMPOSCH (WIPO) asked whether a change of the wording in Rule 8(1)(a) to "During a period of 10 years from the date of the entry into force of the Treaty, the Office of a Contracting Party shall permit the filing of communications on paper, etc...", would be acceptable to the Delegation of Egypt.

511. Mr. BADRAWI (Egypt) said that this would be an attempt to improve the drafting of that Rule, although the addition should be included after the words "nationals of developing countries and countries in transition," in order to cover both individuals and the Office.

512. Mr. BOGDANOV (Russian Federation) said that his Delegation would prefer if no time limits were expressed in Rule 8(1)(a). Thus, no mention of nationals or small enterprises, developing countries, or countries in transition would have to be made. However, the original text was acceptable, and the delegate said that, in principle, he could accept of a period of five years, if the second sentence in paragraph (a) would be put in a separate paragraph. That would mean that Rule 21 would not apply to that sentence. This was important because of the required unanimity for the change of certain rules.

513. Mr. SHALIT (Israel) expressed the opinion that private persons and small businesses should always have the ability to file documents and applications in paper form. His Delegation was pleased to hear that it was being considered to exempt private persons and small entities from the requirement of electronic filing.

514. Mr. MOUKOURI (Congo) noted that the discussions on item 8(2) had shown that most participants, including the Delegation of Congo, had subscribed to the proposal of the International Bureau to add, after the first sentence, "for developing countries and the countries in transition." He regretted that these wishes no longer appeared to be taken into account. The Delegation emphasized that as a result of environmental and technological realities in developing countries, the proposed ten-year time limit should be retained.

515. Mr. BADRAWI (Egypt) said that the text as presented was the best possible solution for his Delegation. However, if the intention was to add something to the text, the addition had to show clearly that it addressed the Offices of developing countries and not the nationals of those countries.

516. Mr. SHEHU-AHMED (Nigeria) said that his Delegation wished to associate itself with the Delegation of Egypt concerning the modifications suggested by the Delegation of the United States of America, namely to limit the 10-year period to small entities. The Delegation felt that it was appropriate to make the 10-year transition period applicable to all Contracting Parties and, in particular, to developing and least developed countries.

517. Mr. NIIMURA (JIPA) stated that the Japan Intellectual Property Association was a non-profit intellectual property organization with about 700 corporate members. Speaking on behalf of that organization, the delegate pointed at the benefits of the electronic filing system for applicants. The electronic filing system was not only useful for offices, but also for applicants and inventors, because applicants and inventors needed to make prior art searches in order to determine the novelty of the invention.

518. The PRESIDENT suggested to suspend discussion on Rule 8(1)(a), in order to allow time for reflection on the new ideas that have been put forward. He then opened the floor for discussion of Rule 8(1)(d) and asked the International Bureau to introduce a new drafting proposal concerning that Rule.

519. Mr. TRAMPOSCH (WIPO) referred to the proposal of the Delegation of the Philippines and indicated that, in order to avoid any confusion, it seemed to be appropriate to refer only to the first sentence of subparagraph (a). Consequently, the phrase would start as follows: "Notwithstanding the first sentence of paragraph (a), ...".

520. Mr. BADRAWI (Egypt) declared that the amendment proposed by the International Bureau was not satisfactory, because it retained the term "notwithstanding." He suggested that it should rather read as follows: "Without prejudice to the provisions of paragraph (1)(a)." The reason for this suggestion was that a paragraph in the Regulations should not contradict a provision in the Treaty. This subparagraph had to explain how to apply the Articles of the Treaty itself. Therefore, it was not possible to include a sentence like this in the Treaty.

521. Mr. TRAMPOSCH (WIPO) asked whether the words that had been added to subparagraph (d), and which referred back only to the first sentence of subparagraph (a) were acceptable to the Delegation of Egypt, since that reference was confined to the Regulations.

522. Mr. BADRAWI (Egypt) said that, in the opinion of his Delegation, the term "notwithstanding" meant that one could act contrary to that provision and that made the text devoid of any meaning. However, if the expression "without prejudice to" was used, the text of the Treaty was respected.

523. Mr. TRAMPOSCH (WIPO) pointed out that the terms "notwithstanding" and "subject to" were used extensively throughout the Treaty and the Regulations.

524. Mr. BADRAWI (Egypt) said that he considered that expression not to be satisfactory in the case under consideration.

525. Mr. BOGDANOV (Russian Federation) said that his Delegation could agree with the amended wording of subparagraph (d). However, he recalled that the Delegation had already proposed twice that the second sentence of subparagraph (a) be put in a separate paragraph. He explained that, at present, Rule 21 established that Rule 8(1)(a) could be amended only by unanimity. He said that it appeared to his Delegation that many delegations supported its point of view that it was unnecessary to guess what might happen in ten or five years time. However, it should be possible for the Assembly to re-examine that matter and to decide by a majority of votes rather than by unanimity.

526. Mr. TRAMPOSCH (WIPO) recalled that the provision in Rule 21 that subjected Rule 8(1)(a) to a unanimous vote was part of a compromise package that had been adopted as a whole by the SCP in concluding the draft Basic Proposal, including a 10-year moratorium subject to unanimous approval by the Assembly.

527. The PRESIDENT declared that it seemed that there was no possibility to reach a consensus on that provision and proposed to defer any further work on Rule 8(1)(d) to see whether a consensus could be found.

528. Mr. BOUAZZAOUI (Morocco) said that, in view of the nature of the assessment entrusted to offices in cases of difficult treatment under subparagraph (d), it would not be advisable, contrary to the suggestion made by the Delegation of Egypt, to insert the term "notwithstanding", otherwise subparagraph (d) would circumvent subparagraph 8(1)(a).

Article 7: Representation

529. The PRESIDENT opened discussion on Article 7.

530. Mr. BAECHTOLD (WIPO) introduced Article 7(1).

531. Mr. STEWART (FICPI) asked whether it would not be more appropriate to use, in Article 7(1)(a)(ii), "in a territory" rather than "on a territory."

532. Mr. TRAMPOSCH (WIPO) recalled that the SCP had decided on the word "on," and unless there was a particular reason to change from "on" to "in," it appeared preferable to keep the language as presented by the SCP.

533. *The PRESIDENT declared Article 7(1)(a) and (b) adopted in substance and referred to the Drafting Committee.*

534. The PRESIDENT opened discussion on Article 7(1)(c).

535. Mr. BOGDANOV (Russian Federation) asked for clarification as to why subparagraph (c) used the term "any Contracting Party," whereas in other subparagraphs, the words "a Contracting Party" were used.

536. Mr. TRAMPOSCH (WIPO) explained that word "any" had been carried into the text from the Trademark Law Treaty. However, it had been changed to "a" in many cases, and it seemed to be preferable to change it to "a" in that case as well.

537. *The PRESIDENT declared Article 7(1)(c) adopted in substance with the modification proposed, and referred to the Drafting Committee.*

538. The PRESIDENT opened discussion on Article 7(2).

539. Mr. BAECHTOLD (WIPO) introduced Article 7(2). He pointed out that the provisions appearing between square brackets did not form part of the Basic Proposal.

540. Mr. HERALD (Australia) declared, in general, the support of his Delegation for the deletion of the square brackets and retention of the text. In respect of Article 7(2)(ii), he said that the chapeau to Article 7(2) referred to any procedure before the Office after the filing date. Article 5 was setting the minimum requirements for establishing a filing date, and concerned variety of procedures to deal with circumstances. The filing date might be the date on which the documents were initially filed, or the date on which that procedure came to a conclusion. It seemed to the Delegation that, when looking at Article 5, it was not possible to determine what was the filing date until the completion of any of the procedures under Article 5. It therefore seemed to not logical to require mandatory representation for procedures within Article 5, because at the stage when one might wish invoking those procedures, it was not known whether or not that was after the granting of a filing date. Therefore, Article 7(2)(ii) had to be maintained.

541. Mr. HIDALGO LLAMAS (Spain) said that his Delegation understood that a patent procedure should include undertakings which did not require compulsory representation, for example the payment of maintenance fees. However, the subject relating to representation constituted a substantive legal issue, which should be settled by national law. This would comply with the amendment agreed regarding the term "representative" in Article 1. He said that in Article 7(2) subparagraphs (iv) and (v), relating to the submission of a translation and the procedures prescribed in the Regulations, should be deleted. As

regards subparagraph (v), he considered that the wording used was excessively broad since, by means of the Regulations, it would allow the entire subject of representation to become an exception in the future. Should these two exceptions not be deleted from Article 7(2), his Delegation would maintain its reservation with regard to them.

542. Mr. BARTELS (Germany) referred to the proposal by his Delegation contained in document PT/DC/7, namely to delete items (ii) and (vi) of paragraph (2). Item (ii) should be deleted because the procedures which were described in Article 5 were very important and could be very complicated, not only from the point of view of the Office, but also for the applicant. The procedures described in Article 5 were important because they described the actions necessary to obtain a filing date. Failure to comply with those procedures could result in the loss of rights. Therefore, the Office should be allowed to require representation. Item (vi) should be deleted, because the fact that a notification had to be transmitted to the applicant was one of the most important cases where representation was needed. Transmission of documents into foreign countries was a complicated procedure. Such a procedure could block the application process for years. Therefore, the possibility for an office to require representation in such cases was of vital importance.

543. Mr. UNGLER (Austria) expressed the support of his Delegation for the statement made by the Delegation of Australia. He said that the Delegation of Austria wished to withdraw its reservation concerning paragraph (2). Furthermore, the Delegation suggested the deletion of all square brackets in paragraph (2). In its point of view, applicants should have the possibility to decide themselves whether there was a need for representation in respect of the procedures listed in paragraph (2), which were procedures of minor difficulty. The Delegation also expressed support for the principle that an applicant should be able to obtain a filing date for an application without representation.

544. Mr. DRISQUE (Belgium) said that his Delegation withdrew its reservation currently included in the explanatory notes regarding the mention in Article 7(2) of the following exceptions: payment of the maintenance fees in force, payment of fees, submission of a translation, any other procedure prescribed in the Regulations, and the issue of a receipt or notification from the Office in respect of any procedure referred to in items (i), (iii), (iv) and (v). The Delegation of Belgium nevertheless retained a reservation as regards the reference, in Article 7(2), to the exception "any procedure referred to in Article 5."

545. Mr. STOHR (EPO) recalled that the Treaty under consideration was aiming at the reduction of formalities and the reduction of costs. Article 7(2) was a crucial point in that exercise. The EPO had always advocated a liberal approach although, for reasons of efficiency, it had preferred to deal with professional representatives only, rather than with inexperienced applicants. It was felt however, that this preference did not justify obliging inventors to act through patent agents, where the applicant could easily carry out an action. Therefore, the Delegation was against making representation mandatory for the payment of any fees, the filing of any translation, as well as for the filing of copies, for example of the earlier application in the context of Article 5(6)(b) concerning the missing parts of the description, which were contained in the priority application. Consequently, the EPO was strongly in favor of removing the square brackets as regards items (iii) to (v). The Delegation was of the opinion that there should be an exception from mandatory representation for the mere filing of the application. As far as the procedures under Article 5 were concerned, mandatory representation could be accepted given the complexity of those procedures in particular, with regard to the requirements relating to the late filing of missing parts of the description. In conclusion, the Delegation suggested to redraft the chapeau of Article 7(2) to provide that a Contracting Party may require an applicant, owner or interested person to appoint a representative for the purpose of any procedure other than the filing of the application, and the additional procedures mentioned in items (i) to (vi).

546. Mr. LEE (Republic of Korea) said that if the payment of fees was maintained as an exception to mandatory representation, in cases where an applicant wanted to submit an amendment to claims, thereby increasing the number of claims, the amendment would be drafted and submitted by a representative, while the fees for the increased number of claims could be paid by the applicant. In order to submit the amendment in due manner, the applicant and the representative had to keep contact with each other every time. In view of cost, time and workload of a Patent Office, it was not viable to divide one procedure into two and to receive the amendment and fees separately. Furthermore, the calculation of fees was not a simple task. In the Office of the country of the Delegation, many cases happened, which invited applicants to pay due fees, because the amount of fees paid was not correct. Moreover, there was a time limit for the payments of fees, and the representative had to inform the applicant of the time limit.

547. Mrs. MARCADÉ (France), reiterating the comments of the EPO Delegation, said that the current Treaty was designed to simplify the procedure and reduce as much as possible the costs for the applicant. The Delegation of France, which had always argued in favor of a reduction in mandatory representation when procedures were not complex, consequently expressed support for deleting the square brackets in Article 7(2).

548. Mrs. BOLAND (United States of America) said that her Delegation supported the deletion of all the square brackets and retention of text in paragraph (2), as well as in Rule 7(1). The Delegation viewed the procedures involved as being largely administrative and clerical in nature not rising to the level of the need for representation. Referring to the opening statement of her Delegation, she said that applicants and patentees should be given the freedom to carry out procedures which they felt they could competently perform. She added that the issue of complexity was a subjective issue and that it should be left to applicants and patent owners to decide what was too complex for them. The delegate expressed concern that it might be arrogant for Contracting Parties or offices to attempt to make that analysis for applicants and patentees. Furthermore, the Delegation sought clarification as to whether Article 7(2)(i) meant that, if a patentee used annuity payment services or maintenance fees somewhere throughout the world, it was necessary for that annuity payment service to rise to the level of the representative requirements contained in Article 7(1).

549. Mr. BAECHTOLD (WIPO) pointed to Note 7.08 in the Explanatory Notes in document PT/DC/5 and explained that such an organization would have to fulfil the requirements to practice before the Office.

550. Mr. BOGDANOV (Russian Federation) said that his Delegation was in favor of deletion of item (vi). He expressed support, in principal, for the idea of the Treaty not to provide for any restriction on the right of the Contracting Party to require the appointment of a representative for any act by the Office in relation to the applicant, owner or other person in any procedure before the Office.

551. Mr. IWASAKI (Japan) said that his Delegation opposed the insertion of item (iii) and (iv). In the view of the Delegation, those seemed to be partially and awkwardly peeled off from the procedural actions. Representation was in almost all cases made effective in accordance with procedural actions, for example the submission of evidence, or the submission of a request for examination. Representation did not mean servicing just one aspect of those procedural actions, like the submission of evidence or payment for the request for examination. Concerning those two items, both the applicant and the representative would have to be involved in a complex matter for the purpose of one single procedural action before the Office. More specifically, a representative would file the evidence, but the applicant might submit its translation, and the same should apply to the payments to the Office. Therefore, the Delegation opposed the inclusion of items (iii) and (iv), in order to avoid unnecessary burden for the Office. It further opposed the inclusion of item (ii) for the same reasons as had been put forward by the Delegation of Germany.

552. Mr. WALKER (United Kingdom) stated that, for many years, there had been no mandatory requirements in the United Kingdom that a patent applicant or a patent owner should be represented before the Office in any patent procedure. The matter was always left to the choice of the applicant or the patent owner. Many applicants chose to use representatives and a smaller number did not. The United Kingdom Patent Office clearly recognized that some patent procedures can be complex, and it is not uncommon for it to advise applicants, who are not represented, to use a representative, but, ultimately the choice must be the applicant's. The Delegation of the United Kingdom supported the views expressed by the Delegation of the United States of America. It was not for an office to dictate whether an applicant should use a representative, despite the fact that it could sometimes cause difficulties for the Office. The Delegation further considered that all of the procedures listed in paragraph (2), including the procedures in square brackets, were procedures that applicants were perfectly able to do for themselves. Therefore, in line with many delegations that had taken the floor, the Delegation's view was that items (i) and (iv) should be retained and the square brackets around items (iii) to (iv) removed and the text retained. In the same way, it proposed that the square brackets around the text in Rule 7(1) should be removed and the text retained.

553. The PRESIDENT reiterated the working arrangements: for Friday, from 10.00 a.m. until 1.00 p.m. and 2.30 p.m. to 5.30 p.m. and 7.00 p.m. until 10.00 p.m.; for Saturday, the meeting could be held in this room from 9.30 a.m. until 1.30 p.m.

554. Mr. BOUCOUVALAS (Greece) stated that, as regards Article 7(2), his Delegation was in favor of the Basic Proposal, that is the deletion of the square bracketed texts.

555. Mrs. GATA GONÇALVES (Portugal) expressed the agreement of her Delegation with the of some precedent delegations. It believed that the requirements of representation would facilitate these procedures, including the payment of the fees in favor of not only the applicants but also of the Offices. It furthermore thought that the procedures described in item (iii) were related to the ones described in items (ii) and (vi) and, therefore, strongly supported the deletion of all of items (i) to (vi) in Article 7(2).

556. Mr. PESSANHA CANNABRAVA (Brazil) stated that he was interesting also on behalf of the Delegations of Argentina, Cuba, Panama and Venezuela. He recalled that, in its opening statement to this Conference, the Delegation of Brazil had commented on the important role of the PLT in the simplification of patent filing procedures at the national level, particularly for the benefit of the users of the system. The delegations on whose behalf he was speaking considered that Article 7(2) was not necessarily the best approach to ensure the objectives of establishing a more user-friendly patent filing system. As mentioned by the Delegation of the United Kingdom, dealing with applicants from overseas could result in difficulties for the Offices. Such difficulties could be overcome by the use of representatives in the country concerned. The Delegations of Spain, Germany, the Republic of Korea, the Russian Federation, Japan and Portugal had made reservations under different items of Article 7(2). The Delegation of Brazil as well as the delegations on behalf of which it was speaking, considered it better to leave the establishment of mandatory representation to the national legislation. However, this did not preclude the possibility of incorporating a few items on mandatory representation in Article 7(2) if there was consensus.

557. Mr. TRAMPOSCH (WIPO), in order to clarify the records, asked whether his understanding was correct that the delegations would like to delete all the items but had expressed the willingness to be flexible and to compromise the interests of consensus was correct.

558. Mr. PESSANHA CANNABRAVA (Brazil) confirmed that it was.

559. Mr. EL FAKI ALI (Sudan) stated that the Delegation of Sudan was of the view that the provision referring to mandatory representation under Article 7(2) ran counter to the spirit of the Treaty. The treaty was intended to simplify procedures and to cut costs, as had been explicitly stated at the inaugural session of this Conference. That being so, introducing the concept of mandatory representation merely served to complicate procedures and to add to the burden on the applicants, particularly, applicants from developing countries or least developed countries who would find themselves in extremely difficult situations as a result of this. The international community had to help such applicants. The Delegation therefore fully supported the declaration of the Delegation of the EPO and the comments by the Delegation of the United Kingdom among others. In other words, it would endorse the idea that representation not be made mandatory and that representation should not be mandatory in any case for any procedure.

560. Mr. RAJAN (Ireland) was of the view that there should be three actions for which a professional representative would not be mandatory, namely, the payment of maintenance fees, item (i), the payment of fees, item (iii), and the filing of a translation item (iv). The Delegation felt that items (ii) and (vi) should be deleted for the reasons given by the Delegation of Germany.

561. Mrs. BOLAND (United States of America) recalled that her Delegation had earlier raised the matter of the payment of maintenance fees by maintenance fees payment companies throughout the world. Following subsequent discussions with the interested circles of its country, she expressed the wish that, it be clarified in the Explanatory Notes that this practice was permitted.

562. Mr. TRAMPOSCH (WIPO) informed the Committee that the International Bureau had also received informal communications on this matter from a number of delegations and representatives of non-governmental organizations. It was the view of the International Bureau that a clarification in the Notes would not be sufficient and that there would need to be an amendment to Article 7(1)(a) which had already been adopted. He suggested that one way to accommodate this concept might be to add, at the end of the introductory words, the words "other than the payment of a maintenance fee", so that Article 7(1)(a) would begin: "A Contracting Party may require that a representative appointed for the purposes of any procedure before the Office other than the payment of a maintenance fee". A

Contracting Party would then not be permitted to require that a maintenance fee payment company be registered to practice before the industrial property Office of that Contracting Party.

563. Mrs. BOLAND (United States of America) expressed her appreciation of the information provided by the International Bureau and indicated that her Delegation was interested, at an appropriate time, in revisiting Article 7(1)(a) to make a proposal along the lines of that suggested.

564. The PRESIDENT indicated that Article 7(1)(a) could be returned to at a later point. He asked, in the interest of efficiency, that delegations were intervening on Article 7(2), also expressed any views the suggested amendment of Article 7(1)(a).

565. Mrs. EL MAHBOUL (Morocco) emphasized that the aim of the PLT was the harmonization and simplification of procedures, but said nevertheless that her Delegation had a reservation concerning Article 7(2) and that it supported the proposal made by the Delegation of Portugal, insofar as the most significant problems of the Moroccan system related to the payment of fees and the submission of translations. Subscribing to the remarks made by the representative of the EPO regarding the need to use the services of professionals, and taking into account that Morocco had acceded to the PCT, her Delegation had no objection also to adding the payment of the maintenance fees in force to Article 7(1).

566. In conclusion, she specified that her Delegation hoped that points (iii) and (iv) would be completely deleted from paragraph 7(2), since the representative should deal with the payment of fees and also the submission of translations, contrary to the payment of the maintenance fees in force which the applicant could settle directly with the Office.

567. Mr. TRÉPANIÉ (Canada) said that his Delegation wished to join a large number of others in emphasizing the importance of agents specializing in patent law and in the practice of patents in all intellectual property offices. In order to achieve this aim, the Delegation of Canada was convinced that Article 7(2) should be examined very closely and that the Conference should adopt any exception with great caution.

568. Convinced that the positions it had previously adopted continued to be valid, the Delegation of Canada was prepared to accept Article 7(2) as it stood and, in a spirit of compromise, could therefore support subparagraphs (i) and (vi), as well as the amendments to Article 7(1)(a) suggested by the International Bureau. In that regard, the Delegation was of the opinion that these payments were not linked to undertakings requiring particular expertise.

569. In the same way as other delegations, the Delegation of Canada opposed the inclusion among these exceptions of the payment of any fees, as suggested in subparagraph (iii). In that spirit, it considered that a number of undertakings associated with this payment should be carried out by specialists, a position based on numerous factors such as the importance of a critical mass of agents in examining countries designed to serve the interests of inventors and small and medium-sized enterprises, as well as the increasing complexity of the procedures which affected not only the offices themselves but also applicants and holders.

570. Mrs. LÖYTÖMÄKI (Finland) said that her Delegation wished to associate itself with those delegations that had already proposed the removal of the square brackets in Article 7(2). She felt that it should be left to the applicant to decide whether he wanted to use a representative or not.

571. Mrs. KJERRUMGAARD (Denmark) said that her Delegation was of the view that the treaty must aim at simplifying procedures and reducing costs for the benefit of the users of the system. Her Delegation could therefore give its full support to what had been stated by the Delegations of the United States of America and the United Kingdom among others, namely, the deletion of all the square brackets in Article 7(2).

572. Mr. VAN DER EIJK (The Netherlands) declared that his Delegation supported the interventions by the Delegations of the United States of America, the United Kingdom and France and supported the maintenance of the text of Article 7(2) without the square brackets.

573. Mr. FICSOR (Hungary) said that the discussions so far had shown that Article 7(2) concerned a complex and sensitive issue. It was of the view that it would be very difficult to reach a consensus on that paragraph, unless exceptions to the main rule were kept to a minimum. The Delegation was of the view

that it was not only cost reduction and simplification of formal requirements which were at stake but the aim was also to ensure that there was smooth communication between Patent Offices and applicants. Imposing additional administrative and financial burdens on national offices and applicants should be avoided. The patent attorney profession formed part of the institutional framework necessary for efficient enforcement of the industrial property rights. For those reasons, the Delegation could support only the following exceptions to the main rule contained in Article 7(2): the filing of an application as proposed by the Delegation of the EPO, and the payment of maintenance fees. It could also go along with item (v) provided that amendment of Rule 7(1) required unanimity. Lastly, it wished to emphasize that paragraph (2) permitted, but did not oblige, a Contracting Party to require representation for the purposes of procedures before its Office. Therefore, Contracting Parties would be left the freedom to go beyond the exceptions that would be provided for by paragraph (2) by not requiring representations in cases other than those covered by the exceptions.

574. Mr. HOLMSTRAND (Sweden) indicated that his country had a rather liberal tradition in regard to the matters now discussed and believed that it should be for applicants and other parties to decide whether to employ a professional or other agent. It should also be for those parties to choose freely the persons they wished to appoint. From this perspective, the proposal in of Article 7(2) represented a rather modest regime in terms of reforms. Nevertheless, the Delegation of Sweden was fully prepared to accept the text as it stood. It had not understood that the main objective of this Conference and of the PLT was to make life easier for Patent Offices or indeed to safeguard the patent practitioners' profession but rather to reduce costs and procedural burden for users of the patent system. In view of this, it had hoped that the Conference would use the opportunity of accepting these rather modest proposals in terms of exceptions as outlined in paragraph (2). In conclusion, the Delegation associated itself with the views that had been expressed by some other delegations and, in particular, that which had been expressed by the Delegation of the United Kingdom, and supported the deletion of the square brackets around items (ii) to (v) and in item (vi).

575. Mrs. RAA GRETTE (Norway) indicated that her Delegation also wished to support the deletion of all the square brackets in paragraph (2). This was in accordance with the national practice in her country today and it was her Delegation's experience that applicants were able to decide whether they needed a representative or not in respect of these matters.

576. Ms. FRANCISCO (Philippines) said that her Delegation was not convinced whether Article 7(2) would reduce costs for applicants. However, in the case of a small office like that of the Philippines, it would make processing and administration more difficult. Her Delegation could only support item (i) she suggested that, in addition to the change to paragraph (1)(a) suggested by the International Bureau, the chapeau of Article 7(2) be modified to say: " after any procedure" in the second line, rather than "the filing of the applications and the payment of maintenance fees." Alternatively, if Article 7(1)(a) mentioned both "other than the payment of maintenance fees" and the filing of applications, then Article 7(2) could be deleted in its entirety.

577. Mr. BÜHLER (Switzerland) said that as regards Article 7(2), his Delegation associated itself with the proposals made by the Delegations of France, United Kingdom and United States of America for the reasons they had given. As to Article 7(1), the Delegation of Switzerland supported the proposal made by the International Bureau but nevertheless reserved the right to reflect further on the matter.

578. Mr. HAMDİ (Tunisia) said that his Delegation strongly supported the deletion of subparagraph (2) so as to leave a decision on the matter to each national legislature based on its specific features. Thus, in Tunisia the currency was not convertible and only representatives could receive foreign currency and pay in local currency. Consequently, it was their responsibility to monitor applications, to warn them in advance regarding the payment of annuities, and sometimes to pay the annuity for a foreign patent, even before they received the transfer relating to the annuity. Furthermore, it was the task of the representatives to monitor applications and to institute procedures accordingly.

579. Mr. MORENO PERALTA (Panama) said that his Delegation supported the comments made by the Delegation of Brazil on behalf of a number of Delegations of the Group of Latin American and Caribbean Countries, and also supported the complete deletion of the subparagraphs contained in Article 7(2), since national legislatures should be free to deal with the matter in question.

580. Ms. WEN (China) said that her Delegation considered that the purpose of the Treaty was to facilitate matters for the applicant and to reduce costs. It was therefore unnecessary to restrict the use of

an agent or representative. Article 2(3) of the Paris Convention left this up to the legislation of each of the countries of the Union as regarded the legal and administrative procedures, and this also went for a choice of representative. The TRIPS Agreement also had a similar provision. The Delegation did not think that there should be any restrictions on the mandatory appointment of a representative. Instead, this should be decided by the national legislation of each country. Any exceptions should be as few as possible. The text in square brackets in paragraph (2) should be deleted. She said her Delegation believed mandatory representation should not be excluded because representatives were very familiar with applicable national patent law and could meet the requirements of patent law within the time limits prescribed. This was to the advantage of the applicant for obtaining a filing date especially as regards applications from foreigners since representatives were now familiar with all the operations.

581. Mr. HERALD (Australia) wished to clarify that his Delegation's comments were restricted initially to item (ii). His Delegation fully supported the comments of the Delegation of the United Kingdom. Australia did not have mandatory representation. In certain cases, applicants were encouraged to use professional representatives for national and international filing. However, this was a different issue from requiring the use of an agent, in all cases." As regards item (v) it was important not to consider only problems or situations in their offices which currently existed. It was to be hoped that, as time moves on, all offices would improve their processes, and that of problems that currently existed would decrease and be eliminated in years to come. In this respect, some of the experience gained under the PCT should be looked at. There were certain provisions in Articles of the PCT, which tied that Treaty to a system which was developed in the 1960s and which many users would like to change, because the world had moved on. Looking at Article 7, one should be mindful of the future because in 10, 20 or 30 years' time it might well be decided to make further restrictions on mandatory representation. Unless item (v) was kept in the text, there would be insurmountable problems to introduce such limitations, even though there may be general consent for that to happen. Irrespective of the decision on items (i) to (iv), the Delegation would strongly urge the retention of item (v) to enable the PLT Assembly to exercise relevant flexibility in the future.

582. Mr. GRIGORIEV (EAPO) noted that, in the discussion on representation, varying points of view had been put forward, from the radical one which would give total freedom to the applicant, to the radically opposed one of leaving everything up to the national legislation of the countries. The representatives of patent attorneys' organizations had not yet expressed their views but, in their opinions in writing, they were in favor of not undermining the institutes of patent attorneys and representatives. The aim of the Treaty was to attempt to make the procedure for patent application less cumbersome. In the view of his Delegation, one should try to achieve at least unanimity on the minimum requirements that might be put in the text of the Treaty that would give a certain amount of freedom to the applicants to act directly without a representative if they so wished with the Patent Office. This freedom was advisable first and foremost for the payment of fees, particularly maintenance fees. In a number of countries, there were national foreign currency regulations and, in that case, even a patent attorney found it difficult to provide for the proper connections between the patent applicant and the Patent Office because, under that legislation, he was obliged to convert foreign currency into national currency. In this connection, the Delegation believed that, whatever decision was adopted by the Diplomatic Conference, first of all it would be wise to give the applicant freedom as regards the mere payment of fees if he was in a position to do that. The Delegation, in principle, supported giving freedom to the applicant. It did however have some doubts, in the exception under Article 7(2)(vi).

583. Mr. OMOROV (Kyrgyzstan) expressed the view that it was necessary to simplify procedures for the applicant to reduce costs. However, at the same time, representation was needed in respect of certain procedures. The Delegation wished to support the declaration of the Delegation of Germany to delete items (ii) and (vi) of the list of exceptions. As an alternative, it would agree to delete the square brackets.

584. Mr. BADRAWI (Egypt) had a comment on the translation of paragraph (2) into Arabic. In that translation, where obligatory representation and mandatory representation are mentioned, it was said "the Contracting Party may require that an applicant," etc. He did not think that the English text was as precise as the Arabic text since the latter spoke of a requirement under condition and it seemed that the English text did not say exactly the same thing. Perhaps, what made this mandatory was that the person who was asked to have a representative was not always obliged to do so. This paragraph could be improved from the point of view of wording so that there would be a balance between the two parts. He suggested the following wording: "A Contracting Party may, after the filing date and, if it is necessary, require that an applicant, owner or interested person appoint a representative for the purposes of any procedure before the Office." The filing date would thus be linked to the beginning of the paragraph.

Further, a fullstop could be inserted after " any procedure before the Office" and the remainder of the text deleted. In other words, all the items in square brackets would be deleted.

585. Mr. ORANGE (FICPI) wished to recall that it was well known that FICPI was fundamentally opposed to the adoption of the exceptions set out in Article 7(2). FICPI was an organization representing practitioners in the intellectual property profession in over 70 countries throughout the world and saw very significant problems with the adoption of the exceptions set out in Article 7(2). It was FICPI's position that it should be left up to the individual Member States to determine when and how a representative would be required.

586. Mr. Orange wished to clarify that it was not FICPI's position that every country should be obliged to require a representative. He recognized, as had been stated, that a number of countries had chosen not to require representation as it suited their particular needs. FICPI was in favor of a system of representation that was flexible and could be adjusted to suit the needs of particular countries, much in the same way as many other provisions in the Treaty, in particular Article 7(1)(c), had been adjusted to accommodate the particular needs of certain Member States. The position of FICPI had been outlined in the paper made available at the beginning of the Conference.

587. In addition, FICPI made available a study paper by Professor Park, from Washington, that confirmed the concerns raised in FICPI's position paper at point 3, namely, that the development of the human resources in many countries would be adversely affected by the adoption of the broad set of exceptions proposed in Article 7(2). FICPI's position had been characterized as one of protecting vested interest. It did of course have a vested interest as did many bodies represented here. However, FICPI's vested interest was in the promotion of the patent system as a whole rather than for the benefit of a particular narrow interest group. In that regard, it should be noted that FICPI had supported other measures within the Treaty that would have an adverse economic impact on the profession, such as a restriction on assignment documents for the filing of priority documents, because, in general, they benefit the orderly development of the patent system. For example, the restriction on assignment documents alone would produce a 25% reduction in professional fees in the country in which Mr. Orange practiced. However, it was clearly to the benefit of applicants as a whole that those provisions should be included in the Treaty and FICPI therefore supported them. On a broader level and on a public policy level, it was interesting to note the importance that was being placed upon intellectual property in the technological development and economy around the world.

588. The Canadian economist, Nuala Beck, had noted in economic studies that a key strategic asset in the new economy was intellectual property, in particular, patents. FICPI wanted to be sure that all countries were given the chance to grow their patent business as their own economy grew. This required an infrastructure of which the patent profession was an integral part. As clearly indicated in Dr. Park's study, the profession in a number of countries would not be able to sustain itself to serve local industry without the revenue generated by the type of activity envisaged under the exceptions of Article 7(2). This would have a marked effect on the development of human resources in the profession in those countries with a developing technology base.

589. FICPI also noticed certain inconsistencies in the views expressed under this Article and the Article discussed yesterday with respect to electronic filing. It had been said yesterday that any applicant from a country not using e-filing would be able to use a local representative to prepare the electronic application, but this assumed that there was a local representative appointed or available. Similarly, for an e-filing office, it was assumed that correspondence could be sent electronically but this would only be possible if there was a recipient in the country who was able to receive that communication or who had a compatible system. Several times it had been said that e-filing would be facilitated by the use of a local representative and a clear effect was to ensure that people filing in countries that would use electronic filing would *de facto* be required to use a representative, where the converse was not true. The development of the profession in technologically advanced countries would be bolstered, whereas that in developing countries would be hampered.

590. The issue of cost had been raised as a major issue under the Treaty, however, the exceptions proposed in Article 7(2) did not impact on costs. As pointed out in FICPI's paper, the work required to perform the actions before the Office was the same, whether it was done by the applicant or the representative. What was different was where those acts occurred. If the exceptions to Article 7(2) were adopted, then the work would be done in the originating country. This indeed was the basis for the analysis by Dr. Park set out at Table 5 of his study. The cost savings alluded to came from elsewhere in

the Treaty as noted above or those matters which would be dealt with under substantive harmonization in later treaties.

591. The cost savings were not a result of where the work was done. The net effect of the exceptions to Article 7(2) was that the work would be concentrated in the originating countries rather than distributed through the countries granting them a monopoly under the patent rights. It was also necessary to point out that these purported cost savings would be realized only by those applicants who were large enough to avail themselves of the direct filing in all offices, that is large companies. The small and medium business, often identified as the engine of growth, would not see the purported benefits and might in fact see increased costs due to the lack of competition which would result in certain countries with the restricted profession. The impact on costs of local offices should also not be overlooked.

592. The Delegation of the Philippines had pointed out that the exclusion of representatives would impose burdens on the smaller offices as they would have to correspond predominantly with foreign applicants. In summary, FICPI hoped that measures would be adopted that were flexible and would not have an adverse impact on the profession and on the development of the profession as a whole.

Eight Session

Thursday, May 18, 2000

Afternoon

593. Mr. ORANGE (FICPI) said that he was in favor of deleting all text in square brackets, but retaining the paragraph.

594. Mr. BROWN (TMPDF/CIPA) strongly supported the deletion of the square brackets in Article 7(2) and the retention of the text, as well as the amendment of Article 7(1)(a). He also said that the problems eluded to by the Delegation of the United Kingdom related to substantive matters and not to the formal matters referred to in Article 7(2).

595. Mr. SHEHU-AHMED (Nigeria) was in favor of retaining, in Article 7, the possibility for Contracting Parties to provide for mandatory representation which would benefit all parties involved. Professional representation would give applicants the assurance that the documents filed fulfilled all requirements, while for offices, it could save a tremendous amount of time and resources.

596. Mr. KHAFAGUI (WASME) emphasized that, as regards the compulsory appointment of the representative specified in Article 7(2), this provision, which in most cases obliged the patent applicant to have a representative, was incompatible with Article 2(3) of the 1883 Paris Convention which specified explicitly that national legislation applied to the conclusion of the agent's contract. Similarly, the Patent Cooperation Treaty stated explicitly that the procedure for obtaining a patent should be facilitated. He recalled that the aim of the current draft Treaty was to promote inventions and not to place hurdles in the path of inventors, in particular of a financial nature, by obliging them to pay very high fees to the representative. Moreover, the power of attorney was governed by national legislation.

597. Recalling the old rule, which was now obsolete except in cases of appeal, according to which a plea should be made only by proxy, he considered that those who requested the compulsory appointment of an attorney, on the pretext that technical elements so required, were wrong. Technical matters were assessed by the applicant who could decide himself whether he needed a representative. For that reason, WASME supported the proposal to delete the text relating to the compulsory appointment of a representative. He said, however, that by extension he accepted the opposite opinion with, in that case, exceptions which were as broad as possible to the obligation to be represented by an attorney, such that exceptions would be the rule and the rule the exception.

598. Finally, he said that he did not agree with the proposal made by the Delegation of Germany at the beginning of the Diplomatic Conference, whereby during the Standing Committee meetings it was appropriate from time to time not to be generous to applicants. Faced by exorbitant charges and very high agent's fees, the inventor would be obliged to look for a body or company to use the invention.

599. Mr. HELFGOTT (ABA) informed the delegations that the Intellectual Property Section of the American Bar Association had passed a resolution strongly supporting Article 7(2) with the deletion of all

of the brackets and retention of text. He stated that minimizing mandatory representation requirements would not call for any change in any national procedure. If the applicant filed the priority document himself, he would have to comply with the same requirements as if it was sent in by a representative, and applicants who felt competent to comply with the requirements for the procedures listed in Article 7(2) were bearing the risk of non-compliance. National Patent Offices should, therefore, be impervious to where the document came from, because the only additional burden in case of non-compliance would be the additional postage required to send something back. That additional burden should rather be handled by adding a surcharge to communications coming from a foreign country, than by generally imposing the cost of local representation.

600. Emphasizing that the ABA Intellectual Property Section represented the largest number of patent attorneys of any organization, he stated that its members could see no reason to impose costs on applicants in order to support patent attorneys, to provide economic benefit for a country, or to provide local attorneys with business. He said that one should try to help the patent system by helping applicants.

601. Mr. GOETZ (UEPIP) supported the statement made by FICPI and emphasized that it would be neither in the interest of applicants nor of Patent Offices to split the responsibility for patent applications by adopting the exceptions to mandatory representation contained in Article 7(2) (ii) to (vi). He said that it was neither cost saving nor expeditious if, under item (iii) for example, the applicant could pay the appeal fee himself, whereas the responsibility of filing the statement, including the grounds of appeal, lay with the attorney. He therefore supported the deletion of items (ii) to (vi).

602. Mr. PANTULIANO (AIPLA) supported the removal of the square brackets and retention of the text of all items in Article 7(2). He emphasized that users should have the option to make their own decision to use or not to use a representative to handle the essentially ministerial procedures listed in Article 7(2). Even though offices could urge applicants to use a representative for handling those procedures, the final decision should be left to the users.

603. Mr. SHAMOTO (APAA) opposed the inclusion of items (ii), (iv) and (v) in Article 7(2). He said that representation with respect to these items was necessary in order to assure that applicants enjoyed full and adequate protection for their inventions. With respect to the procedure mentioned in item (ii), representation was necessary to avoid confusion or misunderstandings in the receiving section of the Office. With respect to item (iv), he emphasized that, in light of the great diversity existing in the world, a translation would best be handled by someone who had the necessary technical knowledge to provide an accurate translation and this was particularly true for small and medium enterprises. With respect to item (v), he pointed out that it was presently impossible to foresee what procedures would be prescribed in the Regulations. He also added that, in most countries in Asia, patent attorneys were considered to provide the necessary infrastructure for the proper functioning of the intellectual property system, and that any discouragement should be avoided.

604. Mr. NIIMURA (JIPA) expressed concern that Contracting Parties might subject even domestic applicants to mandatory representation requirements, and suggested to amend Article 7(2) to rule out this eventuality.

605. Mr. EDGAR (IPIC) stated that the prime beneficiaries of exceptions to mandatory representation requirements appeared to be large multi-national corporations which carry out their intellectual property activities on a world-wide basis, and which, in many cases, could do it without representation. In his view, sympathy for that group had to be tempered by the fact that they acquired lengthy monopolies on technology so that it was justified if they had to pay some fee for their monopoly. He stressed that everybody else would be disadvantaged by lack of professional representation. Patent Offices in certain developing countries and countries in transition would be burdened by the disproportionate amount of time and resources needed to assist unrepresented applicants. Such offices would have to spend so much time in assisting unrepresented inventors that more serious developmental problems within the Offices might be overlooked. From the point of view of individual inventors, it would seem very harsh to give them the right to act on their own behalf and then cut them off should they make a fairly minor mistake. It seemed more user-friendly to direct individuals to competent professional assistance. Finally, professional representatives would be disadvantaged in two ways: On the one hand, the efficiency of Patent Offices, one of the objectives of the Treaty, would drop significantly if a large number of unrepresented applicants took advantage of their right to apply directly. On the other hand, the number of professionally qualified representatives would decrease if they were not used, so that small and

medium size enterprises in developing or in transition countries would have to seek assistance in developed countries. He therefore stated that Article 7(2) should have no exceptions whatsoever.

606. Mr. ARMIJO (AGESORPI) said that his Association considered that the Patent Law Treaty was designed to establish minimum requirements or formalities for the processing of patent applications and not that of prohibiting Contracting Parties from establishing, on a sovereign basis, requirements above and beyond the minimum stipulated in the Treaty. However, Article 7 appeared to prohibit Contracting Parties from establishing, on a sovereign basis, a requirement that they might consider appropriate. Furthermore, a number of delegations had pointed to the consequences of applying the exceptions contained in Article 7(ii) to (vi), which could be very different for the various Contracting States. As indicated by the Delegations of Brazil, Philippines and United Kingdom, and the FICPI representative, dealing directly with applicants on the basis of these assumptions could cause difficulties for certain national authorities, including a greater need for staff with knowledge of foreign languages and for the quality of the service to be provided, not to mention the possible civil responsibilities which might be incurred for errors committed. By contrast, by avoiding local representation applicants from certain countries would benefit by placing on said national offices this workload, a need for linguistic quality and ability, and possible civil responsibilities for mistakes made. He said that it did not appear just that owners from certain countries benefited at the expense of the national authorities of other countries. The decision regarding the need for representation should be taken on a sovereign basis by each Contracting State, for which reason his Association considered that the exceptional hypothetical cases in Article 7(2) should not be maintained.

607. Mr. MERRYLEES (ABPI) supported the statement made by FICPI. He expressed concern about the possibility to train a critical mass of patent agents in developing countries which already suffered from a lack of adequately trained patent attorneys. He emphasized that a profession could only grow if there was the necessary basic work enabling the profession to invest in training. The income produced by such work could, and presently was in Brazil, used to train young members of the profession, and Brazilian companies retained the services of these young professionals. For these reasons, the possibility of requiring representation and thus maintaining a body of work in the country instead of having it transferred to the Offices of large international companies could only be beneficial.

608. Mr. AHLERT (ABAPI) expressed doubts as to whether the exclusions proposed in Article 7(2) would indeed result in a cost reduction for applicants. He said that the most likely result would be that the work would simply be made in the countries from which the patent application originated, which were mostly developed countries. This would reduce the flow of revenue, especially from developed to developing countries, thus affecting the balance of payment. In the particular case of Brazil, he very roughly estimated the potential reduction to be around 50 million US dollars. He also emphasized that, allowing a foreign applicant to access a national office directly would increase the burden for this Office which, in turn, would result in a fee increase that would also affect national applicants. He said that, while developed countries might find it reasonable to impose such additional costs for national applicants because these costs would be compensated when these applicants were seeking protection abroad, this equation would be different for countries, such as Brazil, which received a much larger number of applications from abroad than they send to other countries. In line with the proposal made by the Delegations of Brazil, Argentina, Cuba, Panama, Venezuela and others, he therefore suggested to delete Article 7(2).

609. Mr. PANTULIANO (AIPLA) queried why those who opposed providing for exceptions to mandatory representation assumed that all users would opt not to use representatives.

610. Mr. TAKAMI (JPAA) stressed the importance of ensuring a high quality of applications. He said that the functioning of the patent system relied on smooth cooperation between a Patent Office and a body of qualified representatives admitted to practice before that Office because such cooperation minimized the risk of procedural mistakes, and ensured a high quality examination procedure. He emphasized, in particular, the importance of translations, referred to in item (iv), which constituted an integral part of the application because they could determine the scope of patent claims. In Japan, the translation was created by qualified representatives having legal and technological knowledge. In conclusion, he proposed to delete items (ii) to (vi) of Article 7(2).

611. Mr. ORANGE (FICPI) noted that, although AIPLA supported the inclusion of mandatory exceptions, it also seemed to suggest that applicants should not avail themselves of these exceptions.

612. Mr. HELFGOTT (ABA) recalled that the exceptions concerned only a limited number of procedural matters, and that it had not been proposed to completely abandon mandatory representation, as was the case, in for example, the United States of America. The provision merely aimed at giving applicants the choice to decide, in a limited number of procedures, whether to use the services of a representative or not.

613. Mr. HERALD (Australia) said that in Australia, where representation was not mandatory, at least 95% of the self-represented applicants were local applicants. Foreign applicants, on the other hand, used the local profession as a matter of choice in the vast majority of cases. He also recalled that in cases where an applicant decided to use a representative, Article 7(1) allowed a Contracting Party to determine the conditions that would have to be fulfilled by that representative. With regard to concerns that Patent Offices might have to communicate directly with applicants overseas, he referred to Article 8(6) and Rule 10(2) which allow a Contracting Party to require that an applicant, owner or another interested person indicate an address for correspondence on a territory prescribed by that Contracting Party.

614. Mr. SHALIT (Israel) pointed to problems that might arise when in reply to an office action requiring payment of an extension fee and a substantive reply the applicant would pay the fee and the representative charged with preparing the substantive reply might not know that the fee had been paid.

615. Mr. BAECHTOLD (WIPO) explained that, when an applicant had chosen to be represented even without being obliged to do so, the Office would be free to send any notification to the representative even if it had received, for example, a fee directly from the applicant.

616. Mr. ARMIJO (AGESORPI), responding to the comments of the American Bar Association in relation to the submission of translations to national offices, said that this process was not as simple as putting a translation in the post. For example, in the case of submitting translations in order to validate European patents in the various countries under the European system, in many cases various formal administrative management procedures had to be performed, with which applicants were frequently unfamiliar, and therefore failed to fulfil them or did so incorrectly. Part of the work of professionals was precisely to request these data and to allow the procedures to be carried out appropriately. Placing this workload on national authorities did not appear to be logical.

617. The PRESIDENT proposed to defer further discussion of Article 7(2), and to complete the discussion of Article 7 and the related Rule.

618. The PRESIDENT recalled that the International Bureau had suggested to amend the introductory words in Article 7(1)(a) to read "A Contracting Party may require that a representative appointed for the purposes of any procedure before the Office other than the payment of a maintenance fee..."

619. Ms. FRANCISCO (Philippines) proposed also to add the words "or the filing of an application with the Office."

620. Mr. TRAMPOSCH (WIPO) asked whether the proposal was meant to apply to the submission of the initial papers that would constitute the application on the filing date.

621. Ms. FRANCISCO (Philippines) said that the intention of the proposal was to make the patent system available to all applicants at the time of filing.

622. Mr. TRAMPOSCH (WIPO) suggested to refer to the filing of an application with the Office for the purposes of the filing date, to avoid covering procedures that took place after the filing date.

623. Mr. BADRAWI (Egypt) asked why it had been proposed to add the words "other than the payment of a maintenance fee."

624. Mr. TRAMPOSCH (WIPO) explained that the suggestion had been made in response to the issue, raised by the Delegation of the United States of America, that a large number of patent owners used companies to pay the maintenance fees that were not located in the country where the maintenance fees were to be paid. If the suggested words were not included, such companies would be required to have the right to practice as a representative in those countries, which was not intended.

625. Mr. BADRAWI (Egypt) asked whether, under these conditions, a similar addition would have to be made in Article 7(2)(i) as well.

626. Mr. TRAMPOSCH (WIPO) explained that paragraph (1)(a) referred to any representative whether or not representation was required, while paragraph (2) referred to the ability of a Contracting Party to require representation, so that any point covered by paragraph (1) would also be covered in paragraph (2).

627. The PRESIDENT advised the Committee that the discussion of Article 7(1)(a), which had already been adopted, was regulated by Rule of Procedure 32. He also noted that the Committee thus far had proceeded on the basis of consensus and, in the absence of any objection thereto, would continue to do so.

628. Mr. SPANN (Australia) supported the proposal to add the words "other than the payment of a maintenance fee" to Article 7(1)(a), but not the subsequent proposal to add additional wording in relation to the filing of an application. He stated that the subsequent proposal would allow or permit the filing of an application by a foreign representative. This was different to what was proposed in relation to Article 7(2). He stated that the Delegation of Australia strongly supported the right of an applicant to choose whether to file an application himself, but not the replacement of the local patent attorney or agent by attorneys in other jurisdictions.

629. Mr. WALKER (United Kingdom) stated that the proposed addition of "other than the payment of maintenance fees" to Article 7(1)(a) could be interpreted as distinguishing between two types of representatives: one for the purposes of any procedure and another solely for the payment of a renewal fee or a maintenance fee. He noted, however, that the Committee intended instead that anyone should be able to pay a maintenance fee and a representative was not necessary for that procedure. He proposed that the matter be referred to the Drafting Committee to reflect the true intent of the Committee.

630. The PRESIDENT stated that it could be considered if there was an agreement on substance on that point.

631. Mr. BÜHLER (Switzerland) said that the Swiss Office was obliged, according to its legislation, to draw the attention of the patent applicant or owner to the deadline for payment and to indicate the terms of the deadline as well as the consequences of the failure to observe it. At the request of the patent applicant or owner, the Office sent notification to third parties that made regular payments on behalf of the patent applicant or owner. These third parties should not necessarily be the representatives of the applicant or owner. A distinction existed between the terms representative and third party. In cases where third parties that made payments on behalf of the patent applicant or owner were not the representatives, a different address from that used for correspondence or of elected domicile should be given.

632. The Delegation of Switzerland feared that, on the basis of the current proposal, in its legislation it would no longer be able to require an address on Swiss territory, given that the application of Article 7(a)(ii) was excluded. Furthermore, the Delegation wondered whether the questions concerning third parties or the fee-payment service for maintaining patents would not be better placed in Article 1 where the terms were defined.

633. Mr. BOUCOUVALAS (Greece) supported the general consensus regarding Article 7(1)(a), namely, the original proposal to add the words "other than the payment of maintenance fees," but not with the insertion of the words regarding the filing of an application for according a filing date for the reasons previously stated, namely, the possibility of a foreign agent being able to file the application in another State.

634. Mrs. BOLAND (United States of America) supported the inclusion of only the maintenance fee language in Article 7(1)(a), as well as certain drafting improvements along the lines mentioned by the Delegation of the United Kingdom. She stated that the proposed language regarding the issue of the filing of an application went well beyond the intention of Article 7(2) as well as beyond the intention of anything that had been discussed at the Diplomatic Conference or in the previous meetings of the SCP.

635. Mr. BARTELS (Germany) asked the International Bureau to clarify what was intended by the proposed insertion. He doubted the wisdom of amending the text, which had been adopted after years of discussion, by inserting a few words regarding a very special case. He noted that the problem was wider than just maintenance fees in that it occurred whenever there was no need for representation. He asked whether an applicant would be obliged to use a representative who fulfills the condition of Article 7(1) whenever the applicant asked any person to act in regard to a procedure before the Office. He stated that, in some countries, even a banking institute could be regarded as a representative and would have to fulfill the conditions of Article 7(1). He also stated that, if this was the case, it would make sense to introduce something to make the payment of fees easier. He suggested the possibility of inserting a new provision which stated that, where the payment of fees was affected by a third person, that person need not be a representative under the conditions of Article 7(1).

636. The PRESIDENT suggested the addition of a separate paragraph to make it clear that any person could pay the maintenance fee, whether that would be the applicants themselves or a banking representative or anybody else. He noted, however, that the Committee would still have to address the issue raised by the Delegation of Switzerland, namely, whether an office should be able to require that person, whoever it was, to provide an address within a territory prescribed by that Contracting Party. He asked whether there was any objection to adding a paragraph of that nature, the drafting of which could be left to the International Bureau and reconsidered later.

637. Mrs. BOLAND (United States of America) supported the proposal to draft a separate paragraph which addressed the issue of maintenance fees, as suggested by the Delegation of the United Kingdom. She stated that requiring an address on the territory of a given Contracting Party was both inconsistent with the purpose of the Treaty and with the fact that such requirements did not exist at present. She stated that the Delegation of the United States of America did not support a requirement for the address proposed by the Delegation of Switzerland.

638. Mr. BARTELS (Germany) stated that the intention of his prior intervention was to have a provision which was as clear as possible. He stated that he did not see the need for a restriction to maintenance fees because the problem could occur every time fees had to be paid, and queried the need for such a restriction.

639. Mr. BÜHLER (Switzerland) said that his Delegation wished to know whether it was possible to have an address on Swiss territory for sending notification of a deadline for payment and that it was in the interest of the patent owner to have such communications issued so that payment could be made, in accordance with the legislation in force. He noted that it was desirable for such payment notification not to be sent abroad, taking into account the administrative charges that this would entail for the Office.

640. Mr. TRAMPOSCH (WIPO) stated that, when viewing Article 8(6) and Rule 10 together, it was clear that the Office could require at least the applicant or the representative to have an address on its own territory. He noted that while it might not mean that the specific company or bank that had been paying the maintenance fees would have an address there, the Office could require an address on the territory in order to contact the owner. He asked whether that would address the concerns of the Delegation of Switzerland.

641. Mr. BÜHLER (Switzerland) said that his Delegation wished to propose the inclusion in Rule 10(4*bis*) of an address separate from that used for normal communication or elected domicile, for the very purposes of sending payment notification, and he said that he was prepared to put this proposal in writing.

642. The PRESIDENT stated that the issues raised by the Delegation of Switzerland could be explored more fully during the discussion of Rule 10, with possible drafting changes to be considered by the International Bureau.

643. Mr. STOHR (EPO) stated that the purpose of the proposal relating to the maintenance fee was that institutions used for the payment of fees did not necessarily have to fulfil the requirements under Article 7(1)(a)(i) and (ii). He noted that whether such institutions acted in the capacity of representatives was a question of national law. He doubted that, e.g., a bank would be treated as a representative in the sense the term was normally used in the PLT. He stated that although the suggested insertion was not necessary, the EPO did not oppose it and would accept either the phrase "other than the payment of a maintenance fee" or a separate paragraph as suggested by the Delegation of Germany.

644. Mr. ORANGE (FICPI) supported the previously expressed principles allowing the payment of maintenance fees by such organizations as well as the proposal of the Delegation of the United States of America to make this a specific provision. He stated that a specific provision was the simplest and cleanest way to achieve the specific purpose. He proposed that the drafting also include the notification of payment of such a fee so that the organization in question could both pay the fee and receive notification of the payment. He noted that to do otherwise would create a loop whereby the notification would come back to the representative who had had no part in paying the fee.

645. Mr. BROWN (TMPDF) supported the proposal of the Delegation of the United States of America and the suggestion that the text be passed on to the Drafting Committee.

646. The PRESIDENT proposed that the International Bureau prepare a separate paragraph which would provide for an exception for maintenance fees, the finished text of which could be considered when it was presented to the Committee. He noted that the comments raised by the Delegation of Germany might be tied to what the Committee did under Article 7(2) in respect of fees, and that it might be necessary thereafter to continue the present discussion.

647. Mr. BARTELS (Germany) stated that he would be happy to hear an explanation why there was a restriction to maintenance fees for the provision in question.

648. Mr. TRAMPOSCH (WIPO) stated that, as the President had pointed out, the reason for referring to maintenance fees in Article 7(1)(a) and not simply to fees was because if fees in general were mentioned in Article 7(1)(a), it would not make any sense to have the possibility of requiring mandatory representation for the payment of fees under Article 7(2). He noted that if payment of fees was exempted under Article 7(2) it would be possible to talk about all fees in Article 7(1)(a).

649. The PRESIDENT concluded that there was agreement to leave the redrafting to the International Bureau and to consider the text when it was ready. He invited the International Bureau to introduce Article 7(3) and related Rules 7(2) to 7(4).

Article 7: Representation

Rule 7: Details Concerning Representation Under Article 7

650. Mr. BAECHTOLD (WIPO) stated that paragraph (3) of Article 7 was the basis for regulating the manner of appointment of a representative in the Regulations. He stated that Rule 7(2)(a) obliged a Contracting Party to accept the appointment of a representative in two forms: either in a separate power of attorney signed by the applicant or the person appointing the representative or in the request form which then would be signed by the applicant. He noted that a Contracting Party would be obliged to accept the appointment of a representative in a power of attorney or in the request Form, and referred to Article 8(3) (Model International Form). He stated that there was a consequential change in Rule 7(2)(ii) in as much as the words "or format" should be deleted so that item (ii) would read, "the request Form referred to in Article 6(2), signed by the applicant." He noted that, under Rule 10(1)(b)(ii), a Contracting Party would be permitted to require that a communication made to an office by a representative for a procedure before the Office contain a reference to the power of attorney or any other communication appointing the representative. He proposed that, for reasons set out in document PT/DC/6, paragraph 30, the words "by other means," in the penultimate line of Rule 7(2)(b), be deleted and replaced by "as otherwise" so that the sentence would read: "The Office may require that, where that single power of attorney is filed on paper or as otherwise permitted by the Office, a separate copy thereof be filed for each application and patent to which it relates." He proposed that the word "the" in the last word of the first line in Rule 7(3) be replaced by the word "a" so that the text would read: "A Contracting Party may require that, if a power of attorney is not in a language accepted by the Office, it be accompanied by a translation." He explained that the minor changes made it clear that the use of a power of attorney was not required. He also proposed that the words "any communication" in Rule 7(3) be replaced by "a power of attorney" so as to be consistent with the use of these terms in paragraphs (2)(b) and (3).

651. *The PRESIDENT, noting that there were no comments regarding Article 7(3), declared it adopted, as modified by the International Bureau, and referred to the Drafting Committee.* He invited the delegations to comment on Rule 7(2)(a) or (b) with the two changes which were proposed by the International Bureau.

652. Mr. BOGDANOV (Russian Federation) stated that his Delegation was concerned that the provision which allowed a power of attorney to be sufficient as regards all future applications might create uncertainty since general requirements concerning powers of attorney were often regulated by general civil law. He noted that the civil code of the Russian Federation set a maximum duration of three years for a power of attorney, and that if the duration was not indicated, the power of attorney was valid for one year only.

653. Mr. TRAMPOSCH (WIPO) stated that the reference to future applications could not possibly extend beyond the term of the power of attorney, so that it would necessarily only refer to future obligations during the term of the power of attorney. He offered to insert a clarifying statement in the Notes.

654. *The PRESIDENT, noting that there were no further comments regarding Rule 7(2), declared it adopted, with the modification suggested by the International Bureau and with the understanding that a clarification would be inserted in the Notes, and referred to the Drafting Committee.* He invited comments regarding Rule 7(3) with the one amendment suggested by the International Bureau, namely, changing "the power of attorney" to "a power of attorney."

655. Mr. STEWART (FICPI) asked whether it would be possible to file a translation of the power of attorney at a later time or whether it must be filed at the same time as the power of attorney itself.

656. Mr. TRAMPOSCH (WIPO) stated that the intent of the provision was that the power of attorney would not be effective until the translation was filed.

657. Mr. NIYONKURU (Burundi) wished for clarification of the methodology, since the nomenclature of the definitions that had been given did not contain the term "power." This word assumed importance in the context of Rule 7 and should therefore be included in the general definitions as a matter of importance.

658. Mr. TRAMPOSCH (WIPO) noted that Rule 7(2)(a)(i), which spoke of "a separate communication (hereinafter referred to a 'power of attorney')," constituted the definition of "power of attorney." He noted that the definition was not put in Article 1 since "power of attorney" did not appear often in the PLT and could easily be defined in the few provisions where it did appear.

659. *The PRESIDENT, noting that there were no comments regarding Rule 7(3), declared it adopted, as modified by the International Bureau, and referred to the Drafting Committee.* He invited comments regarding Rule 7(4) with the one amendment suggested by the International Bureau, namely, changing "any communication" to "a power of attorney."

660. Mrs. BOLAND (United States of America) asked why Rule 7(4) referred only to paragraph (2)(a)(i) and not paragraph (2)(a)(i) and (ii).

661. Mr. LEWIS (WIPO) stated that it was a drafting irregularity which could be referred to the Drafting Committee, but nonetheless noted that there did not now appear to be a reason to use "referred to in paragraph 2(a)(i)." He noted that Rule 7(3) had just been amended to "a power of attorney" without any reference back to "paragraph (2)(a)(i)." He suggested that Rule 7(4) therefore be simplified by deleting the words "referred to in paragraph 2(a)(i)" since "power of attorney" was already defined in Rule 7(2)(a)(i), for the sake of consistency with Rule 7(3), and since there would be no change in meaning. He added that Rule 7(4) would read: "A Contracting Party may require that evidence be filed with the Office where the Office may reasonably doubt the veracity of any indication contained in a power of attorney."

662. Mrs. BOLAND (United States of America) asked whether the deletion of the phrase from Rule 7(4) was sufficient, since it relied on the definition of "power of attorney" for the references in these paragraphs and it seemed then that the request Form referred to in paragraph (2)(a)(ii) would not be subject to the evidence requirement under paragraph (4).

663. Mr. TRAMPOSCH (WIPO) stated that the issue raised by the Delegation of the United States of America might be covered by Article 6(6), but that the International Bureau would have to take the issue under consideration. He noted that if Article 6(6) did not apply, the language would have to be changed.

664. The PRESIDENT proposed the order of discussion as follows: the remainder of Article 7 and Rule 7; Article 7(2), to see if there were any other suggestions on how to move forward on the issue, in particular, any compromises that might be considered in order to move forward; and Article 5. He noted that Friday evening and Saturday morning would be devoted to the remainder of Article 8, Article 8(2), Rule 8(2), Rule 3, Rule 9, Rule 10, Article 9, and Rules 15 to 19. He adjourned the meeting until the next day (May 19) at 10 a.m..

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665. The PRESIDENT opened the meeting and returned to the discussion on Rule 7(4).

666. Mr. BAECHTOLD (WIPO) suggested that, after further consideration by the Secretariat, the provision under consideration read as follows: "A Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the veracity of any indication contained in any communication referred to paragraph (2)(a)."

667. Mr. BOGDANOV (Russian Federation) asked whether the term "communication" referred also to the request Form mentioned in paragraph (2)(a)(ii).

668. Mr. TRAMPOSCH (WIPO) suggested to me the word "any appointment referred to in paragraph (2)(a)", since that word was used in the chapeau of paragraph (2)(a).

669. Mr. SHEHU-AHMED (Nigeria) proposed to add, for purposes of clarity, the words "of this Rule" and "above," so that the wording would read "in a power of attorney referred to in paragraph (2)(a) above" and "of this Rule."

670. Mr. TRAMPOSCH (WIPO) said that the drafting standard used throughout the Treaty was based on the assumption that, when a paragraph or sub-paragraph was mentioned in a Rule or Article, it referred to the other paragraphs or subparagraphs of that Article.

671. *The PRESIDENT declared Rule 7(4) adopted in substance with the modification suggested and referred to the Drafting Committee.*

672. The PRESIDENT opened discussion on Article 7(4).

673. Mr. BAECHTOLD (WIPO) introduced Article 7(4).

674. The PRESIDENT said that no other delegation wished to take the floor on this provision.

675. The PRESIDENT opened discussion on Article 7(5) and (6) and Rule 7(5) and (6).

676. Mr. BAECHTOLD (WIPO) introduced Article 7(5) and (6) and Rule 7(5) and (6). As far as paragraph (5) was concerned, the International Bureau suggested to delete the words "or where evidence is required under the Regulations pursuant to paragraph (3)," since they were already covered by the reference to paragraph (1) to (3) at the beginning of the second line. In paragraph (6), the International Bureau suggested to add the words "by the Contracting Party" so that the beginning of that paragraph would read "where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (3)." He also suggested to make the same changes in Rule 7(5) and (6) as had already been made to Rule (6)(1) and (2) in order to simplify the wording.

677. *The PRESIDENT declared Article 7(5) and (6) and Rule 7(5) and (6) adopted in substance with the modifications suggested and referred to the Drafting Committee.*

678. The PRESIDENT opened discussion on Article 7(2).

679. Mr. HERALD (Australia) declared that the provision under consideration was of concern to his Delegation. He said that his Delegation was of the view that applicants should have the right to proceed

with respect to a number of activities in other countries without mandatory representation. In that respect, equal treatment should be provided to applicants across all jurisdictions. However different requirements for being an applicant could give rise to inequalities between countries where applicants could be corporate entities and those countries where applicants had to be the actual inventors. In jurisdictions where the applicant may be a corporate entity, Article 7(2) allowed a corporation, which was the applicant and owner of the invention to take advantage of that provision. However, in jurisdictions where the applicant must be the actual inventor, an inequality could arise in that a corporate applicant was not considered to be the applicant and, for example, an in-house attorney prosecuting on behalf of the corporate entity would not fall under Article 7(2) in those jurisdictions. Therefore, he was seeking clarification as to the scope of the reference to the applicant or owner in the context of Article 7(2). If a corporate entity from a jurisdiction where the applicant must be the actual inventor in other jurisdictions could come to and make an application maintaining the benefit of Article 7(2) but the same would not hold true for corporate entities when applying in jurisdictions where the applicant must be the actual inventor, his Delegation would be in favor of the deletion of Article 7(2) in its entirety.

680. Mrs. BOLAND (United States of America) said that, throughout the negotiating history of the Treaty, the understanding of her Delegation had always been that applicant as defined in Article 1(viii) and the associated Note 1.07 permitted Contracting Parties to define applicant according to the applicable law in the Contracting Party. In terms of the relationship between the definition in Article 1(viii) and the treatment to be accorded under Article 7(2), the delegate said that the comments by the Delegation of Australia were well taken. However, it had to be kept in mind that, concerning the procedures under consideration, the United States of America did not mandate that a correspondence address be on its territory. The benefits of Article 7(2) would flow to applicant inventors throughout the world to the extent that the correspondence is carried on between the United States Patent and Trademark Office (USPTO) and the applicant inventor. Therefore, the allegedly unequal treatment did not exist and the benefits of Article 7(2) could extend equally to all Contracting Parties and all applicants throughout the world.

681. Mr. ORANGE (FICPI) asked if, in a situation where an application was filed from an inventor applicant having his residence abroad through a local representative, the applicant would still be able to avail himself of the provisions of Article 7(2), or whether that applicant would have to appoint a local representative for those purposes.

682. Mrs. BOLAND (United States of America) declared that, as far as the situation in her country was concerned, the only thing that mattered for the purposes of the treatment accorded in paragraph 7(2) was that the communication contain the signature of the applicant inventor. It did not matter whether the correspondence was sent to a corporate entity or representative or a law firm in a different country, as long as the correspondence was done between the USPTO and the applicant inventor.

683. Mr. TRAMPOSCH (WIPO) suggested, as a compromise solution, to consider to limit the effect of Article 7(2) to natural persons.

684. Mr. MERRYLEES (ABAPI) said that, in the view of his Delegation, the compromise would not make very much difference to the question of who would be able to take advantage of not having a representative in another country. It would still be the large multinational companies that would be concerned. The delegate recalled that, in view of problems to maintain a strong profession through funds coming into the country from large applicants abroad, his Delegation was opposed to that solution. However, a solution limiting the effects of Article 7(2) to natural persons would be entirely acceptable.

685. Mr. BADRAWI (Egypt) said that as far as representation was concerned, the representative had to be *ipso facto* a natural person. However, this natural person may be a representative of another natural person or a legal entity, depending on the definition of person. The definition of person in Article (1) referred to natural and legal persons.

686. Mr. BOGDANOV (Russian Federation) said that his Delegation was against the idea of limiting the application of Article 7(2) to only natural persons.

687. Mr. HERALD (Australia), considering that in the great majority of countries applicants could be corporate entities, declared that his Delegation was concerned to ensure equivalence of the practical effect when those provisions were applied in countries where applicants must be the actual inventors. In the view of that Delegation, it should be possible that, where corporate applicants could take the action

provided in Article 7(2), where they are the actual applicant they could also do so in countries where the applicant must be the actual inventor.

688. Mr. BARDEHLE (Germany) said that the issue under discussion was crucial for his Delegation, and sought clarity as to the real consequence of the provision under discussion. In particular, he thought that the Treaty should achieve that all applicants, whether corporate or not, had the same opportunities to use the possibilities under Article 7(2) in all Contracting Parties. For example, an applicant from the United States of America, filing with the EPO, would normally be a legal entity, and the correspondence may be sent by that legal entity, and would be accepted by the EPO under that Article without the obligation of having a representative. However, he required whether it would be necessary, in cases where a European legal entity filed in the United States of America, that the inventor, in order to take advantage from Article 7(2), appoint a local attorney. The delegate said that it was important to be on an equal footing.

689. Mrs. BOLAND (United States of America) said that, under the circumstances describing the operation of Article 7(2), those procedures would be carried out directly between the USPTO and the applicant inventor in the foreign country. That would require the correspondence in respect of those procedures to be signed by the applicant inventor.

690. The delegate also recalled that it had provided a response to the comment by the Delegation of Australia. However, without hearing from that Delegation whether or not that response addressed its concerns, a compromise solution was proposed that did not seem to be necessary in light of the discussion. She felt that the discussion had to take place and naturally progress and, if a compromise needed to be forged, it should come from the Member States.

691. The Delegation of the United States of America further opposed a limitation, in Article 7(2), to natural persons. Mrs. Boland reiterated that the operation of that provision would provide benefits to foreign corporate entities that can correspond directly with the USPTO under the signature of the applicable inventors. She expressed the view that all benefits were going both ways between the United States of America and other countries, as well as among other countries, and that the provision should be maintained without further limitation to preserve those benefits.

692. Mr. STOHR (EPO) said that, if it was suggested that the exemption from mandatory representation should only be available to applicants who were natural persons, his Delegation was opposed to that suggestion. The Delegation felt that, if such a change was accepted, corporate inventors would always need to be represented, while applicant inventors would be treated as natural persons and could benefit from the exceptions under Article 7(2).

693. Mr. UNGLER (Austria) said that applicants irrespective whether they were legal entities or natural persons should be treated equally in the context of Article 7(2). For the purposes of that provision, it shouldn't be relevant who was entitled, under the national law, to file an application. In conclusion, he expressed support for the text as originally presented.

694. Mr. BADRAWI (Egypt) said that, in his opinion, Article 7(2) allowed the applicant to be a natural person or a legal entity, because this was a mere repetition of the definition of Article 1(viii). A restriction to natural persons would violate the principle of equality. Therefore, the provision should not be changed. However, the delegate suggested that Contracting Parties following the granting of a filing date, disputes between the applicant and the Office should be referred to a dispute settlement mechanism. Furthermore, the applicant might be requested to appoint a representative for the purpose of any direct procedures or direct action by the Office.

695. Mr. KITAZUME (Japan) said that his Delegation supported the original text of the provision under discussion.

696. Mr. WALKER (United Kingdom) declared that exceptions for mandatory representation should apply to both natural persons and corporate bodies.

697. Mr. LEE (Republic of Korea) said that his Delegation believed that it was not logical to discriminate natural persons from legal entities.

698. Mr. BOUAZZAOUI (Morocco) said that Moroccan national legislation did not make provision for discrimination in appointing the agent, irrespective of whether this was a natural person or legal entity, and hoped that the system was not discriminatory as regards the nature of the applicant.

699. The PRESIDENT said that discussion on Article 7(2) would be suspended. He then opened discussion on Article 5(1).

Article 5: Filing Date

700. Mr. BAECHTOLD (WIPO) introduced Article 5(1). In particular, he said that the International Bureau would suggest the following redraft of the introductory words of that paragraph: "Except as otherwise prescribed in the Regulations, and subject to paragraphs (2) to (8), a Contracting Party shall provide that the filing date of an application shall be the date on which its Office has received all of the following elements, filed at the option of the applicant, on paper or as otherwise permitted by the Office for the purpose of according a filing date." This suggestion was made to provide for the possibility of future changes through a decision by the Assembly, for example, because of developments in the field of electronic filing.

701. Mrs. BOLAND (United States of America) referred to document PT/DC/6 and proposed that, under Article 5(1)(a), the only item that be required for the establishment of a filing date should be item (iii), namely a part which on the face of it appeared to be a description. Her Delegation proposed the deletion of items (i) and (ii), if that were done, it could agree to not insert of the words "no later than." The Delegation felt strongly that the filing date provisions should be a minimum, that it should be readily obtained by applicants and that any concerns relating to current items (i) and (ii) should not be determinative of the filing date. Most importantly, she said that her Delegation had some concerns with regard to item (ii) as a stumbling block for the grant of filing date. The Delegation had always been supportive of a great amount of flexibility on the part of Contracting Parties to provide filing dates and she thought that the only necessary element for that should be the description itself.

702. Mrs. BERENDSON (Peru), speaking on behalf of the Group of Latin American and Caribbean Countries, said that in order for the Patent Law Treaty to be an instrument for standardizing procedures, and taking into account the provisions existing in the legislation of various countries, her Group proposed that a new subparagraph (c) should be added to Article 5(1), as follows: "(c) For the purposes of the filing date a Contracting Party may require confirmation of payment of the established fees." Her Group also proposed amending the wording of Article 5(1)(a)(ii) by replacing the word "or" with the term "and". Consequently, the new wording of this provision would be as follows: "(ii) information allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Office."

703. The PRESIDENT invited comments on any aspect of Article 5(1), subparagraph (a) or (b), or comments on the proposal by the United States of America or the proposal of GRULAC for a new Article 5(1)(c).

704. Mr. PRAMUDYO (Indonesia) stated that his Delegation supported the proposal of GRULAC with regard to the amendment of Article 5(1)(c). It was his understanding that this proposal was in line with Rule 3.3(a)(ii) of the PCT Regulations. His Delegation also supported the addition of Article 5(1), subparagraph (a).

705. Mr. EVASCO (Philippines) indicated that his Delegation could go along with the changes introduced by the International Bureau with respect to the introductory sentence in Article 5(1)(a) and would like items (i), (ii) and (iii) to be retained as they appeared in the Basic Proposal. It would, however, like to add the following item (iv): "(iv) one or more claims." This addition was being proposed for the reason that once a patent had been granted, the State guaranteed protection of the rights of the patentee with respect to the claim or claims, since it was the claim or claims which actually defined the invention. He further stated that his Delegation did not support the addition of proof of payment of filing for purposes of according a filing date, as well as the addition of indications allowing the applicant to be contacted by the Office. To summarize, his Delegation supported Article 5(1)(a) as modified by the International Bureau, with the addition only of item (iv), that is, adding the requirement of one or more claims.

706. Mr. IWASAKI (Japan) stated that his Delegation opposed the proposal suggested in paragraph 6 of document PT/DC/8 distributed by the Delegation of the United States of America and wished to make a comment on the proposal by GRULAC. Regarding the meaning of filing date in the PLT, the history of the

Treaty should be kept in mind: the hard-line for negotiating the Treaty was the harmonization of procedural issues as much as possible, and, among the issues to be harmonized, the filing date was the most important element. As a consequence, his Delegation felt deep concern about too flexible procedures for obtaining a filing date. Article 5(1) as it was presently drafted provided that all three of these elements must be submitted for an application to be given a filing date, which was an indispensable factor to harmonize a minimum and a maximum requirement for the establishment of the filing date. Therefore, the Delegation opposed the proposal regarding Article 5(1)(c) proposed by GRULAC. Second, attention had to be paid to the regular respect of the filing date. The filing date had a quite essential legal effect for the patent application. From a legal point of view, an action by a person took legal effect only if the intention of the action was defined and the identity of the person was clear. The same rule should apply in this case, therefore, the legal effect for the filing date should require items (i) and (ii) of Article 5(1)(a). Thus, the Delegation opposed the proposal by the Delegation of the United States of America to limit Article 5(1)(a) to item (iii). Third, the Delegation wished to make a brief comment on the phrase "not later than." Despite the purpose of this provision, the words "no later than" could be integrated so that Contracting Parties would be allowed to have the discretion to plan the filing date by their own jurisdiction much earlier than the date when all three elements were filed at the Office. The Delegation was afraid of abuses resulting from this kind of ambiguity. Indeed, it sometimes happened that flexibility led to ambiguity, which annoyed everyone. For the applicant as well as the third parties, this internationally divergent situation for granting a filing date would give rise to serious problems which would diminish the merits of the user-friendliness of the Treaty. It should be kept in mind that the filing date was a fundamental factor also for a patent defeating effect which should provide an equal priority effect to any application in the world. Therefore, the Delegation also strongly opposed the insertion of the phrase "no later than" in order to maintain the legal certainty in granting the filing date. In conclusion, the Delegation believed that, as the filing date was a fundamental element for the application procedures it was not appropriate to base a treaty on a conception which may be different from State to State. Therefore, the Delegation supported the present text of Article 5(1)(c).

707. Mr. PAL (India) stated that his Delegation had no problem regarding the amendment proposed by the International Bureau for Article 5(1)(a). It also went along with the comments made by the Delegation of Japan regarding deletion of the words "no later than" in paragraph (1). Regarding items (i) to (iii), it could not support the proposal by the Delegation of the United States of America to restrict it to item (iii). In this respect, the Delegation wished all three items to be a minimum requirement to establish an application. Regarding the GRULAC proposal for amendment of item (ii), the Delegation fully supported the proposal for putting "and" in place of "or". Regarding item (iii) of paragraph (1)(a) concerning the description, the Delegation wondered why a claim, along with description and drawing was not referred to, as the claim better reflected the invention.

708. Mr. TRÉPANIÉ (Canada) wished to make a practical comment on the proposal by the Delegation of the United States of America. One could envisage a photocopy of, say, a magazine article sent to the Ministry without any indication at all that this was intended as a patent application. If there was no indication that this communication should be directed to the Patent Office, it would probably be discarded. Therefore, the effect of an attempt to file a patent application would be completely lost. So, as a minimum, he thought that there had to be an indication of what this communication was intended for. The minimum in his Delegation's view of Article 5 (1)(a) would be items (i) and (iii) for very practical reasons.

709. Mr. MOUKOURI (Congo) said that his Delegation subscribed to the procedure adopted by the International Bureau but considered nevertheless that proof of the payment of the prescribed fees was a condition of validity imposed as such. Consequently, his Delegation suggested that the Article should be retained as it stood, including item (i), contrary to the view of the United States of America, but with the prescribed fees added, since Congo considered this a condition of validity.

710. Mr. BADRAWI (Egypt) indicated that his observations were based on item (iii) of Article 5(1)(a), as well as on subparagraph (b), because he saw a relationship between these two elements. Item (iii) said "a part which on the face of it appears to be a description" and this did not meet the provision contained in the TRIPS Agreement, namely "a clear description of the invention." Thus, the phrasing in item (iii) was insufficient and it was necessary to include all details of the description. Turning to subparagraph (b), which provides that what is mentioned in item (iii) of subparagraph (a) can be a drawing, he believed that the applicant could here include a drawing in order to provide clarification on the nature of the invention. He further believed that the applicant must in any event provide information on the invention which was

being presented in foreign countries and that the applicant must state this for an application. In his view, it was also necessary to modify that in subparagraph (b).

711. Mr. SADOU (Algeria) said that his Delegation fully supported the aim of the Treaty which was to standardize and simplify the formalities, as also desired by the Delegation of the United States of America. However, in the same way as a number of delegations that had spoken, his Delegation supported the retention of Article 5(a), in its current wording, with nevertheless a number of observations designed to clarify the text and the proposal relating to the additional requirement for the payment of fees at the time of filing.

712. The minimum requirements prescribed by this Article as drafted represented the least that could be asked in order to identify the invention, the applicant and the nature of the application filed, since different types of protective title could be requested in Algeria. Furthermore, it was important to ascertain from the very beginning the type of application for protection to be filed in view of the filing date, an essential feature for the allocation of the title. The Delegation of Algeria supported the proposals designed to clarify this Article, as proposed by the International Bureau and the Delegations that suggested adding a subparagraph on the additional requirement of a fee-payment title.

713. Mr. SHALIT (Israel) stated that his Delegation supported the proposal of GRULAC in as far as having an option to require a proof of payment of a filing fee as a requirement for obtaining the filing date. The Delegation was not in favor of including the words "not later than" in the introductory part of paragraph (1) for the reason that the text here concerned a minimum of requirements. Before the minimum requirements had been required, a filing date should not be assigned. If not, they were not minimum requirements.

714. Mr. UNGLER (Austria) said that his Delegation, supported the statement by the Delegation of Japan concerning the proposal of the Delegation of the United States of America. He referred to two fundamental principles. First, the filing date under discussion was a benefit for an applicant. Second, a filing date could only be accorded where the Office was sure that the description belonged to the patent application and was able to identify the applicant. In his understanding, items (i) and (ii) were implicit criteria of the term "description". However, these implicit criteria should be made explicit in specific items for the purpose of an easy understanding. His Delegation therefore supported the text as it stood.

715. Mr. BOUCOUVALAS (Greece) referring to Article 5(1)(a), stated that his Delegation could support the Basic Proposal as amended by the International Bureau. It also understood that the words "not later than" would not be inserted in this text. As regarded items (i), (ii) and (iii), the Delegation supported them as they are presented in the Basic Proposal. Coming to paragraph (1)(c) as proposed in document PT/DC/21 proposed by GRULAC, the Delegation supported this proposal for the reasons stated in that document. In paragraph (1)(b), the Delegation saw a contradiction with the spirit of the draft Treaty. Under Article 5(6), where a missing part of the description or a missing document referred to in the description was filed later, the filing date would be the date when the full disclosure of the invention took place. However, paragraph (1)(b) did not make similar provision where a description was filed later. Moreover, if a priority claim was based on such a filing where the description was filed later, problems would occur as regards the harmonization of the priority documents. The Delegation therefore considered that paragraph (1)(b) of Article 5 should be deleted for the purposes of harmonizing the according of a filing date to a patent application.

716. Mr. HERALD (Australia) indicated that his Delegation supported the changes proposed by the International Bureau. Secondly, it supported the non-inclusion of the words "no later than" in the chapeau of subparagraph (2)(a). Thirdly, with respect to items (i), (ii) and (iii), although item (iii) was the most important part, item (i) was significant, so that miscellaneous correspondence could be distinguished from applications. The Delegation queried whether item (ii) was strictly required. However, in a spirit of compromise, it was prepared to accept that as a reasonable requirement. The Delegation did not support the GRULAC proposal to amend item (ii) to change the "or" to "and". If there were indications allowing the applicant to be contacted by the Office, then inherently, it was possible to identify the applicant. Similarly, it could be assumed that, if the identity of the applicant was known, then the means and sufficient information to be able to contact him would be available. The Delegation therefore thought that in reality those two provisions were two alternatives which ultimately led to the same outcome, and the Delegation could not see a need to provide both as a mandatory requirement. The Delegation strongly supported the retention of subparagraph (b) and drew attention to the fact that it was a "may" provision not a "must" provision. The Delegation referred to its experience where applicants had

provided drawings or photographs which fully disclosed the invention. This was something that a Contracting Party should be able to recognize. With respect to the proposal on fees, the Delegation stated that it could support that provision, providing it was in the context of the scheme consistent with the PCT, that is, that the filing date be not dictated by the date on which the fees were paid. Under Article 6(4), Contracting Parties may require that fees be paid. The concept that if such fees were not paid, the filing date could be lost was acceptable, but a mechanism which provided that a filing date could be obtained only as of the date that the fees were paid could not be supported. Such an arrangement would be quite inconsistent with the way the PCT currently operated. Finally, a number of delegations had suggested that they would like to see a requirement for claims in the provisions. The Delegation of Australia wished to go on record that it did not support in any way the inclusion of such a requirement. He noted that such a requirement could easily be met by the applicant putting in a claim in the form of "my invention is better than anyone else's," or "I claim a million dollars," because some applicants did not understand the legal significance and structure of such claims.

717. Mr. THOMAS (WIPO) explained that, where an application under the PCT was filed without fees, or with missing fees, the applicant was invited to pay the missing fees. Within a strict time limit if the fees were not paid within that time limit, then the application was considered withdrawn. However, the application would, even if it was considered withdrawn, still retain its filing date. Accordingly, the position under the PCT was that the payment of fees were not a precondition for a filing date and that failure to pay missing fees did not result in loss of a filing date.

718. Mr. TRAMPOSCH (WIPO) observed that PCT, Article 11(1) was also relevant since the PCT was the starting point for the provision on the filing date in the PLT. The drafting of the PLT had closely followed the PCT, although in some cases, it had been deemed that the PLT should be more user-friendly. In PCT Article 11(1), there were seven requirements for according a filing date under the PCT. Two of those requirements would not apply to national filing because they dealt with residency requirements and the designation of a Contracting State. Of the remaining five, three corresponded to items in the PLT. There were two remaining items in the filing date requirements for the PCT where the PLT had been more liberal, namely the inclusion of claims and the language requirements.

719. Mr. DRISQUE (Belgium) said that his Delegation requested the final deletion of the words "at the latest" from Article 5(1)(a) and opposed the proposals made by the Delegation of the United States of America and the Group of Latin American and Caribbean Countries. He specified that after having consulted the relevant parties in Belgium, his Delegation wished to withdraw the reservation relating to Article 5(1)(a), which appeared in the explanatory notes and concerned the failure to fulfill the condition of one or more claims from among the minimum requirements to be satisfied by an applicant in order for a filing date to be accorded to his or her patent application.

720. Mrs. BOLAND (United States of America) recalled that it felt fairly strongly that the understanding that had been reached in the Committee of Experts and the SCP, was that the Treaty should not make the process of obtaining a filing date throughout the world more difficult than it was today. It appeared to the Delegation that discussion on Article 5(1) was perhaps taking the opposite tack. Applicants throughout the world should be assured that a filing date be granted on the filing of the most important aspect of their invention, namely the description. She observed that the Paris Convention provided a Member State the freedom to grant the filing date to whatever it consider to be a regular national filing and such a filing necessarily gave rise to a right of priority under Article 4 of the Paris Convention. The Delegation was concerned that the freedoms that Contracting Parties currently had in terms of granting a filing date could be prejudiced. As regards item (i), the Delegation was of the opinion that this item did not impose much of a requirement at all and, therefore, did not feel it to be necessary to be included. However, in response to the concerns expressed the Delegations of Canada, Austria and Australia, the Delegation was prepared to amend its proposal accordingly to reinsert item (i) as part of the filing date requirement. On item (ii), the Delegation was concerned that contact and applicant information got lost on occasion, and the fact that a filing date would be granted on the date of receipt of the description should not be prejudiced as a result of that loss of that information. It therefore wish to delete item (ii). If that item were not to be deleted, then the Delegation supported the retention of the insertion of the phrase "no later than" throughout all of Article 5. As regard proposals to include fees and other requirements in respect of the filing dates, the delegate noted that the SCP and its predecessor the Committee of Experts had decided that these were not necessary for a filing date. Instead, an appropriate mechanism was that in Article 6. In particular, as regards the GRULAC proposal, she recalled that the Delegation of the United States of America had already stated in its opening remarks that it could not

support the incorporation of a fee requirement even as a discretionary item. In addition, the Delegation did not support changing the word "or" to "and" in the indications in item (ii).

721. The PRESIDENT asked the Delegation of the United States of America for clarification as to whether, in proposing the deletion of Article 5(1)(a)(ii), it was the intention that no Contracting Party could require those indications or whether a Contracting Party would be permitted to require such indications should it so wish.

722. Mrs. BOLAND (United States of America) replied that her Delegation's preference would certainly be to delete item (ii) as a filing date requirement altogether. In its view, the Committee was trying to arrive at a filing date "standard" and the adoption of an optional requirement would fall short of that goal.

723. Mr. KAUDYROV (Kazakhstan) noted that, one goal of the Committee was to simplify life for applicants. On the other hand, the Committee was trying to determine what the minimum requirements necessary for the filing date of an application were. Common sense dictated that national patent legislation not be burdened by requirements. What had been proposed in the first part of Article 5(1)(a) and its subparagraphs did not seem to solve the problem. His Delegation wished to support those proposals which would aim at a clearer definition. It also supported the proposal of GRULAC in document PT/DC/21. It also supported the suggestion made by the Delegation of the Philippines for a requirement of one or more claims.

724. Mr. HIEN (Burkina Faso) said that in line with the delegations which had preceded it, Burkina Faso wished to make a contribution as regards fees. The current legal situation prevailing in Burkina Faso was such that when a patent application was filed, fees necessarily had to be paid. This payment represented a condition of admissibility and the receipt for the payment of fees was one of the documents required if the application were to be admissible. Burkina Faso therefore considered that the GRULAC proposal was relevant and wished to support it strongly, and requested that a subparagraph be devoted to the payment of fees.

725. Mr. ADA (Czech Republic) expressed his Delegation's support of the text of Article 5(1)(a) and (b) as it stood in the Basic Proposal.

726. Mr. LEE (Republic of Korea) recalled that this Conference's aim was to harmonize patent laws and the procedures thereof. The inclusion of the text "no later than," could result in the filing date being different from country to country. If there was relevant prior art between the different filing dates, the patentability would also vary from country to country according to where the application was filed. This was a matter of substance and not a matter of a procedure. His Delegation therefore strongly supported the Basic Proposal with the changes proposed by the International Bureau.

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727. Mr. CHAOUCH (Tunisia) said that his Delegation supported the proposal made by GRULAC relating to the payment of fees for the purposes of according a filing date. Such a payment was made in return for the services provided by the Office, as soon as it received a patent application (entry in the patent register, notification to the applicant of missing documents); such services should be provided free of charge if the applicant subsequently withdrew his or her application.

728. Mr. OMOROV (Kyrgyzstan) supported the suggestion made by the International Bureau. He emphasized the importance of clear and accurate provisions with regard to the grant of a filing date and proposed deleting the words "no later than" in square brackets, and the word "or" in item (ii), and to amend item (iii) to read "a part which is a description of the invention."

729. Mr. RAJAN (Ireland) supported the amendments suggested by the International Bureau. He opposed the proposal for the deletion of items (i) and (ii), and also objected to the insertion of the words "no later than" in square brackets. He stated that the payment of the fee should not be a prerequisite for

according a filing date. Sub-paragraph (b) should be retained, since the Paris Convention already permitted the according of a filing date to an application which disclosed the invention only in a drawing.

730. Mr. GARCÍA LÓPEZ (Spain) said that his Delegation considered that the phrase "at the latest" should not be included in Article 5. As regards the requirements for obtaining an application filing date, his Delegation believed that items (i) and (ii) of Article 5(1)(a) should be retained, and supported the proposal by GRULAC to insert the conjunction "and" in item (ii). As to the inclusion of claims in paragraph (1)(a), he said that his Delegation held the reservation previously expressed by Spain and accepted the text proposed by the International Bureau.

731. Mr. CRAMER (EPO) said that Article 5 was perhaps the most important provision in the draft PLT, since it established a uniform worldwide standard. He stated that any possible deviation from this standard, including the possibility for national offices to require a fee, should be avoided, and could not be supported by his Delegation. He also supported the deletion of the words "no later than", presently contained in square brackets, because they would allow offices to introduce or maintain a different standard. He expressed some sympathy for the proposal made by the Delegation of the United States of America to delete items (i) and (ii), but said that severe administrative problems might arise if an office did not have any indication as to the sender of particular documents, because such documents might, under these circumstances, have to be kept for an indefinite period of time, to ensure their availability in case the sender identified himself later.

732. Mr. HABIBI (Libyan Arab Jamahiriya) stated that the elements mentioned in Article 5(1)(a)(i), (ii) and (iii) were extremely important and added that paragraph (3) regarding notification should also be taken into consideration in this context. The Delegation would like to point out that the elements of application required for the purposes of a filing date under this Article are essential and necessary to accord a filing date. It suggested the amendment of item (iii) on the description or disclosure of the invention in order to provide for a detailed and full description of the invention accompanied by the relevant drawings, if any, and to require that the applicant should pay the prescribed registration fees pursuant to national laws.

733. Mr. HOLMSTRAND (Sweden) concurred with the Delegation of the EPO, and stated that a filing date should be afforded on the basis of only minimal conditions. He added that it did not seem justified to make the grant of a filing date subject to the payment of fees and that he, therefore, could not support the proposals made by the Delegations of the GRULAC countries, the Philippines and other countries. He declared his readiness to accept paragraph (1) as contained in the Basic Proposal and the additional language suggested by the International Bureau, but objected to the inclusion of the words "no later than." He stated that the elements contained in item (iii) appeared to be the most important and constituted the absolute minimum, while item (i) might be redundant, and item (ii) might be redrafted as a separate provision.

734. Mr. BARTELS (Germany) asked for clarification regarding the suggestion made by the International Bureau to insert the words "Except as otherwise prescribed by the Regulations" at the beginning of paragraph (1). He expressed concern regarding the consequences of subjecting this provision, fixed in the Treaty itself, to changes in the Regulations. He said that, while he agreed that item (iii) constituted the absolute minimum, he would also find it difficult to delete item (ii), whereas item (i) would appear less essential. While he preferred to retain all three items in Article 5(1), he proposed, by way of compromise, to reduce the exception to Article 2(1) to a reference to Article 5(1)(a)(iii) with a view to enable Contracting Parties to be more liberal in favor of applicants by granting a filing date even where the elements mentioned in items (i) and (ii) had not been furnished. He objected to the inclusion of any reference to fees, and stated that there would be no need to include patent claims for the purpose of obtaining a filing date.

735. Mr. TRAMPOSCH (WIPO) explained that the suggestion, contained in Annex VI of document PT/DC/6, to include the words, "except as otherwise prescribed in the Regulations" at the beginning of Article 5(1)(a), was the result of an extended discussion in the PCT Assembly meeting in March 2000 concerning the grant of a filing date for electronically filed applications. It was felt that the Treaty should at least be flexible enough to encompass technologies that might be used in the future for filing applications, but which might not conform to the elements listed in Article 5(1)(a). He said that the only possibility to achieve this without amending the Treaty itself would seem to allow Article 5 to be amended by the Assembly by way of changing the Regulations. He emphasized that the suggestion contained in

Annex VI of PT/DC/6 included the limitation in Rule 21 that any Regulations established under Article 5(1) would require a unanimous vote in the Assembly.

736. Mrs. BERENDSON (Peru) specified that by introducing the requirement to submit confirmation of payment as paragraph (1)(c), the GRULAC proposal would affect the establishment of the filing date.

737. Mr. LEWIS (WIPO) explained that the system regarding the payment of fees envisaged in the Basic Proposal was similar to the one followed under the PCT, under which the application is considered to be withdrawn if the fees are not paid within the time limit, without causing a loss of the filing date. Referring to Notes 6.14 and 6.15 in the Explanatory Notes, he stressed that, while Article 6 dealt with the requirements in respect of an application and enabled a Contracting Party, in paragraph (4), to charge fees in respect of applications, Article 5 prohibited a Contracting Party from refusing to accord a filing date because the application fee had not been paid.

738. Mr. THOMAS (WIPO) emphasized that the system established under the PCT had helped many applicants to safeguard their rights in cases when something had gone wrong with fee payments. He stressed that the aim of the patent system, whether under international or national arrangements, should be to provide applicants with patents for their inventions without imposing too many formality requirements, particularly with regard to obtaining the very important filing date.

739. Mr. FICSOR (Hungary) supported the Basic Proposal in respect of Article 5(1)(a) with the amendments suggested by the International Bureau. He said that, in the spirit of compromise, he might, however, be ready to consider the possibility of deleting item (i), while he opposed the inclusion of the words "no later than."

740. Mr. JONG (Democratic People's Republic of Korea) supported the suggestion made by the International Bureau, but objected to requiring claims or the payment of fees for the grant of a filing date under Article 5(1)(a).

741. Ms. LACHOWICZ (Poland) supported the deletion of the words "no later than" for the reasons given by the Delegation of Japan, and expressed a preference for retaining all three items in Article 5(1)(a). She also supported the proposal made by the GRULAC countries to replace the word "or" by "and" in item (ii), and the proposal put forward by the Delegation of the Philippines to add one or more claims for the purpose of according a filing date.

742. Mr. STRENC (Romania) supported the current draft of Article 5(1)(a) with the amendments suggested by the International Bureau and the retention of all items (i) to (iii). He favoured the deletion of the words "no later than", because the filing date would otherwise depend on national practices which would obstruct the goal of harmonization.

743. Mrs. BOLAND (United States of America) proposed adding the words "express or implicit" before the word "indications" in item (ii), so that the provision would read "express or implicit indications allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Office". She also drew attention to Article 9(2) and (3) on notification and stated that these provisions adequately addressed the issues that might be raised by insufficient contact information.

744. The PRESIDENT asked whether, and Mrs. Boland confirmed that, this proposal was made on the basis of the amendments suggested by the International Bureau, and the deletion of the words "no later than."

745. Ms. LÖYTÖMÄKI (Finland) supported the current text of Article 5(1)(a) with the amendments suggested by the International Bureau, and stated that she could also accept the proposal which had just been made by the Delegation of the United States of America.

746. Mr. SNETHLAGE (Netherlands) supported Article 5(1)(a) as currently drafted and said that he could agree with the suggestions made by the International Bureau. He welcomed the fact that the Delegation of the United States of America was no longer advocating adding the words "no later than", and stated that he could agree with the amendment of item (ii) proposed by that Delegation. He saw no problems in accepting the proposal made by the Delegation of Peru to replace, in item (ii), the word "or" by "and", but objected to the proposal made by the Delegations of the GRULAC countries because Article 6(4) was sufficient for that purpose. He also opposed the proposal made by the Delegation of the Philippines to

require claims. He welcomed subparagraph (b), which enabled Contracting Parties to accept a drawing as a description.

747. Mr. SHALIT (Israel) emphasized the importance of retaining the word "or" in item (ii) and explained that this would make it be possible to grant a filing date in a situation where a representative had mistakenly provided a wrong name of applicant, in which case the Office could contact the applicant through his representative despite the inability to establish his identity.

748. Mr. NIYONKURU (Burundi) said that his Delegation supported the proposal made by the International Bureau concerning Article 5(1)(a) and the amendments made thereto. Recalling his earlier remarks relating to the need to support inventors irrespective of their financial situation, he feared that the introduction of fees in item (i) might represent an obstacle for innovators who lacked resources at the time an application was filed.

749. Ms. WEN (China) supported the amendments made by the International Bureau, but opposed adding the words "no later than," because this would contradict the goal of harmonizing patent law. She expressed herself in favor of retaining items (i) to (iii), objected to including the payment of fees in the list as proposed by the Delegation of GRULAC countries, and supported the proposal to delete subparagraph (b).

750. Mr. VIDAURRETA (Argentina) said that with respect to the requirement to pay fees for the recognition of the filing date, there were a number of countries, including at least the 34 member countries of GRULAC, that had always required the payment of a fee in order to acknowledge the validity of the date in question. Such a payment was considered to be a logical counterpart or a fair compromise for anyone wishing to use a public service. The requirement to pay the fee was not a criterion which GRULAC wished to impose on other countries and it was therefore proposed that the requirement be made optional for Contracting Parties. In that regard, Offices that so desired could accept subsequent payment of the requisite fees. He said that the GRULAC proposal should not be considered an obstacle, nor contrary to the spirit of the Treaty. It should be considered that certain countries required a period of time to overcome particular stages and that, if an attempt was made to omit these stages, it would be difficult to achieve a consensus and also for the largest possible number of countries to accede to the Treaty. Speaking on behalf of the Delegation of Argentina only with respect to Article 5, he said that his Delegation agreed to maintain the requirements established in items (i), (ii) and (iii) of paragraph (1)(a) and that it supported the statements made by other delegations in support of incorporating the optional requirement to request, for the validity of the filing date, a part that appeared to constitute a claim. As regards subparagraph (1)(b), his Delegation agreed that it should be retained, since in some cases a drawing could actually replace a description. Finally, his Delegation confirmed the position of GRULAC regarding paragraph (1), item (ii), i.e. to replace the word "or" with "and."

751. Mr. SPANN (Australia) supported the text of Article 5(1)(a) as currently drafted with the amendments suggested by the International Bureau, and opposed the proposal made by the Delegations of the GRULAC countries. He declared, however, that he could, in the spirit of seeking a compromise, support the proposal presented by the Delegation of the United States of America, to add the words "express or implicit" in item (ii).

752. Mrs. MARCADÉ (France) said that her Delegation had always been in favor of simplifying the patent application procedure, in particular as regards the allocation of a filing date, and did not therefore support the addition of extra conditions to Article 5(1)(a), such as the payment of fees or the provision of claims. Nevertheless, while recognizing that the allocation of a filing date was an important issue, she noted that consideration should be given not only to the interests of the applicant but also to those of third parties. Since the conditions currently included in Article 5(1)(a)(i) to (iii) imposed few restrictions and were already very advantageous to the applicant, the Delegation of France wished to retain these three conditions and supported the comments made in that regard by the Delegation of Japan.

753. As regards the insertion of the phrase "at the latest" in the first paragraph, which her Delegation did not support, she noted that in a spirit of compromise the Delegation of the United States of America was prepared to withdraw the phrase and would support the retention of the three conditions in this paragraph with a slight amendment to item (ii). In the same spirit of compromise, she concluded that her Delegation was ready to consider the proposed amendment in a positive light.

754. Mr. BADRAWI (Egypt) objected to the proposal made by the Delegation of the United States of America and stressed the necessity of having a clear and unequivocal statement to the effect that a certain communication constituted an application. He also said that it was necessary to have clear indications as to the identity of the applicant enabling the Office to get in touch with him, if needed. With regard to item (iii) and subparagraph (b) he emphasized the need for a detailed description providing full information concerning the subject of the invention, which should also include a drawing if necessary. Referring to Article 6(4), he said that this provision interacted with the provision under discussion and might cover other necessary elements.

755. Mr. BARTELS (Germany) said that the suggestion made by the International Bureau might appear questionable from a constitutional perspective, and asked whether it could be interpreted as allowing any amendment of the Regulations to overrule any of the provisions in Article 5, so that, for example, an office could, based on an amendment of the Regulations, grant a filing date without having a description, even though Article 5(1)(a)(iii) would prohibit such a practice. He further supported the proposal made by the Delegation of the United States of America.

756. Mr. TRAMPOSCH (WIPO) replied that Article 5(1) could be amended by a unanimous vote of the Assembly without any limitation as to the substance of such an amendment, but that every Contracting Party would in effect have a veto.

757. Mr. MOUKOURI (Congo), clarifying his Delegation's position on the obligation to introduce the payment of fees expressed prior to the explanations of the International Bureau, said that in the light of the PCT, which gave a time limit of two months for the payment of fees, failing which the application was considered never to have been filed, his Delegation subscribed to those explanations and endorsed the Basic Proposal of the International Bureau, but specified, however, that it wished to retain the three items (i), (ii) and (iii).

758. Mr. CRECETOV (Republic of Moldova) supported the text of Article 5(1)(a) as currently drafted with the additions suggested by the International Bureau and the Delegation of the United States of America. He was in favor of deleting the words "no later than" and objected to the inclusion of additional items requiring matters such as claims and the payment of fees. With regard to subparagraph (b), he asked whether this provision would only apply to technical graphs or also to the structure of chemical compounds.

759. Mr. LEWIS (WIPO) replied that chemical formulae constituted a good example that an invention could be adequately disclosed for the purposes of a filing date in a drawing without any further description. He said that drawings could disclose the actual chemical formula of a new substance to a chemist and explain the method of its preparation which might, in certain countries, be sufficient for the grant of a patent.

760. Mr. MOTA MAIA (Portugal) supported the Basic Proposal with the modifications suggested by the International Bureau, agreed with the deletion of the words "[no later than]" in Article 5(1)(a), and the substitution of the term "or" by the word "and" in Article 5(1)(a)(ii). He proposed that an additional item concerning the presentation of one or more claims be included in Article 5(1)(a).

761. Ms. CHNG (Singapore) stated that, in most jurisdictions, a filing date is very important for first filed applications because it serves as the basis of priority claims in subsequently filed applications. Bearing in mind the significance of the filing date and that the underlying principle of the Treaty is to streamline procedures, the needs and requirements must be balanced, as subparagraphs (i), (ii), (iii), the proposed inclusion of the requirement of at least one or more claims, and the arguments in respect of the inclusion of a filing fee as minimum requirements to obtain a filing date are considered. She stated that Article 5(1)(a)(i), "an express or implicit indication to the effect that the elements are intended to be an application," was necessary in view of Article 5(1)(b). In the absence of any such indications, when an office received only a drawing it would not know whether it is meant to be a patent application, an application for a design registration, or a trademark application. She further questioned the necessity to require claims for the purpose of obtaining a filing date, since claims are supported by the description and would therefore not disclose anything else than what was already disclosed in the description. She also asked whether the proposal of filing fees being included as a minimum requirement to obtain a filing date would create more of a burden on an applicant, and noted that it may be unfair to the applicant if an office were to refuse the according of a filing date because the applicant could not raise the appropriate funds, at that point in time.

762. Mr. PAL (India) proposed that only the term “express” be retained in Article 5(1)(a)(i) since the terms “express” and “implicit,” if used together, established two different standards.

763. Mr. DAVIES (Canada) supported the amendment suggested by the International Bureau and the amendment proposed by the Delegation of the United States of America in that the words “express or implicit” be added to subparagraph (ii). He stated that it was his understanding that words “[no later than],” being in square brackets, did not appear in Article 5(1)(a) as it currently reads.

764. Mr. JONG (Democratic People’s Republic of Korea) endorsed the explanation of the International Bureau that in some cases, in particular, in respect of chemical and mechanical inventions, a drawing was sufficient to disclose the invention.

765. Mr. IWASAKI (Japan) supported the comments of the Delegation of India and asked for clarification with respect to the proposal of the Delegation of the United States of America regarding Article 5(1)(a)(ii). He asked for a concrete example of the situation contemplated by the proposed amendment.

766. Mrs. BOLAND (United States of America) stated that the phrase “express or implicit” was already used in Article 5(1)(a)(i) and thus was not new to the PLT; that the phrase gives some flexibility regarding, e.g., inadvertent loss of contact information that could be subsequently associated with a given application; and that such flexibility allowed, within the framework of Article 5(1)(a), the possibility of providing applicants and users with a safety net in those situations where there may be a temporary misassociation of contact or applicant information.

767. Mr. HERALD (Australia) stated that an example of an “implicit indication” would be when the name of the applicant had not been inserted in the form part of a request Form, but was clearly identified on the header transmitted with the fax.

768. Mr. BADRAWI (Egypt) noted, that if the explicit element of an indication was removed, there would not be an application. He noted that the Office would have to make its own assessment of the case and that this could create problems due to abuse by either of the parties.

769. Mr. STEWART (FICPI) supported the original as well as the alternative proposal put forward by the United States of America even though other provisions were present in the PLT to take care of items (i) and (ii). He stated that the objective of the Conference was to approve a Treaty that was user-friendly for applicants, particularly in connection with the establishment of filing date. He suggested two scenarios: (1) an applicant faxes his patent application to a Patent Office, but because of an error in the transmission, the “express or implicit indication” or perhaps even the identity of the applicant was lost in the transmission although the description is received, and (2) an electronic filing became corrupted. He asked whether the Committee should create a treaty that denies an applicant a filing date because of such errors or accidents occurring outside the fault of the applicant himself. He opposed the requirements of the proof of payment of a fee for the purpose of obtaining a filing date as proposed by GRULAC, and agreed in this regard with the comments made by the Delegation of Australia. He noted the prior discussion regarding Article 7(2) and the appointment of a local representative, where one of the proposals had been that a local representative would not be needed to pay fees. He noted the scenario where an applicant who fails to pay a particular fee to a Patent Office because of a mistake is denied a filing date, receives a notice to pay the fee, pays the fee later and obtains a filing date upon payment, and, if the invention has already been published during this intervening time period, loses all rights because the filing date is not accorded until there has been proof of payment. He stated that this approach was going backwards from the PCT today. He stated that, with regard to the comments of the Delegation of the Republic of Moldova with respect to Article 5(1)(b), he would point out that, in addition to drawings or chemical formulae as being a description of an invention, it could be indicate in the Notes that sequence listings could be a description of an invention. He drew the attention of the Conference to the position paper that has been distributed by FICPI, pages 2 to 3, Section 3, and asked whether an indication on a PCT Request Form for a filing in a particular country was an “implicit indication” under Article 5(1)(a). He noted that Article 5 contained very liberal standards for the assignment of a filing date but that applicants filing a PCT Application have to comply with stricter standards under PCT Article 11. He noted that FICPI had proposed, in its position paper, to cure this imbalance by allowing a receiving office under the PCT to consider an international application as a national application for the designated States, where such application fulfilled the conditions of Article 5(1) of the Treaty, but not those of Article 11 of the PCT. He stated that such an amendment would provide a safety net for applicants using

the PCT procedure. As an example he noted the situation where the filing of the applicant's name and a specification containing a complete disclosure of the invention to establish a filing date under Article 5 would have been accepted, if the application had been filed nationally. He noted that, with FICPI's suggested amendment, the applicant would receive the filing date of the defective PCT application accorded to national applications in any of those countries designated on the request by filing separate national applications once the applicant is aware of the deficiency of the PCT application: that the PCT application would be allowed to lapse without further processing; and that the applicant would lose the benefits of the PCT procedure but would avoid the complete loss of rights that would result. He asked that the International Bureau and the delegations carefully consider the issue. He recalled his question whether an indication on a PCT request form falls into the category of an "implicit indication" in a designated country, and proposed that a comment or explanation be put into the Notes if the answer was yes, but would request serious consideration of the FICPI proposal if the answer was no.

770. Mr. KUNIN (United States of America) pointed out that, with respect to the proposal from the United States of America with respect to the amendment of item (ii) of Article 5(1)(a), there were situations where there would be the permission of an office to require a customer number or registration number for an applicant which implicitly would, through the records of the Office, permit identification of the applicant without expressly identifying him by his given name, the indication using either a customer number or registration number as provided for under the PCT. This would be an "implicit" way by which the identity of the applicant could be established. He stated that it was for this reason that the Delegation of the United States of America was proposing, in item (ii), the words "express or implicit" to be added before the word "indications."

771. Mr. BROWN (EPI) stated that he strongly supported the Basic Proposal as proposed to be amended by the International Bureau with the latest amendments suggested by the Delegation of the United States of America. He stated that he strongly opposed the replacement of the word "or" in subparagraph (ii) by the word "and" for the reasons explained by the Delegation of Israel. He stated that he was fundamentally opposed to requirements for claims which do not relate to an essential requirement for a filing date regardless of what may be needed for an application at a later stage. He stated that he had a serious problem interpreting the GRULAC proposal, because the proposed filing date for an application could not be ascertained. He asked whether an application could receive a filing date which was prior to the date on which the fee was paid or proof of payment was provided, and noted that, if that was not the case, the applicant was totally dependent on the means of transferring the money to the Office to get a filing date.

772. Mr. ARMIJO (AGESORPI) said that his Association opposed the proposal made by the United States of America to insert the term "expressly" or "implicitly" in Article 5(1)(a)(ii), since the word "implicitly" was vague and could give rise to doubt. For example, if an Office received a fax which included a description, but not the identity, of the applicant and if a person's name was given at the top of the fax, it would be doubtful whether that person were the applicant or the representative. He said that in the United States of America, entitlement to a patent was granted to the first person to produce the invention, and considered that it was not perhaps essential for this country to define exactly who had filed the application. By contrast, in other countries of the world patent entitlement was granted to the inventor who first filed the application. If the applicant were not defined at the time of filing, this could give rise to claims as to the applicant's identity. In those countries, it was therefore necessary to define, at the time of filing, who the applicant was, and thus ascertain who was entitled to the patent. AGESORPI also supported the proposal by GRULAC relating to the payment of the fee as a condition of the validity of the filing date, since it enabled the person who was entitled to the patent to be defined unequivocally. It also agreed with the reasons given by the Delegations of Argentina and Tunisia in support of national offices. Finally, it shared the views recently expressed by the Delegation of Argentina, since it was necessary to incorporate a flexible and optional proposal which enabled the subject to be dealt with freely by national legislatures.

773. Mr. NIIMURA (JIPA) stated that the JIPA welcomed the deletion of the words "no later than" from Article 5(1)(a) because of legal certainty. He stated that the filing date was very important for examination of novelty, especially under a first to file system.

774. Mr. PANTULIANO (AIPLA) supported the latest proposals by the Delegation of the United States of America and the proposal by FICPI contained in paragraph (3) of the FICPI position paper. He stated that the proposal by GRULAC would be a large step backward. He noted that Article 5(1), in particular, was to be as liberal as possible for users, and that some of the proposals being advanced by some delegations

appeared to be going in the opposite direction. He stated that if it comes to a choice between what is best for users and what is best for Patent Offices, the users must prevail.

775. Mr. BROWN (EPI) stated that, as set forth in the EPI position paper, EPI had intended to propose that the words "[no later than]" be included in the Treaty, but now realized that it was not acceptable to the other delegations. He stated that when the words "has received" in the third line of paragraph (1)(a) were strictly interpreted, they excluded the practice of many offices of according the date of mailing as the date of filing, and it would also preclude an office from giving an earlier filing date where there had been for example, a delay in the delivery of mail.

776. Mr. TAKAMI (JPAA) stated that Article 5 was one of the most important provisions since it set very liberal, worldwide standards and a minimum requirement. He supported the proposal of the International Bureau, namely, the deletion of the words "[no later than]" and the addition of a fee.

777. Mr. BOGDANOV (Russian Federation) supported the wording proposed by the International Bureau and the addition proposed by the Delegation of the United States of America. He stated that he appreciated the proposal by GRULAC concerning the payment of fees as regards the application, but may prefer different wording. He stated that the Patent Office should not be transformed into a free of charge depositary of applications; that the purpose of the Patent Office was to consider applications and to grant patents; and that the Patent Office should not be flooded by information which needed to be processed and kept for some time. He suggested that the filing date be based on the three elements included at present in Article 5(1)(a), provided that within one or two years a fee will be paid. He noted that this would strike a balance between the interests of applicants and users, who could not pay when applying, and of the Offices, which would not be compelled to keep the received elements free of charge, without being able to issue a patent based on those elements.

778. Mrs. RAA GRETTE (Norway) supported the Basic Proposal in respect of Article 5(1)(a) and (b) with the modification by the International Bureau, and was in favor of deleting the phrase "no later than" in Article 5(1)(a). She noted that the purpose of the PLT was the harmonization of formal requirements, and that the inclusion of the phrase "no later than" hampered the effect of harmonization. She stated that the filing date should be afforded without a payment of a fee. She supported the inclusion of the words "express or implicit" in Article 5(1)(a)(ii) proposed by the Delegation of the United States of America.

779. Mr. HELFGOTT (ABA) supported the Basic Proposal with the amendments suggested by the International Bureau and the United States of America: supported the deletion of the words "no later than" as part of a compromise opposed by the United States of America; and he opposed the two GRULAC proposals, and opposed requiring one or more claims as conditions for obtaining a filing date.

780. Mr. MERRYLEES (ABAPI) noted the previous comments by the Representative of EPI and the user friendly arrangement, in which a mailing date, for example, could be accepted by a Patent Office as was presently the case in Brazil. He proposed the deletion of the words "[no later than]" and the replacement of "the date on which its office has received, all of the following elements" with "the date on which its office has received or considered it had received, all of the following elements," and noted that such amendments would allow this user-friendly approach to be maintained in the United States of America, and in Brazil. As regards item (ii) it was sufficient for the indications to allow the identity of the applicant to be established or the applicant to be contacted by the Office. It was not necessary for the Office to actually know who the applicant is at the filing date. He also stated that ABAPI, as a regional group, cannot support the GRULAC proposal regarding the payment of a fee. He noted that in Brazil, it was necessary to pay fees in a bank and then to present the bank receipt to the Office. It was therefore important that an applicant was not required to pay the fee prior to getting a filing date.

781. Mr. THOMAS (WIPO) stated that Article 11 of the PCT provided, similarly in this respect to Article 5 of the Basic Proposal that the international filing date would be based on the date of receipt and that, in the Regulations, there was a reference to the date of actual receipt: that in the case of those offices where international applications were given a filing date based on the date of mailing, the postal authorities were considered to be an agent of the Patent Office, so that in fact the application when received by the postal authorities was considered to have been received by the Office. He also stated that, on a related matter as raised by the Representative of the EPI, namely, the possibility that postal delays could be excused by giving an earlier date of receipt in circumstances other than those which were just outlined, the position under the PCT was that delays in the post would not, as a general rule, be able

to be used to obtain an earlier filing date for an application, although they certainly could be used as a basis for excusing late arrival of papers at subsequent stage in a processing of an application.

782. Mr. TRAMPOSCH (WIPO) stated that Note 5.04 on page 12 of the Explanatory Notes, PT/DC/5, explicitly stated that the mail box receipts could apply under the Treaty as well.

783. Mr. MERRYLEES (ABAPI) stated that the phrase “deemed to have been received” took into account public holidays, and that it would be easier if it were explicitly expressed in Article 5.

784. The PRESIDENT noted that some concern had been expressed about the proposal by the Delegation of the United States of America to add the words “express or implicit” at the beginning of Article 5(1)(a)(ii), and asked whether one way of resolving this might be instead to add an additional Article 5(1)(c) of the same nature as Article 5(1)(b) which, by way of example, could read “A Contracting Party may, for the purposes of the filing date, accept an implicit indication as the element referred to in subparagraph (a)(ii).” He noted the assent of the Delegation of the United States of America to his proposal, namely, that it would be an option and not something that would be imposed on all Contracting Parties. He concluded by noting that the Committee was clearly going to have to find a compromise that would require everyone to accept something that they might have not initially preferred as their ideal text.

785. Mr. BADRAWI (Egypt) expressed support for the statement of the President regarding an express or implicit indication.

786. The PRESIDENT proposed that the search for a compromise text begin with an examination of the text as it appears in Document PT/DC/3, which essentially was developed by the SCP, with the one outstanding issue being the words “no later than”. He proposed that, as a compromise, the Committee consider adding the changes suggested by the International Bureau, which apparently had found widespread support. He stated that the first suggestion was to add at the beginning of Article 5(1)(a) the words “except where otherwise prescribed in the Regulations and”, with the understanding that amendments to those regulations would require unanimity, and that there would therefore be a consequential change in Rule 21. He noted that the purpose would be to allow for future technological developments that might require a change to take place without the need to convene a Diplomatic Conference, but with the requirement of unanimity of all Contracting Parties. He stated that the second suggestion was to change words “by other means permitted by the Office” to “has otherwise permitted by the Office for the purpose of recording a filing date”. He proposed, in terms of a compromise, to add to the text just referred to, in Article 5(1)(c), along the lines of Articles 5(1)(b), that a Contracting Party may, for the purposes of a filing date, accept an explicit indication as the element referred to in subparagraph a(ii). With respect to the various proposals that had been put forward, he noted that there was a proposal in item (ii) to change the word “or” to “and”, which received little support. He added that the “or” had been carefully decided upon in the SCP and in the Committee of Experts, where it had been noted that, if there was insufficient information allowing contact to be made, then Article 9(2) would provide for this eventuality. He also recalled that a change of the word “or” to “and” would effectively be making the Treaty less user-friendly than the PCT under Article (11)(iii)(c), which requires the name of the applicant, but not indications allowing the applicant to be contacted.

787. With respect to the issue of claims, which received very extensive attention in the SCP and in the Committee of Experts, the PRESIDENT said that a very large majority favored not having a requirement for claims. Even if there was a requirement for a claim, one could comply with it by simply making a statement like “I claim the invention described”, or “I claim this to be a great invention”, with the result that the requirement would become a mere formality.

788. On the issue of fees, which had also been extensively debated in the meetings of the SCP and in the Committee of Experts, he noted that there was a strong majority against including such a requirement. If it was to be introduced, the Treaty would be less user-friendly than the PCT. If the fees were missing, the result could be the later withdrawal of the application, but not the loss of the filing date. Moreover, there was provision in Article 6(4) for a Contracting Party to require fees to be paid, and if the fees were not paid within the time limits prescribed, that Contracting Party would be free to impose any sanction—refusal of the application for example—other than the loss of the filing date.

789. He noted that the proposal made by the Delegation of United States of America to limit Article 5(1)(a) to the description, as well as the proposal to keep the words “no later than”, had received little support.

790. Mr. CAVAZOS TREVIÑO (Mexico) recalled that in the statement made at the beginning of the Diplomatic Conference, his Delegation had highlighted the need to produce a text of the Treaty which was sufficiently flexible as to allow the largest possible number of countries to accede to it. His Delegation had committed itself to achieving these aims and to participating constructively in the debates for that purpose. He considered that in order to achieve a compromise solution, it was necessary to take account of all the interests at stake, and not only a certain number of such interests. In the light of the debate on Article 5, his Delegation had counted eleven other delegations, in addition to those who were members of GRULAC, that expressed partial or complete support for the proposal submitted by GRULAC to the Conference regarding Article 5(1), for which reason it should be understood that this was the position of around 46 countries represented at the Conference. In that regard, it considered that both in relation to Article 5(1)(ii) and the issue of fees, support existed for the proposal on the part of those 46 countries, and work should therefore be done to allow for the concern expressed by them. He said that the solution as currently tabled did not yet appear sufficient for it to be considered a consensus solution.

791. Mr. MORIYASU (Japan) recalled that, in its previous intervention, the Delegation of Japan had expressed some concern about the proposal to amend Article 5(1)(a)(ii) to read “express or implicit indications to the effect that the elements are intended to be an application.” He stated that he appreciated the explanation of the Delegation of the United States of America, and that, as a compromise his Delegation may accept the proposal put forward by the President, based on their explanation.

792. Mr. BOGDANOV (Russian Federation) stated that his proposal had apparently not been understood. He explained that the problem under the present draft of the Treaty was that, although an application could be withdrawn and not be considered, if the fee was never paid, the Office nonetheless would have to store the application as a priority document for at least one year. He noted that his solution was user-friendly in that the filing date could be established based on the three elements presently included in Article 5, but only on the condition that during the period in the Regulations—one year or two years, whatever was more convenient—the required fees would be paid in relation to such an application.

793. The PRESIDENT stated that his oral proposal regarding Article 5(1) would be distributed in writing and discussed after distribution. He proposed that the Committee nonetheless continue its discussion of Article 5.

794. Mr. BAECHTOLD (WIPO) stated that paragraph 2 of Article 5 set out the language requirements in respect of the elements for obtaining a filing date. He stated that according to paragraph (2)(a), the indications contained in paragraph 1(a), items (i) and (ii), could be required to be in a language accepted by the Office. He explained that paragraph 2(b) stated that the element which is the part which on the face of it appears to be a description may be filed in any language, provided that, at a later a translation may be required under Article 6(3) for the application to proceed before the Office.

795. Mr. DRISQUE (Belgium) wished for clarification from the International Bureau regarding Explanatory Note 5.13, in relation to Article 5(2)(b), which stipulated that the fact that a translation of the description was not submitted in a language accepted by the Office, and which was therefore required under Article 6(3) within the prescribed time limit, would lead to the filing date being lost, even if the application were rejected under Article 6(8)(a). He asked whether a provision should not be made, similar to that which had been drawn up under Article 5(7)(b) and Rule 2(5)(b) of the Basic Proposal for the PLT, insofar as the situation closely resembled that referred to in Article 5(2)(b). This was particularly true when an applicant submitted a copy of the application previously filed, to which he referred for the purposes of replacing the description with a view to the allocation of the filing date, without adding within the prescribed time limit the requisite translation in a language accepted by the Office. Under Article 5(7)(b), the Office could consider the application not to have been filed.

796. Mr. TRAMPOSCH (WIPO) explained the difference between Article 5(7)(b) and Article 5(2)(b): while Article 5(7) was an exceptional procedure included to cover the special case of a reference filing for which a specification must follow very soon thereafter, Article 5(2)(b) covered the case where a complete specification was submitted to an office, but in the wrong language. He stated that the specification falling under Article 5(2)(b) could be used as a basis for a future priority claim, and for that future priority

claim could be translated and submitted to the subsequent Office, because it was a complete disclosure of the invention. He stated that this was not the case with the specification falling under Article 5(7)(b).

797. Mr. PAL (India) noted that, when the description was filed in a language not accepted by the Office, the Office may not be able to identify the description, while the applicant may state that he had given sufficient indication to identify the same as description, which would invite unwanted litigation. He stated that this situation could be avoided by incorporating a provision to the effect that an applicant had to indicate, in a language accepted by the Office, that the material submitted by him was a description.

798. Mr. TRAMPOSCH (WIPO) stated this function was served by the fact that the express or implicit indication to the effect that the elements are intended to be an application could be required to be in a language accepted by the Office, so the Office could require that there be a statement in the language of the Office that the enclosed material constituted a patent application.

799. Mr. EVASCO (Philippines) proposed that Article 5(2)(a) be amended to read "A Contracting Party may require that the indications referred to in paragraph (1)(a)(i), (ii) and (iii) be in a language accepted by the Office." He stated that the description must be in a language accepted by the Office, because the Office would not be able to appropriately act on the basis of a paper that is not comprehensible to that Office.

800. Mr. BADRAWI (Egypt) stated that the most important element of Article 5(1)(i) through (iii) was item (iii), the description. Whether detailed or not, the description should therefore be submitted in a language accepted by the Office.

801. Mr. TRAMPOSCH (WIPO) acknowledged that no office could proceed with a description of an invention that is not in a language of the Office, and indicated that therefore the Office could require a translation. He referred, in particular, to Article 6(3), which had not yet been adopted, whereby a Contracting Party may require a translation of any part of the application, including the description, that was not in a language accepted by the Office. He noted that the effect of these provision was that applicants would have to file the description in the language of the Office but not for the purposes of the filing date.

802. Mr. BADRAWI (Egypt) noted that if a separate paragraph allowed the possibility of presenting the application in a language accepted by the Office, many problems would be avoided. He further supported the proposal by the Delegation of Philippines wholeheartedly.

803. Mr. BOUHNİK (Algeria) said that he was puzzled by the fact that the Office could be asked to accept a description, or what at the very least resembled a description, in any language. The description of the invention was the centerpiece of the application, and allowed the invention and the scope of the protection sought to be determined. The Delegation of Algeria said the wording as proposed opened the way to possible abuses and suggested, by way of a compromise, that reference should be made to "in a language accessible to the Office" rather than leaving the proposal as it stood or using the phrase "in a language accepted by the Office."

804. The PRESIDENT, after proposing that the Committee return at 7.00 p.m. to carry as far possible the discussion of Article 5(2), the rest of Article 8 and related Rules 9, and Rules 15 to 19, suspended the meeting until 7:00 p.m.

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805. The PRESIDENT invited the International Bureau to comment on Article 5(2).

806. Mr. TRAMPOSCH (WIPO) noted that the possibility of filing the description of an application in any language was one of the key parts of the draft PLT, as it had been negotiated by the SCP. He emphasized that important safeguards for offices had been included in the Treaty regarding the language of an application. He referred, in particular, to the requirement that the translation be submitted soon after the filing of the application, and that the indications in paragraph (1)(a), items (i) and (ii) be in the language

accepted by the Office. With regard to paragraph (1)(a), item (iii), he noted that there would be no harm in granting a filing date even when the description was not in a language accepted by the Office because the filing date was only granted for what had already been contained in the application. If, therefore, the description did not contain the proper information, this would be to the detriment of the applicant whose application would have to be rejected.

807. The PRESIDENT invited further comments on Article 5(2).

808. Mr. STRENC (Romania) stated that the text as currently drafted would seem to allow applicants to file the specification even in a computer language and proposed to replace the words "in any language" by the phrase "in a language other than that accepted by the Office." He said that this would apply only to languages which were comparable to the language accepted by the Office.

809. Mr. TRAMPOSCH (WIPO) referred to Explanatory Note 1.10 according to which the expression "a language accepted by the Office" refers to a verbal language and not, for example, to a computer language. He stated that a change in the text under Article 5(2)(b) might require consequential changes in a number of other places in the Treaty and asked whether the delegate could also accept the inclusion of an Explanatory Note to Article 5(2)(b) to the same effect as Note 1.10.

810. Mr. STRENC (Romania) said that he would be satisfied with the inclusion of an Explanatory Note to that effect.

811. *The PRESIDENT declared Article 5(2) adopted in substance and referred to the Drafting Committee.*

Article 8: Communications; Addresses

812. The PRESIDENT invited the International Bureau to introduce Article 8(2).

813. Mr. LEWIS (WIPO) introduced the provision, stating that it dealt with the language of communications in general, and referred to the definition of the phrase "a language accepted by the Office" in Article 1(xii).

814. The PRESIDENT invited comments on Article 8(2).

815. Mr. MENGISTIE (Ethiopia) asked in what circumstances the Regulations provided for an exception to the provision under discussion.

816. Mr. LEWIS (WIPO) referred to Explanatory Note 8.05 which lists all situations in which the Treaty and the Regulations expressly provide for the filing of translations. All these situations concerned documents which could only be filed in the original language, such as an earlier application for the purposes of priority, or documentation to establish changes of names and addresses.

817. *The PRESIDENT declared Article 8(2) adopted in substance and referred to the Drafting Committee.*

818. The PRESIDENT invited the International Bureau to introduce Article 8(3).

819. Mr. LEWIS (WIPO) noted that the provision was subject to paragraph 1(b), which contained the important safeguard that no Contracting Party is obliged to accept the filing of communications other than on paper. In line with the previous decision of the Conference to delete all reference to "formats", he suggested deleting that word in Article 8(3). He also suggested making that provision subject to Article 6(2)(b) to ensure that the provisions under that Article in respect of the filing of an application.

820. *The PRESIDENT declared Article 8(3) adopted in substance with the modifications suggested and referred to the Drafting Committee.*

Rule 8: Filing of Communications Under Article 8(1)

821. The PRESIDENT invited the International Bureau to introduce Rule 8 paragraphs (2) and (3).

822. Mr. LEWIS (WIPO) introduced Rule 8(2) and (3). He suggested that as had been similarly agreed in other provisions, the words "of transmittal" should be added after the terms "electronic means" and "other like means" in the titles and texts of paragraphs (2) and (3).

823. The PRESIDENT invited comments on Rule 8(2).

824. Mr. JUNG (Republic of Korea) proposed to add, at the end of subparagraph (c), the words "provided that the Office finds the document transmitted contains a defect of illegibility or failure of transmittal". He stated that this wording would be in conformity with PCT Rule 92.4(e) which contained a similar provision.

825. Mr. TRAMPOSCH (WIPO) explained that Rule 92.4(d) of the PCT allowed Contracting Parties to request the original of any document transmitted by electronic means, and that subparagraph (e) addressed non-compliance with such requests. He observed that the result of adding the suggested words to Rule 8(2)(c) would seem to restrict the ability of an office to require an original of an electronic communication, and asked whether this was intended by the proposal.

826. Mr. JUNG (Republic of Korea) said he was concerned that a Contracting Party might require the original in all cases. His proposal was meant to restrict this possibility to cases where there was a valid reason, such as illegibility or failure of transmission.

827. The PRESIDENT noted that the PCT did currently not provide for such a restriction and invited comments.

828. Mr. TRÉPANIÉ (Canada) proposed to move the words "under subparagraph (a)" from the second line of subparagraph (c) to after the word "filing" in the first line. He explained that this would indicate that the means under paragraph (a) pertained to all means, not just to the means of transmittal.

829. Mr. HERALD (Australia) supported the proposal made by the Delegation of the Republic of Korea and stated that, in the past, an original of a telefacsimile had only been required in order to obtain an original signature. This, however, was now dealt with in Rule 9(4), which required Contract Parties to accept a graphic representation of a signature. Therefore, the only valid reasons for requiring an original were those referred to in the proposal made by the Delegation of the Republic of Korea.

830. Mr. BOUCOUVALAS (Greece) stated that his Delegation could not accept the proposal made by the Delegation of the Republic of Korea.

831. Mr. CAVAZOS TREVIÑO (Mexico) said that his Delegation did not agree with the proposal made by the Delegation of the Republic of Korea with respect to Rule 8(2)(c).

832. The PRESIDENT noted that there was no agreement to add the words proposed by the Delegation of the Republic of Korea. He asked that Delegation whether it could accept the text without the proposed addition.

833. Mr. TRAMPOSCH (WIPO) observed that the PLT Assembly could decide to add the proposed words once Contracting Parties had had sufficient experience with electronic filing.

834. Mr. JUNG (Republic of Korea) agreed on the condition that the statement just made by Mr. Tramposch be included in the Minutes of the Committee.

835. Mr. STEWART (FICPI) suggested that for consistency with other provisions, the phrase "Any Contracting Party " in Rule 8(2)(b) be replaced by "A Contracting Party."

836. *The PRESIDENT declared Rule 8(2) adopted in substance with the amendments suggested by the International Bureau, the Delegation of Canada, and the Representative of FICPI, and referred to the Drafting Committee.*

837. He noted that the FICPI suggestion could be considered by the Drafting Committee.

838. *The PRESIDENT declared Rule 8(3) adopted in substance and referred to the Drafting Committee.*

Article 8: Communications; Addresses

839. The PRESIDENT invited the International Bureau to introduce Article 8(4).

840. Mr. LEWIS (WIPO) introduced Article 8(4). He explained that, under subparagraph (b), a signature should be assumed to be correct, unless there was an indication to the contrary. The only exception to that principle was contained in Rule 9(6) dealing with electronic signatures. The purpose was to streamline procedures and reduce costs for applicants and other users.

841. The PRESIDENT noted that the Delegation of Israel had made a proposal regarding Article 8(4) in document PT/DC/15, according to which "Contracting Parties should be permitted to require certification or notarization of affidavits submitted to their offices in accordance with national law."

842. *The PRESIDENT noted that the proposal by the Delegation of Israel had received no support. He, therefore, declared Article 8(4) adopted in substance and referred to the Drafting Committee.*

Rule 9: Details Concerning the Signature Under Article 8(1)

843. The PRESIDENT then invited the International Bureau to introduce Rule 9.

844. Mr. LEWIS (WIPO) introduced Rule 9.

845. The PRESIDENT invited comments on Rule 9 (1).

846. Mr. RAJAN (Ireland) referred to the definition of the term "communication" in Article 1(v) and asked whether Article 8 (4)(b) and Rule 9 were applicable in relation to communications filed with an office in quasi-judicial proceedings before it.

847. Mr. TRAMPOSCH (WIPO) replied that the definition was limited to communications that had been "filed with the Office" and that the Treaty would, therefore, apply to all such communications.

848. *The PRESIDENT declared Rule 9(1) adopted in substance and referred to the Drafting Committee.*

849. He invited comments on Rule 9(2).

850. *The PRESIDENT declared Rule 9(2) adopted in substance and referred to the Drafting Committee.*

851. The PRESIDENT invited comments on Rule 9(3).

852. Mr. HE (China) asked whether the term "legal entity" in paragraph 3, item (iii) also included entities not having a legal personality, such as partnerships.

853. Mr. TRAMPOSCH (WIPO) stated that the definition of legal entity had been left to the Contracting Parties. He also referred to Explanatory Note R.9.2 which indicated that the wording of the provision had been adopted to accommodate the specific law of at least one State. It would, therefore, not constitute any problem to amend the wording in order to accommodate the law of another State. He also noted, that, since paragraph (3), item (iii) was a "may" provision, no Contracting State was obliged to implement it.

854. *The PRESIDENT declared Rule 9(3) adopted in substance and referred to the Drafting Committee.*

855. The PRESIDENT referred to Rule 9(4). He noted that, in accordance with the changes adopted in other provisions, the words "of transmittal" should be added after the term "electronic means" in the title and text.

856. He also noted that two delegations had made written proposals regarding Rule 9(4), namely the Delegation of Japan in document PT/DC/10, and the Delegation of Switzerland in PT/DC/22. He invited both delegations to introduce their proposals.

857. Mr. IWASAKI (Japan) explained that his Delegation proposed to replace the words "in electronic form or by electronic means" by the words "by telefacsimile or other like means" in order to bring it in line with Explanatory Note 9.03, Rule 8(2)(iii) and PCT Rule 92.4 which all presumed that there existed an original of the electronically transmitted signature which would be available for submission. He said that, only in such cases, would it be reasonable to give legal effect to a mere graphic representation of a signature.

858. Mr. BÜHLER (Switzerland) said that the proposal contained in document PT/DC/22 had been made because the current text of Rule 9(4) would seem to preclude an office from requiring a certified electronic signature in respect of the communications referred to in Rule 7, and Rules 15 to 17.

859. Mr. TRAMPOSCH (WIPO) explained that Rule 9(4) was intended to cover a number of types of electronic communication that would result in a graphic representation of the signature when reaching the Office. These included a standard paper to paper fax transmission, a fax transmission that began on a computer and ended on paper, one that began on paper and was then received on a computer, direct transmissions from computer to computer, and PDF transmissions. The concern with regard to all such communications was the possibility that a signature in digital form could be very easily copied from one digital document into another.

860. The PRESIDENT invited comments on Rule 9(4).

861. Mr. HERALD (Australia) suggested, with regard to the proposal made by the Delegation of Japan, to add an indication in the Explanatory Notes to the effect that a signature which was not linked to or embedded in an electronic file was not covered. He opposed the proposal made by the Delegation of Switzerland on the grounds that concerns regarding the authenticity of a signature were already addressed in Rule 15(4), 16(6), 17(6) and 7(4) and Article 8(4)(c), which allowed a Contracting Party to require evidence if the Office has reason to doubt the veracity of any indication.

862. Mr. TRAMPOSCH (WIPO) pointed out that all provisions dealing with electronic filing were likely to be of a transitional nature. They would probably be replaced, in due course, by any provisions that would be adopted in connection with electronic communications under the PCT.

863. Mr. BÜHLER (Switzerland) said that his Delegation was satisfied with the explanation given by the International Bureau and the Delegation of Australia on Rule 9(4). He asked if language to this effect could be included in the Explanatory Notes.

864. Mr. TRAMPOSCH (WIPO) confirmed that this would be reflected in the Notes.

865. *The PRESIDENT stated that there was no agreement on the proposals made by the Delegations of Japan and Switzerland. He declared Rule 9(4) adopted in substance and referred to the Drafting Committee.*

866. *The PRESIDENT invited comments on Rules 9(5) and (6). In the absence of comments, he declared Rule 9(6) adopted in substance and referred to the Drafting Committee.*

Article 8: Communications; Addresses

Rule 10: Details Concerning Communications Under Article 8(5), (6) and (8)

867. The PRESIDENT opened discussion on Article 8(5) and Rule 10(1).

868. Mr. LEWIS (WIPO) invited the International Bureau to introduce Article 8(5) and Rule 10(1).

869. *The PRESIDENT declared Article 8(5) and Rule 10(1) adopted in substance and referred to the Drafting Committee.*

870. The PRESIDENT invited the International Bureau to introduce Article 8(6) and Rule 10(2), (3), and (4).

871. Mr. LEWIS (WIPO) introduced Article 8(6). He suggested that, for clarity, the words "in any communication" be added at the end of the provision.

872. Mr. LEWIS then introduced Rule 10(2), (3) and (4).

873. The PRESIDENT asked for comments on Article 8(6).

874. Mr. BOGDANOV (Russian Federation) asked for clarification of the term "address for legal service" contained in item (ii) of that provision. In particular, he pointed out that, in the English version of the Rule, the term "address for legal service" was used, whereas the French version referred to "domicile." Since the two terms referred to different concepts, further clarification as to their exact significance was needed.

875. Mr. TRAMPOSCH (WIPO) explained that, from the point of view of the English term, the importance of an address for legal service, as opposed to an address for service as used in the Paris Convention, was to indicate an address that existed under the legal system of some countries, where service of process may be served on a particular person. For example, where a notification to appear in court was delivered to that address, it would have legal effect to require that the person appear in court. As regards the consistency of that term in other language documents, he suggested to deal with that question in the Drafting Committee when dealing with the various language versions.

876. Ms. CHNG (Singapore) referred to Article 5(1), item (ii), dealing with indications allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Office. She asked whether that contact address provided by the applicant would be considered as "and Other Address" under Article 8(6).

877. Mr. LEWIS (WIPO) said that an address provided for the purpose of filing of an application was an address by which the applicant could be contacted. Where the address for contact was the applicant's home address, this would normally also be the address for legal service within the jurisdictions of those countries which applied that requirement so he could be contacted by mail or in the normal way. However, the address at which someone could be contacted would not necessarily always be an address for legal service, for example, where the address for contact was care of some other person or care of a bank.

878. *The PRESIDENT declared Article 8(6) and Rule 10(2) adopted in substance with the modification suggested by the International Bureau and referred to the Drafting Committee.*

879. The PRESIDENT invited comments on Rule 10(3) and (4).

880. Mr. BÜHLER (Switzerland) stated that the law of the Switzerland permitted an applicant or owner to appoint a representative for the payment of fees. Furthermore, it was possible to indicate an address for notifications in respect of the payment of a maintenance fee. In addition, the Office issued reminders that a fee was due. However, for several reasons, the reminders in respect of maintenance fees were not sent to foreign countries. First, there might be a delay in the case of a reminder for the payment of a maintenance fee. Second, sending those reminders outside the country would unduly burden the Office. Therefore, the Delegation sought clarification if it would still be possible to provide that, at the request of an applicant or owner, an address for notification in respect of the payment of a maintenance fee may be indicated, which address could not be outside of the country.

881. Mr. BAECHTOLD (WIPO) said that, since the indication of such an address did not appear to be a mandatory requirement for applicants or owners, it would be considered as a more favorable treatment for applicants than provided by the Treaty. In such a case, it appeared to be possible to require that address.

882. Mr. BÜHLER (Switzerland) asked for that explanation to be reflected in the Notes.

883. *The PRESIDENT declared Rule 10(3) and (4) adopted in substance and referred to the Drafting Committee, and that a clarification would be added to the Notes.*

884. The PRESIDENT invited the International Bureau to introduce Article 8(7) and (8), Rule 10(5) and Rule 11.

Article 8: Communications; Addresses

Rule 10: Details Concerning Indications Under Article 8(5), (6) and (8)

Rule 11: Time Limits Concerning Communications Under Article 8(7) and (8)

885. Mr. LEWIS (WIPO) introduced Article 8(7) and (8). He suggested that, for simplification, the beginning of Article 8(7) be amended to read: "Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with in respect of communications, the Office shall notify the applicant ...". In Article 8(8), he suggested that, for clarity, the words "by the Contracting Party" be added after the word: "applied" in line 2.

886. Mr. LEWIS (WIPO) then introduced Rule 10(5) and Rule 11. Concerning Rule 11, he suggested that Rule 11 be amended in line with amendments adopted under Rule 6, and that the new drafts of the text be referred to the Drafting Committee.

887. Mr. VIDAURRETA (Argentina) requested clarification of Article 8(7). This paragraph stated that where the requirements under paragraphs (1) to (6) were not complied with, in accordance with the new wording proposed by the Secretariat, the Office would notify the applicant, owner or other interested person. His Delegation understood that notification should be given to the applicant, owner or other interested person in breach of his or her obligations, but that it was not necessary to notify all those parties simultaneously. He observed that in a patent procedure there might be various interested parties at different stages throughout the procedure, for which reason he proposed that the phrase "as appropriate" should be added after the words "other interested person." Thus, this part of paragraph (7) would read "the Office shall notify the applicant, owner or other interested person, as appropriate, giving the opportunity to comply with any such requirement."

888. Mr. TRAMPOSCH (WIPO) proposed that the Committee accept this proposal in principle and leave it to the Drafting Committee to adopt the exact wording that would be used, keeping in mind that this may need to be done in a number of places throughout the Treaty.

889. Mr. CAVAZOS TREVIÑO (Mexico) requested clarification from the International Bureau regarding Rule 11(2)(ii), since it understood that this provision covered cases where the Office had been unable to contact the applicant as he or she had not provided the requisite information. He asked whether the provision contained in Rule 11(2)(ii) could be related to the previous discussions on Article 5(1).

890. Mr. TRAMPOSCH (WIPO) confirmed that the drafting of the provision under consideration would be affected by the possible outcome of that discussion. However, if provisions were changed, there could be consequential changes in other provisions of the Treaty. He suggested adoption based on the current text of the Treaty and to make consequential changes if necessary.

891. *The PRESIDENT declared Article 8(7) and (8) adopted in substance with the modifications suggested by the International Bureau and the Delegation of Argentina and referred to the Drafting Committee.*

892. The PRESIDENT invited comments on Rule 10(5).

893. Mr. BROWN (CIPA) said that his Delegation was concerned that the word "refusal" in the second line would be very narrowly interpreted. He asked whether it could be made clear in the notes that "refusal" covered "deemed withdrawn" and all the other phraseology that can be used by various offices having the effect that the application was refused, although the word refused was never used.

894. Mr. TRAMPOSCH (WIPO) confirmed that this would be reflected in the notes.

895. *The PRESIDENT declared Rule 10(5) and Rule 11 adopted in substance with the modification suggested by the International Bureau and referred to the Drafting Committee.*

Article 9: Notifications

896. The PRESIDENT invited the International Bureau to introduce Article 9.

897. Mr. BAECHTOLD (WIPO) introduced Article 9.

898. The PRESIDENT opened the discussion on Article 9(1).

899. Mr. BÜHLER (Switzerland) said that, under Article 5(6) and (8), there might be a need to send a notification to an address other than the address provided under Article 8(6). He asked how the Treaty would deal with this case?

900. Mr. TRAMPOSCH (WIPO) pointed out that Article 9(1) was a minimum, which stated that mailing to an address under Article 8(6) would constitute effective notification. The Article provided a minimum of security that notification to these addresses would be sufficient. However, in other circumstances, the Office could use another addresses. That was left to the national procedures.

901. Mr. CAVAZOS TREVIÑO (Mexico) asked the International Bureau whether notifications given through an official publication body, such as an official journal, bulletin or gazette, would be considered sufficient for the purposes of the PLT.

902. Mr. TRAMPOSCH (WIPO) said that the interpretation of the provision under consideration would be that if, under the national law or the national procedures of a Contracting Party, such publication was sufficient notice, this would be sufficient for the purposes of the Treaty.

903. Mr. CAVAZOS TREVIÑO (Mexico) requested that the interpretation given by the International Bureau in response to his Delegation's question be reflected in the Explanatory Notes to the Treaty.

904. Mr. BROWN (EPI) said that his Delegation was of the view that Article 9 or the related Rule should specify that, where an address for correspondence was provided under Article 8(6), that address for correspondence should be the one used for sending notifications. Furthermore, he said that the last sentence of Note 9.02 should be deleted, since it was against the general trend of the draft Treaty and lacked a legal basis in the Treaty.

905. Mr. TRAMPOSCH (WIPO) said that the interpretation of the Representative of EPI appeared to require an additional provision in the Treaty. The matter had been discussed in the SCP, and the members of the Committee had declined to adopt such a provision.

906. Mr. KARUNARATNE (Sri Lanka) stated that, under Article 9(1), a notification was considered to be sufficient notification if it was sent to the address for correspondence or address for legal service indicated under Article 8(6). He noted that Article 9(2) required, by implication, a Contracting Party to send a notification, if an indication allowing the applicant, owner or other interested person to be contacted had been filed, even though an address referred to in that Article had not been given, for example, under Article 5(3). The delegate queried what the legal effect of a notification to such a contact address was and whether it was sufficient for the purposes of the Treaty.

907. Mr. TRAMPOSCH (WIPO) recalled that Article 9(1) was a minimum provision, indicating that a communication to the address for correspondence or address for legal service shall constitute a sufficient notification. But it was left open that communications to other addresses may also constitute sufficient notification.

908. Ms. CHNG (Singapore) indicated that, when comparing the title of Article 8(6), namely "Address for Correspondence, Address for Legal Service and Other Address" with the words, in Article 9(1), referring to Article 8(6), it covers "address for correspondence and address for legal service" only. The words "and other addresses" appeared to be missing from Article 9(1).

909. Mr. TRAMPOSCH (WIPO) explained that Article 8(6) stated that a Contracting Party may require that the applicant, owner or other interested person indicate an address for correspondence, an address for legal service or any other address provided for in the Regulations. The address that would be required under item (iii) may not be an appropriate address for notification. This address could, for example, be an e-mail address or an electronic location for the purposes of electronic communication. Consequently, Article 9(1) recognized that there may be additional addresses for notifications that the Contracting Parties to the PLT would wish to add in the future. Therefore, a basis was put in the Treaty under Article 9(1), separate from Article 8(6), item (iii) that those addresses could be added to the Regulations.

910. Ms. CHNG (Singapore) asked for this clarification to be added to the Explanatory Notes.

911. Mr. BOGDANOV (Russian Federation) queried if, where in accordance with Article 5 the applicant furnished indications allowing his identity to be established, although neither an address for correspondence nor for legal services was given, notifications sent out by the Office would be deemed to be sufficient.

912. Mr. TRAMPOSCH (WIPO) explained that such a contact address would be sufficient if it was the only address that the Office had, because at the time of filing, that contact information was the address that was supplied to the Office. However, once the Office had received an address for communication or an address for legal service, the Office may not be required to notify to the contact address.

913. Mr. BOGDANOV (Russian Federation) expressed concern that, in a situation where the Office did not have an address for correspondence or an address for legal services, there might be a situation where, in accordance with Article 9, a notification that was sent by the Office to an address that allowed it to contact the applicant was not sufficient under Article 9. In particular, the delegate queried whether that would have any consequences.

914. Mr. TRAMPOSCH (WIPO) declared that Article 9(1) was constituted of a non-exhaustive list. This meant that either of the addresses would be sufficient, but other addresses might be sufficient as well. This point could also be clarified in the Explanatory Notes.

915. *The PRESIDENT declared Article 9(1) adopted in substance and referred to the Drafting Committee.*

916. The PRESIDENT invited comments on Article 9(2). He noted that there was no comment on that provision and he declared Article 9(2) adopted in substance and referred to the Drafting Committee.

917. The PRESIDENT invited comments on Article 9(3).

918. Mr. MÜLLNER (Germany) stated that, in the opinion of his Delegation, it was necessary to make it clear that the applicant could not lose rights without having been notified, and that the applicant must have been given the opportunity to comply with necessary requirements. Article 9(3) should be amended to state that a failure to notify could not set in motion a time limit fixed by the Office.

919. Mr. BAECHTOLD (WIPO) pointed to Note 9.05 which covered that issue. The exception contained in the second sentence of that note concerned the filing date under Article 5, in order to avoid the possibility of the application pending forever since no time limit for complying with the outstanding requirements had started to run.

920. Mr. NIYONKURU (Burundi) asked for clarification of Article 9(3), in particular the second part, the French version of which specified that absence of notification did not relieve the applicant, owner or other interested person of the obligation to comply with that requirement. Should it be understood that “does not relieve” signified “does not exempt” from this obligation? If that were the case, why should the applicant, owner or other interested person be reproached, whereas it was the Office that had not given the notification? The repercussions of this serious breach should be borne by the Office and not by the applicant or owner.

921. Mr. TRAMPOSCH (WIPO) said that, in his view, the understanding of the paragraph by the Delegation of Burundi was correct, in both the French and the English versions. The SCP had taken the view that an obligation under the law was not relieved by a mistake on the part of the Office. The notification did not give rise to the obligation. The obligation existed independently from the notification. If the Office had failed to send a notification, either inadvertently or because of some failure of its procedures, the applicant was not relieved of his legal obligation to comply with the law setting out the requirements for obtaining a patent.

922. Mr. NIYONKURU (Burundi) pointed out that the draft Treaty was designed to serve applicants and inventors, and that, in this regard, it would be desirable to provide for flexible measures promoting effective information procedures for the beneficiaries, instead of envisaging appropriate sanctions against them, even though everyone was supposed to be aware of the law.

923. Mr. TRAMPOSCH (WIPO) explained that a number of safeguards were in place to protect the rights of the applicant in that case. The time limits for compliance were counted from the date of notification, so that if the notification was not sent, the time limit will not run, and the applicant would have sufficient time to discover the mistake and to correct it. In addition, if a patent was granted despite non-compliance with formalities, Article 10(1) protected that patent from being invalidated later on because of the non-compliance, on the basis that the notification was not sent.

924. Mr. MÜLLNER (Germany) declared that, despite the text of Explanatory Note 9.05 and the explanations given by the International Bureau, his Delegation was still of the view that it was necessary to make it clear that a failure of notification did not set a time limit, in order to give some assurance to applicants. The Delegation felt that this was a point of great importance and that it should be dealt with in the Treaty.

925. Mr. EVASCO (Philippines) expressed support for the proposal of the Delegation of Germany.

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926. The PRESIDENT noted that the quorum of one half of the delegations which was needed in order to start the session according to the Rules of Procedure was reached. Since the Delegation of Germany was not present at the moment, he suggested to set aside the discussion on Article 9(3), which was the subject matter of a proposal by that Delegation, and to turn instead to Rules 15 to 19 as they appeared in document PT/DC/4.

Rule 15: Request for Recordation of Change in Name or Address

927. Ms. MIYAMOTO (WIPO) introduced Rule 15(1). She explained that this Rule standardized the procedure concerning requests for recordation of a change in the name or address of an applicant or owner. It only applied where there was no change in the person of the applicant or owner. If there were changes in the person of the applicant or owner, Rule 16 would apply. Rule 15 also standardized the procedure concerning the request for recordation of a change in the name or address of a representative, as well as any changes relating to the address for correspondence or address for legal service. The International Bureau further wished to raise the question whether Rule 10(1)(a)(ii) already covered the requirements appearing in Rule 15(1)(ii). In addition, the International Bureau suggested minor drafting changes in paragraph (3).

928. The PRESIDENT invited comments on Rule 15(1) and, since the International Bureau had raised the question as to whether there was any need for Rule 15(1)(ii), as this would appear to be covered by Rule 10(1)(a), and comments on the text of Rule 15(1), on the assumption that item (ii) would be deleted.

929. Mr. BOUCOUVALAS (Greece) stated that his Delegation supported the Basic Proposal. For the sake of completeness and easy reading and understanding of the provision under discussion, his Delegation preferred that item (ii) should be left as proposed in the Basic Proposal.

930. Mr. PAL (India) noted that this provision related to the request for recordation of change in name or address under Article 41(1)(b)(i) and that Rule 15(4) provided that a Contracting Party may require evidence in support of the change only when there was reasonable doubt. Such a requirement might lead to dispute between the applicant and the Office and thereby unwanted litigation. His Delegation was of the view that the provision put unnecessary restrictions on the Patent Office to call for evidence to its satisfaction and could therefore not support this provision in totality. His Delegation could further not support the proposal of the Secretariat to delete item (ii), for the reason given by the Delegation of Greece.

931. The PRESIDENT asked whether there was any objection to adopting Rule 15(1) in the form in which it appeared in document PT/DC/4, with that language retained. *Seeing no objection, he declared Rule 15(1) adopted in substance and referred to the Drafting Committee. He invited comments or objections on Rule 15(2). Seeing none, he declared Rule 15(2) adopted in substance and referred to the Drafting Committee.* He further invited comments on Rule 15(3), subparagraphs (a) and (b), with the one

change proposed by the International Bureau at the end of Rule 15(3), namely to replace the words “by other means permitted by the Office” by “as otherwise permitted by the Office”. *In the absence of any objections, he declared Rule 15(3) adopted in substance and referred to the Drafting Committee.* He proceeded to invite comments on Rule 15(4).

932. Ms. VARGA (The former Yugoslav Republic of Macedonia) wished some clarification on this paragraph in relation to the mention of the name of the applicant. A change of name might have some legal effect and, in such a case, evidence would have to be furnished to the Office in every case.

933. Mr. TRAMPOSCH (WIPO) referred the chapeau of paragraph (1) of Rule 15, which began with “Where there is no change in the person of the applicant or owner but there is a change in his name or address...” He explained that a change in the name without a change in the person would not have the same legal effect with respect to an application or a patent than a change in the person would have, and the Standing Committee had therefore not felt it necessary to require any evidence, except in the case of doubt, for instance where the Office might suspect that the change in name really was a change in the person.

934. Mr. BOGDANOV (Russian Federation) questioned whether the word “only” which appeared in the preceeding similar paragraphs and not in the text of paragraph (4) under discussion had been intentionally omitted.

935. Mr. TRAMPOSCH (WIPO) agreed that this was an omission and that the word “only” should appear in this paragraph after the word “Office” and before the word “where.”

936. *Seeing no objections to the adoption of Rule 15(4), with the addition of the word “only”, the PRESIDENT declared Rule 15(4) adopted in substance and referred to the Drafting Committee.* He suggested that Rule 15(5), Rule 15(6) and Rule 15(7) be examined together since they were fairly standard provisions. In Rule 15(6), there were the two minor drafting changes proposed by the International Bureaus as they had been proposed in other contexts as well, so that the beginning of Rule 15(6) would read: “Where one or more of the requirements applied by the Contracting Parties under paragraphs (1) to (4) are not complied with, the Office shall...”. *Seeing no objections, the President declared Rule 15(5), (6) and (7) adopted in substance and referred to the Drafting Committee.* He proceeded to invite comments on Rule 15(8). *Seeing no comments nor objections, he declared Rule 15(8) adopted in substance and referred to the Drafting Committee.*

Article 9: Notifications

937. Since the Delegation of Germany was now present, the President proposed to turn back to Article 9(3) and the discussion of that provision together with the discussion of the proposal of the Delegation of Germany (document PT/DC/7). The Delegation of Germany had made an additional proposal for a drafting change for Article 9(3), which was found on page 3 of document PT/DC/7, and there had been an indication of support from the Delegation of the Philippines. The President invited further comments on Article 9(3).

938. Mr. BOUCOUVALAS (Greece) stated, referring to Article 9(3), that his Delegation supported the Basic Proposal and opposed the proposal by the Delegation of Germany for two reasons. First, the proposal did not comply with the spirit and the letter of Article 9(3) and, second there would be no legal basis for the time limits according to the provisions of the Rules that had already been adopted in the case of non-existence of data to contact the applicant or other interested persons.

939. Mr. CAVAZOS TREVIÑO (Mexico) said that his Delegation associated itself with the comments made by the Delegation of Greece and opposed the amendment of Article 9(3) proposed by the Delegation of Germany.

940. Mr. TRAMPOSCH (WIPO) pointed out that there really would be no change required in the procedures of the Office whether the proposal were adopted or not, as set out in the Notes. Without including this additional language, it would leave the mechanism to the discretion of the Contracting Parties. For instance, a country might decide that there were no time limits, while other countries might decide that there could be a time limit, but there were no sanctions. The result would in effect be the same.

941. Mr. JONG (Democratic People's Republic of Korea), referring to the explanation given by Mr. Tramposch on some of the contents of Note 9.05, thought that the suggestion of the Delegation of Germany was already covered by the explanation in Note 9.05. His Delegation therefore opposed the proposal of the Delegation of Germany.

942. The PRESIDENT wondered, taking account of the fact that a number of delegations were against including the proposal by the Delegation of Germany and in view of the explanations given by the International Bureau, whether it would be agreeable to proceed with the adoption of Article 9(3) in the form in which it appeared in document PT/DC/3 without any.

943. Mr. STEWART (FICPI) wished to go on record as to FICPI's support of the concept of the provision suggested by the Delegation of Germany and asked Mr. Tramposch whether Rule 9.05 did in fact clearly cover the intent of the Delegation of Germany. If so, FICPI would be satisfied.

944. Mr. TRAMPOSCH (WIPO) confirmed that Rule 9(5) reflected the substance and the intent of the proposal of the Delegation of Germany.

945. The PRESIDENT proposed adoption of Article 9(3) in the form in which it appeared in document PT/DC/3. *Seeing no objections, he declared Article 9(3) adopted in substance and referred to the Drafting Committee.*

Rule 16: Request for Recordation of Change in Applicant or Owner

946. Ms. MIYAMOTO (WIPO) introduced Rule 16. She explained that the Rule standardized the procedure concerning requests for recordation of a change in applicant and/or owner, in particular where the change resulted from a change of ownership. She suggested a minor consequential change in paragraph (2)(a)(iii), namely to delete the words "or Model International Format" in the second sentence, as had already been agreed in other provisions. Similarly, the International Bureau wished to suggest further consequential changes under this Rule, namely to replace, in paragraphs (5) and (6), the words "by other means" by "as otherwise." The word "only" should also be inserted in paragraph (6), second line, after the words "case of paragraph (2), be filed with the Office". Finally, Mrs. Miyamoto drew attention to the fact that the Delegation of Japan had made a proposal with respect to Rule 16(2).

947. *The PRESIDENT, seeing no objections, declared Rule 16(1) adopted in substance and referred to the Drafting Committee.* Turning to Rule 16(2), he explained that the square-bracketed language in the introductory part of Rule 16(2)(a) meant that this language was not part of the Basic Proposal and was only to be considered if it was proposed by a delegation. He suggested beginning the discussion with the introductory part of Rule 16(2)(a).

948. Mr. HERALD (Australia) stated that the proposal by the Delegation of Japan to insert a new Rule (2)(a) effectively related to the issue which was included in square brackets and should perhaps be discussed in association therewith. He questioned the relevance of paragraph (2)(e) in regard to paragraphs (2)(c) and (2)(b). The Delegation wished to go on record as supporting the insertion of the text in square brackets.

949. The PRESIDENT asked the Delegation of Japan to explain its proposal and its relationship to the rest of Rule 16(2).

950. Mr. IWASAKI (Japan) proposed to add a new subparagraph (e) to paragraph (2) as it appeared in document PT/DC/10. The Delegation of Japan welcomed the provision in Article 16(1), in light of user-friendliness. It wished, however, to explain its position under its national law. As far as national Japanese procedure with regard to recordation of change in applicant or owner was concerned, Japan always required that both the new applicant and new owner, and the applicant and owner, demonstrate a clear intention for recordation of the change. The Delegation also drew attention to the fact that national law in respect of recordation varied from country to country. In addition, this situation applied to Rule 17 as well and the Delegation wished to take the floor again on this point when that Rule would be discussed. Furthermore, the Delegation of Japan strongly opposed the insertion of the wording in square brackets. Under Japanese procedure with regard to recordation of change in applicant or owner, the documentation of the basis of the change might be required in any case, regardless of the person making a request for recordation.

951. The PRESIDENT suggested that delegations comment at the same time about both the introductory words of Rule 16(2)(a) and the proposal of the Delegation of Japan for a new Rule 16(2)(e).

952. Mr. MILES (United Kingdom) stated that the wording in the square brackets seemed to his Delegation a very good deregulatory provision which reduced the burden on the granter or seller should they make the request for registration of the change. The Delegation would therefore support the removal of the brackets and the insertion of the text in paragraph 2(a). The Delegation stated that it had recently introduced a similar provision into its domestic legislation as it believed that the more liberal procedure greatly reduced the burden on applicants whilst at the same time maintaining the necessary safeguards. With respect to the proposal of the Delegation of Japan, if national procedure required substantiation of the transaction in any case, the Delegation of the United Kingdom could not see the need for this because the transaction documents or whatever relevant evidence was required would prove the consent of the other party.

953. Mr. PAL (India) supported the deletion of the text in square brackets.

954. Mrs. BOLAND (United States of America) said that, with respect to the currently bracketed language in the chapeau to paragraph (2)(a), the Delegation of the United States of America agreed with the Delegation of Japan that it should not be included in the final provision. The Delegation of the United States of America stated that the availability of an underlying document in every case was beneficial for third parties when reviewing the change of title. As to the proposal by the Delegation of Japan for paragraph (e), the Delegation of the United States of America did not see a need for it in this Rule.

955. Mr. CAVAZOS TREVIÑO (Mexico) said that his Delegation associated itself with the proposal made by the Delegation of Japan, since it supported the deletion of the words in square brackets in Rule 16(2) and considered that those words could affect the ownership of the legitimate owner of the right.

956. Mr. BOUCOUVALAS (Greece) stated, as regarded the chapeau of Rule 16(2), subparagraph (a), that his Delegation was not in favor of the inclusion of the square bracketed text. Regarding the proposal by the Delegation of Japan, it opposed it, because it laid an unnecessary burden on the Offices and the applicants.

957. Mr. UNGLER (Austria) stated that his Delegation supported the inclusion of the text in square brackets in paragraph (2)(a).

958. Mr. OMOROV (Kyrgyzstan) supported the proposal by the Delegation of Japan to include an additional paragraph (e).

959. Mr. BROWN (EPI), speaking on behalf of CIPA, EPI and TMPDF, strongly supported the deletion of the square brackets in Rule 16(2) and the retention of the text. Where the applicant or owner requested the recordation of the change, he wondered why any other document was necessary, since the costs were often very substantial, particularly where a very complex document was required by the Office to be translated into one of its accepted languages. As to the proposal of the Delegation of Japan for a new Rule 16(2)(e), he was of the view that if the language in square brackets was introduced into the text, then that proposal was acceptable. If the language in the square brackets were not included into the text, the language in the new subparagraph was not necessary.

960. Mr. WALKER (AIPLA) supported the position of the Delegation of the United States of America that the bracketed language should not be included simply to provide users with a clear and identifiable chain of title with respect to any patent property.

961. Mr. STEWART (FICPI) indicated that FICPI supported the comments made by the Delegation of the United States of America, as well as those by the Representative of AIPLA. FICPI was concerned about item (i), a copy of the contract being provided at the option of the requesting party. The contract may contain confidential business information and this raised the question as to whether item (ii) might solve that problem, although a concern remained about confidential information being available in a contract that was submitted to support a recordation of change in ownership.

962. Ms. CHNG (Singapore) sought clarification as to the wording "relating to the registration of the contract" which appears in Rule 16(2).

963. Mr. TRAMPOSCH (WIPO) indicated that the Standing Committee had included this language in the text at the request of the Delegation of the Russian Federation.

964. Mr. BOGDANOV (Russian Federation) explained that Rule 16 dealt with the procedure to include information on changing in owner in the records of the Office but not with the procedure of registration a contract which served as the basis for the change. Such procedure did not have any legal importance. It did not have any consequences whether or not this information was included in the records of the Office. However, as regarded the rights, the Russian national patent law required registration of such contracts. Contracts were not valid without such registration. The Delegation had therefore tried to reflect in this Rule the important fact that information relating to the registration of the contract should be included in the request for recordation.

965. Mr. EDGAR (IPIC) commented that he favored the simplification of the patent system internationally, cost reduction and objectives of the Treaty. He said, as had been pointed out by the Representative of CIPA, that the question of assignment documentation did add very significantly to the cost of prosecution of applications in various countries. Obtaining of adequate documents was one of the most difficult administrative task that users of the system faced. In many cases where the requirements arose some years after an initial application had been filed, it might be extremely difficult, if not impossible, to obtain any signatures from inventors. Therefore, the IPIC wished to go on record as favoring simplification of the system and as supporting the comments of the Representative of CIPA and of the Delegation of Australia.

966. Mr. HOSHINO (Japan) clarified that his Delegation believed that Rules 16 and 17 should be consistent since both strongly related to national recordation procedure. He therefore wished to touch upon the issue dealt with in Rule 17. For example, licensor A had concluded a non-exclusive license contract with licensor B; that contract did not allow the license to be recorded, because licensor A had the intention to transfer the right later on to a new applicant C. Licensee B, however, requested recordation against the will of licensor A in order to make his position legally stable and the license profitable. New applicant C consequently lost his benefits because the right of third party B prevailed through the recordation. The Delegation of Japan therefore was strongly convinced that mutual consent for license recordation must be confirmed and permitted that documentation as to the basis of the change of applicant or owner be required in all cases, regardless of who had made a request for recordation.

967. Ms. CHNG (Singapore), wishing to pursue the point she had raised earlier, explained that her main concern was that a Patent Office needed to know exactly in which areas it could ask for more documents and in which areas it could not. With regard to the phrase "registration of the contract, where registration is compulsory under the applicable law of the Contracting Party", she sought clarification on whether an office could also ask for information in the event that the registration of the contract was not required or compulsory under the applicable law of a Contracting Party? She also asked a clarification whether a reference to the registration of the contract meant a reference to the registration of a contract before the Patent Office.

968. Mr. TRAMPOSCH (WIPO) replied that this provision was limited to the case where registration was compulsory under the applicable law. This was intended, as stated by the Delegation of the Russian Federation, for the case where the validity of the contract itself depended on its registration with the proper agency. With respect to the case referred to by the Delegation of Singapore, it was not clear to the International Bureau whether it was referring to a registration with the Patent Office that was a different and separate procedure concerning the request for recordation of the contract. If it was not a required procedure, it would not be covered by this provision. However, it seemed that the information that the Office might require could fall under the documentation that would accompany the request; this was what was referred to in items (i) to (iii).

969. Mr. HOLMSTRAND (Sweden) stated that his Delegation wished to associate itself with the Delegation of the United States of America and others, namely that it opposed the inclusion of the bracketed text in subparagraph (a). The Delegation saw no need for inclusion of a new subparagraph (e) as proposed by the Delegation of Japan.

970. Mr. GARCÍA LÓPEZ (Spain) said that his Delegation supported the inclusion of the text in square brackets in Rule 16(2), and that it retained the reservation previously expressed by Spain, for the sake of consistency with the Trademark Law Treaty which the country had ratified.

971. The PRESIDENT asked whether the Delegation of Spain wanted to have the language in square brackets kept in the text without the square brackets. The Delegation clarified that this was his intention.

972. Mr. TRÉPANIÉ (Canada) stated, for the sake of simplification and user friendliness, that his Delegation was in favor of removal of the square brackets and was not in favor of the proposal of the Delegation of Japan for subparagraph (e).

973. Mr. DRISQUE (Belgium) said that his Delegation opposed the insertion of the text in square brackets in the Basic Proposal.

974. Mr. BADRAWI (Egypt) stated that his Delegation was, on paragraph (2), in favor of deleting the text in square brackets and, with regard to the copy, that it must be certified by an authority or person who had authority before the Office. The phrase "where registration is compulsory under the applicable law" seemed to him somewhat contradictory because this depended on the applicable law. If the law permitted registration of a contract, the law prevailed. If this was not permitted under the law, that would be the case. Therefore, he felt that he had to insist on the pertinent application of the Contracting Parties and that this right be effected in accordance with the legislation in force and not dependent upon the person that submitted the request.

975. Mr. SEYIDOV (Azerbaijan) declared that his Delegation believed it necessary to delete the texts in square brackets in paragraph (2) and also supported the proposal by the Delegation of Japan to introduce an additional paragraph (e).

976. Mr. EL FAKI AKI (Sudan) requested clarification with regard to paragraph (2)(a)(i) of Rule 16. He questioned that, a Contracting Party requested the new owner or the new applicant to furnish information on the public authorities of the Contracting Party, what was the purpose of such a requirement.

977. Mr. TRAMPOSCH (WIPO) said that two aspects of information were included. The first was the information referred to by the Delegation of the Russian Federation with respect to a compulsory registration of the licensing contract with the government agency that was required for the validity of the contract. This information would be required to ascertain the validity of the contract before it was recorded. With respect to the information that must be submitted under items (i), (ii) and (iii), this would provide evidence of the licensing contract itself, which was a partial transfer of rights, and would give information for instance about the scope and the duration of that partial transfer of rights.

978. Mr. RAJAN (Ireland) stated that his Delegation was in favor of the introduction of the text in square brackets.

979. Mr. BOGDANOV (Russian Federation) said that his Delegation supported the deletion of the text within the square brackets.

980. Ms. VARGA (The former Yugoslav Republic of Macedonia) stated that her Delegation supported the deletion of the text in the square brackets.

981. The PRESIDENT noted, first, that the proposal by the Delegation of Japan had received little support and that there was substantial opposition to include the proposed text of new Rule 16(2)(e). As regards the texts in square brackets, there was a division of opinion, although a majority of the delegations had spoken in favor of the deletion of the text. There had been discussions on the square bracketed language many times in the past in the Standing Committee and in the Committee of Experts. The President noted that this Committee was not in a position to move forward with harmonization on this point. If the language in square brackets were included, a certain regime would be imposed on the Contracting Parties. If it were not included, then flexibility would be left to the Contracting Parties to decide which way they wanted to go with their own national law. It seemed, in this discussion and on the many discussions held in the past that, at this point, it was going to be very difficult to arrive at a consensus to include the square bracketed language. The President then concluded that the time was not yet right for harmonization. Since, this provision that was in the Regulations, the Assembly could modify at some future point. In view of that, he invited comments by the delegations opposed to the adoption of Rule 16(2)(a) without the language in square brackets.

982. Mr. HERALD (Australia) indicated that his Delegation had noted the point made by the President about this provision being in the Rules and subject to change. The Delegation had also noted that the comment made by the President regarding the flexibility on the one hand versus the restraint on the other as regard the offices. However, the Delegation was also mindful of the effect on the users of the system and, in particular, by the deletion of the words in square brackets resulting in a continuation of a significant imposition of costs on the users of the system was ensured. The Delegation understood that this Treaty, amongst other things, was designed to try to make things easier, more user-friendly, and in part reduce costs imposed on the users of the system. The Delegation saw that the discussion had been very one-sided. However, looking at the system from the point of view of the users, it seemed that this was an area where there was real potential for significant reductions in unnecessary cost burdens to applicants. The Delegation lamented the lost opportunity for a significant reduction of burdens to the users which the deletion of that text necessarily led to.

983. The PRESIDENT interpreted the intervention by the Delegation of Australia as indicating a strong regret that language in square brackets could not be included in the text but not as an objection to the adoption of the text without the language in square brackets.

984. Mr. WALKER (United Kingdom), said that his Delegation wished to associate itself with the intervention of the Delegation of Australia. It also greatly regretted that this Committee had not been able to achieve a simplification in this area.

985. *The PRESIDENT declared Rule 16(2)(a) adopted as regards the introductory words in substance and referred to the Drafting Committee.* Turning then to items (i), (ii) and (iii) of Rule 16(2)(a), he reminded the Committee that the International Bureau, in item (iii), had proposed the deletion of the words "or Model International Format" as a consequential change following from some earlier changes that had been made. *Seeing no comments nor objections, he declared those subparagraphs adopted.* He went on to ask whether there were any comments on Rule 16(2) (b), (c) or (d).

986. Mr. EREMENKO (EAPO) indicated that his Organization had some doubts on subparagraphs (b) and (c), concerning the words "or the reorganization or division of a legal entity", since the very concept of the division of a legal entity was a form of reorganization of a legal entity. In many countries, in accordance with civil law, there were other forms of reorganization other than the division of a legal entity, and it seemed, therefore, that this wording was not accurate. He suggested that, after the word "reorganization," the word "or" be deleted and be replaced by "in particular division of a legal entity".

987. Mr. TRAMPOSCH (WIPO) mentioned that the intent of the draft was simply to refer in general to the case where some change in the character of an organization would result either in one organization or in more than one organization. If it resulted in one, it would be referred to as a reorganization; if it resulted in more than one, one would be referring to it as a division. These were not used as legal terms because of course the legal implications of these terms would be different in different States according to the applicable law. It could be clarified in the Notes that these terms were used in a sense to refer to cases where the result would be either one or more than one entity.

988. Mr. EREMENKO (EAPO) agreed that this could be mentioned in the Explanatory Notes.

989. *The PRESIDENT declared subparagraphs (b), (c) and (d) of Rule 16(2), adopted in substance and referred to the Drafting Committee.* He then suggested turning to Rule 16(3) and (4) at the same time and asked for comments.

990. Mr. PAL (India) said that Rule 16(3) empowered Contracting Parties to require a translation if the document concerned was not in a language accepted by the Office. In this respect, a Contracting Party should have the power to require that a certified translation be submitted. The restriction imposed by paragraph (6) was difficult to accept for his Delegation.

991. Mr. LEWIS (WIPO) explained that the question of the verification of translations arose in a number of contexts within the Treaty and had been extensively discussed by the Committee of Experts and also by the SCP. The general approach within the Treaty was that certification of translations should not be required unless the Office had reasonable doubt as to the accuracy of that translation. This was one of the central features of the streamlining which was incorporated in the Treaty to do away with unnecessary certification. As already adopted by this Committee, a similar approach had been taken in connection with the priority documents, where the copy of the earlier application might be required to be

certified as provided for in the Paris Convention, but the fact that the translation of that priority document need not be certified unless the Office had reasonable doubt. The purpose of this was to save cost for applicants. In the view of the Committee of Experts and the SCP, a translation of a priority document did not serve a useful purpose. In conclusion, he said that it would seem better to keep the whole thrust of this streamlining in case of all translations rather than to make exceptions in one or two cases where there seemed to be no special need.

992. Mr. TRAMPOSCH (WIPO) stated that although, it was desirable to group several provisions into a general provision, that for legal certainty and also for clarity, it would be better to repeat provisions that may sound the same but may not have exactly the same effect in many cases. Regarding the case in question, he pointed out that the language of Rule 16(3), "A Contracting Party may require a translation of any document filed under paragraph (2) that is not in a language accepted by the Office," did not refer to a request, which was covered by another language provision, but to the documents accompanying requests, which were not covered by another language provision.

993. *The PRESIDENT, noting that there were no comments regarding Rule 16, paragraphs (3) or (4), declared them adopted in substance and referred to the Drafting Committee.*

994. The PRESIDENT invited the International Bureau to introduce Rule 16(5). He noted that, as elsewhere in the Treaty, it had been agreed that "by other means permitted by the Office" be replaced by "as otherwise permitted by the Office."

995. Mr. HERALD (Australia) queried whether there was a need to include the phrase at all.

996. Mr. LEWIS (WIPO) recalled that the SCP had decided to include an express reference to paper. He noted that Rule 16 was clearly without prejudice to the right of offices under Article 8 and Rule 8 to require filing on paper or to any rights of applicants to file on paper.

997. Mr. TRAMPOSCH (WIPO) stated that without the inclusion of the phrase "as otherwise permitted by the Office," the common usage of the word "copy" by itself could suggest only paper.

998. *The PRESIDENT, noting that there were no comments regarding Rule 16(5), declared it adopted in substance, as modified by the International Bureau, and referred to the Drafting Committee.*

999. The PRESIDENT introduced the discussion on Article 16(6) on evidence by noting that the International Bureau suggested the addition of the word "only" in the second line so as to read "be filed with the Office only where that Office may reasonably doubt" as has been done elsewhere.

1000. *The PRESIDENT, noting that there were no comments or objections regarding Rule 16(6), declared it adopted in substance, as modified by the International Bureau, and referred to the Drafting Committee.*

1001. *The PRESIDENT, noting that there were no comments or objections regarding Rule 16, paragraphs (7) and (8), declared them adopted, in substance, and referred to the Drafting Committee.*

1002. Mr. CRETOV (Republic of Moldova) asked that a statement be placed in the Notes regarding Article 5(1)(b) that a drawing is to be understood as a technical drawing including a description of geological or chemical characteristics.

1003. Mr. TRAMPOSCH (WIPO) stated that the intervention made earlier by the International Bureau in respect of chemical inventions would be put into the Explanatory Notes.

Rules 17: Request for Recordation of a Licensing Agreement or Security Interest

1004. The PRESIDENT invited the International Bureau to introduce Rule 17.

1005. Ms. MIYAMOTO (WIPO) explained the provisions of Rule 17. She pointed out, in particular, that the words surrounded by the square brackets in the chapeau of Rule 17(2)(a), "[, where the recordation is requested by the licensee, rather than by the licensor,]," were not included in the Basic Proposal but would be discussed if any delegation wished to do so. She observed that removal of the square brackets would limit the operation of the Rule to requests by the licensee.

1006. The PRESIDENT introduced the proposal of the Delegation of Israel who was not able to be present, namely, that a new item (iv) be inserted in Rule 17(1)(b) as follows:

“(iv) the date of the licensing agreement and its duration, if limited.”

1007. Mr. MILES (United Kingdom) supported the proposal of the Delegation of Israel in the interests of third parties.

1008. Mr. TRAMPOSCH (WIPO) pointed out that the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications in March of this year adopted as a proposed joint resolution a set of provisions on trademark licensing that are intended to supplement the Trademark Law Treaty. He noted that those provisions contained an item that was very similar to this item, so in the context of the Trademark Law Treaty, the Member States have found this to be a reasonable request.

1009. The PRESIDENT asked whether the Delegation of United Kingdom intended in supporting the proposal by the Delegation of Israel, to include a reference to the duration as well as the date of the licensing agreement.

1010. Mr. MILES (United Kingdom) stated that since third parties should have access to such information when inspecting the register, he supported both aspects of the proposal of the Delegation of Israel.

1011. Mr. PAL (India) supported the comments by the Delegation of the United Kingdom and the proposal of the Delegation of Israel.

1012. Mr. BOGDANOV (Russian Federation) stated that he had no objection to the proposal by the Delegation of Israel. However, he observed that it may be unnecessary since Rule 17(2), the documentation the Contracting Party could request under Rule 17(2) would contain the duration and date of the licensing agreement.

1013. Mr. TRAMPOSCH (WIPO) explained that even though there may be an overlap between the two provisions, there were two reasons why it may be beneficial to include new item (iv). First, where the Contracting Party published the indications under paragraph 1(b), information as to the date and duration of the licensing agreement would be published and would be more readily available to third parties without having to consult the files. Second, a Contracting Party that did not in fact require supporting documentation under paragraph 2(b) could require an indication of the date and the duration under the new item.

1014. Mr. STRENC (Romania) supported the proposal of the Delegation of Israel, but suggested that the words “, if limited” be deleted from the proposed text.

1015. Mr. TRAMPOSCH (WIPO) noted that the proposal by the Delegation of Romania more closely conformed with the recent decision by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications with respect to trademark licenses.

1016. *The PRESIDENT, noting that there were no further comments regarding the adoption of new Rule 17(1)(b)(iv) as proposed by the Delegation of Israel and modified by the Delegation of Romania, declared it adopted, in substance, and referred to the Drafting Committee.*

1017. The PRESIDENT introduced Rule 17(2) by noting that the Committee might arrive at the same conclusion as it did in respect of Rule 16(2), namely, that the text might be adopted without the language in square brackets and without adding any language along the lines of what the Delegation of Japan had proposed for Rule 16(2)(e) and had suggested might also be included in Rule 17. He asked whether any delegation would object to the adoption 17(2) in the form that it appears in PT/DC/4 without including the language in square brackets and without adding an additional provision along the lines of what Japan had proposed for Rule 16(2)(e).

1018. Mr. BEAKLINI (Brazil) stated that, under Brazilian law, there are some cases where an extract of the licensing agreement could not be accepted. Consequently, Rule 17(2)(a), item (ii) was not acceptable to the Delegation of Brazil.

1019. The PRESIDENT asked Brazil to provide a more detailed explanation of why the item (ii) was not acceptable.

1020. Mr. BEAKLINI (Brazil) explained that the Brazilian PTO performed some tasks in common with the Central Bank of Brazil regarding the transfer of money. Consequently, in some cases, the Brazilian PTO needed to see the whole document and not only an extract.

1021. Ms. CHNG (Singapore) noted that Rule 16(2)(a) provides that a request may be required to include information relating to the registration of the contract where registration is compulsory under the applicable law of the Contracting Party. She sought whether a parallel construction might be warranted in Rule 17(2).

1022. Mr. BAECHTOLD (WIPO) drew the attention of the Delegation of Singapore to Rule 17(1)(b)(iii) where similar wording is provided. He suggested that the Drafting Committee could consider harmonization of the texts in Rules 16 and 17 in this respect.

1023. Mr. TRAMPOSCH (WIPO) noted that, with regard to the intervention of the Delegation of Brazil, a similar discussion had taken place in the context of the provisions of trademark licenses in the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications and that the text of those provisions might provide precedent.

1024. The PRESIDENT proposed that the discussion of Rule 17(2) be set aside until the materials from the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications could be examined.

1025. Mr. IWASAKI (Japan) stated that his Delegation had the same concerns in regard to Rule 17(2) as those mentioned in regard to Rule 16(2)(e), but that given the lack of support for the latter, the Delegation would not make a similar proposal in respect of Rule 17(2). Nonetheless, he requested that the record reflect that they have similar concerns regarding Rules 16(2)(e) and 17(2). He also proposed the addition of a new item (iii), in order to accommodate agreements resulting from the operation of law or a court decision, as was provided under Rule 16(2)(c).

1026. The PRESIDENT noted that the proposal of the Delegation of Japan could be given effect by stating that Rule 16(2)(c) applies *mutatis mutandis*, but suggested that the precise wording could be left to the Drafting Committee.

1027. Mr. PAL (India) noted that the nature of licensing agreements and the certification required for such documents generally was governed by provisions of national civil law. It therefore could not be left to the option of a requesting party. He also supported the deletion of the square bracketed text.

1028. Mr. HERALD (Australia) stated that his Delegation would have preferred to retain the bracketed text. However, it recognized that it would be inappropriate to propose as much given the progress of the Conference. He lamented the loss of the opportunity for significant simplification of office procedures for the benefit of users. He also noted that some of the debate seems focused on making sure the Treaty is consistent with current national practice rather than with a vision of what the practice of the Offices should be in the future.

1029. Mr. BOGDANOV (Russian Federation) explained that, under the law of the Russian Federation a license must be registered with the Office otherwise it was not valid. He stated that upon registration of a license, the Office entered the information into a general register. He proposed to include in the Notes on Rule 17(1), an explanation that Rule 17 did not oblige Contracting Parties to set up a separate registration process or recording process for licensing agreements as referred to in that rule.

1030. Mr. LEWIS (WIPO) confirmed that the International Bureau would make a clarification in the Explanatory Notes as requested by the Delegation of the Russian Federation.

1031. Mr. TRAMPOSCH (WIPO) informed the delegations that he now had a copy of the proposed joint recommendation concerning trademark licenses that was adopted by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications. He noted that the provisions prohibit any Member State from requiring the furnishing of the licensee's contract or a translation of it, or an indication of the financial terms of the license contract. He also noted that in the Notes to that provision,

there was a statement which reads as follows: "It should be noted, however, that this paragraph does not prevent any authorities of Member States, for example, tax authorities or authorities establishing statistics, from requiring the parties to a license contract to furnish information in accordance with the applicable law." He offered the text as an example of at least one possibility for dealing with the issue which was, in fact, brought up by the Delegation of Brazil at the meeting where the proposed recommendation had been adopted. He suggested to include such a statement in the Explanatory Notes to the PLT.

1032. Mr. GRAÇA ARANHA (Brazil) stated that this would be acceptable.

1033. The PRESIDENT proposed adoption of Rule 17(2) without the inclusion of the words in square brackets, and with the addition of a new sub-paragraph to the effect that "Rule 16(2)(c) applies *mutatis mutandis*," the precise wording of which would be left to the Drafting Committee.

1034. Mr. BOGDANOV (Russian Federation) asked what would happen under Rule 17(2)(b) if the license granted was a compulsory license, that is not the result of an agreement among parties.

1035. Mr. LEWIS (WIPO) explained that subparagraph (b) was correctly restricted to licensing agreements and was not relevant compulsory licenses under the proposed new sub-paragraph (c). He suggested that the Drafting Committee, when considering the drafting of that new subparagraph, determine whether, for the purpose of clarity, it would be better to spell out the text in full.

1036. *The PRESIDENT, noting that there were no further comments regarding the adoption of Rule 17(2), with the understanding that the issues raised in the discussion would be considered by the Drafting Committee, declared it adopted in substance and referred to the Drafting Committee.*

1037. *The PRESIDENT, noting that there were no comments regarding the adoption of Rule 17, paragraphs (3) through (8), declared them adopted in substance and referred to the Drafting Committee.*

1038. *The PRESIDENT, noting that there were no comments regarding the adoption of Rule 17(9), declared it adopted in substance and referred to the Drafting Committee.*

Rule 18: Request for Correction of a Mistake

1039. The PRESIDENT invited the International Bureau to introduce Rule 18.

1040. Ms. MIYAMOTO (WIPO) introduced the provisions of Rule 18(1) and (2). She noted that paragraph (1), subparagraph (a), could be amended to make it clear that it is restricted to corrections before the Office. She suggested that in the English text in the second line, after the words "or patent contains a mistake which is correctable," the words "by the Office" be inserted: that in the third line the words "the Contracting Party" be replaced by the word "the Office": and that in the fourth line after the words "and publications of the Office be made in a communication" the words "to the Office" be inserted.

1041. The PRESIDENT noted that a proposal for modification of Rule 18(1)(a) had also been made by the Delegation of the United States of America and appears in Document PT/DC/8.

1042. Mrs. BOLAND (United States of America) stated that her Delegation proposed that the exclusion, in respect of the correction of mistakes, relating to search or substantive examination, contained in Explanatory Note 18.01, be explicitly mentioned in the chapeau to paragraph (1). She stated that it is very important that the procedures for correcting mistakes by virtue of this Rule not be available to patent applicants in the normal course of substantive search or examination. She proposed that in paragraph (1)(a), after the phrase "in respect of an application" the phrase ", not related to search or substantive examination," be inserted. She stated that, for the record, her Delegation also supported the additions to the text as suggested by the International Bureau.

1043. Mr. TRAMPOSCH (WIPO) suggested that the phrase in question be inserted after the word "mistake." The chapeau of Rule 18(1)(a) would then read, in part, "in respect of an application or a patent contains a mistake not related to search or substantive examination." Insertion of the phrase in question after "mistake" would make it clear that it was the mistake that did not relate to search or substantive examination rather than the communication.

1044. The PRESIDENT noted that the Delegation of the United States of America had indicated its consent to the suggestion of the International Bureau.

1045. Mr. NIYONKURU (Burundi) said that following the change that had just been made by the International Bureau, the French version appeared somewhat strange. Consequently, he suggested the following wording for the second part of the provision: "the Office shall accept that a request for correction of that mistake in the records and publications of the Office be made in a communication to the Office signed by the applicant."

1046. The PRESIDENT stated that the suggestion of the Delegation of Burundi should be referred to the Drafting Committee.

1047. Mr. MOUKOURI (Congo) expressed the same concern and suggested, instead of repeating the word "Office" twice in the same sentence, saying: "where an application or patent contains a mistake which is correctable by the Office which accepts the request in rectification of the error, under the applicable law...."

1048. The PRESIDENT stated that the suggestion of the Delegation of the Congo also should be referred to the Drafting Committee.

1049. Mr. BARTELS (Germany) asked whether the words "which is correctable by the Office under the applicable law" would oblige a Contracting Party to provide for a possibility of correction, or whether they only meant that the Office was free to define the details of the correction and define what kind of mistake may be corrected.

1050. Mr. BAECHTOLD (WIPO) explained that the phrase "correctable . . . under the applicable law" permitted a Contracting Party, under its national law not to provide for the correction of mistakes at all or to define what mistakes are correctable. He noted that this could be clarified in Explanatory Note 18.02.

1051. Mr. IWASAKI (Japan) supported the proposal by the Delegation of the United States of America and the modification suggested by the International Bureau regarding clarification of the text.

1052. *The PRESIDENT noted that there were no further comments on Rule 18(1)(a), with the amendments suggested by the International Bureau and those proposed by the Delegation of the United States of America as modified by the suggestion of International Bureau. He declared it adopted in substance with those amendments and referred to the Drafting Committee.*

1053. *The PRESIDENT, noting that there were no comments regarding Rule 18(1)(b) through (d), declared them adopted in substance and referred to the Drafting Committee.*

1054. *The PRESIDENT, noting that there were no comments regarding Rule 18(2), declared it adopted and referred to the Drafting Committee.*

1055. The PRESIDENT, turning to Rule 18(3) and (4), suggested that the word "only" be inserted in Rule 18(4) as had been done elsewhere, and that the precise wording could be left to the Drafting Committee.

1056. Mr. HERALD (Australia) suggested that more than one "only" might be needed and agreed that it was a matter for the Drafting Committee.

1057. *The PRESIDENT, noting that there were no objections regarding Rule 18, paragraphs (3) and (4), with "only" added as appropriate, declared them adopted in substance and referred to the Drafting Committee.*

1058. *The PRESIDENT, noting that there were no objections regarding Rule 18, paragraphs (5) and (6), declared them adopted in substance and referred to the Drafting Committee.*

1059. *The PRESIDENT, noting that there were no objections regarding proposed Rule 18(7), declared it adopted in substance and referred to the Drafting Committee.*

Rule 19: Manner of Identification of an Application Without its Application Number

1060. Ms. MIYAMOTO (WIPO) introduced Rule 19 on the invitation of the President.

1061. Mr. HERALD (Australia) queried whether there was a legal basis for Rule 19 in Article 14(1).

1062. Mr. TRAMPOSCH (WIPO) explained that the legal basis for Rule 19 was to be found in Article 14(1)(a)(ii).

1063. Mr. GARCÍA LÓPEZ (Spain) suggested that in the Spanish version of Rule 19(1), the word "*que*" ("that") should be deleted from the second line, so as to read: "but such a number has not yet been issued."

1064. Mr. TRAMPOSCH (WIPO) asked for clarification as to what item the Delegation of Spain was referring.

1065. Mr. GARCÍA LÓPEZ (Spain) specified that the suggestion he had made referred to the preamble of paragraph (1) of the Spanish version, since in his opinion the word "*que*" ("that") was redundant.

1066. Mr. TRAMPOSCH (WIPO) noted that the problem appeared to be restricted to the Spanish text and suggested that the matter be referred to the Drafting Committee.

1067. Mrs. BOLAND (United States of America) stated that her Delegation had some concern with the terms "provisional application number" since it could be understood to mean the number of a provisional application. She suggested that the matter be clarified in the Explanatory Notes or referred to the Drafting Committee.

1068. The PRESIDENT suggested referring that issue to the Drafting Committee along with the issue of the Spanish text raised by the Delegation of Spain.

1069. Mr. BADRAWI (Egypt) suggested adding a fourth subparagraph providing that a provisional application number be used only where the national law provides for such a number.

1070. Mr. TRAMPOSCH (WIPO) pointed to Rule 19(1)(i) which referred to "the provisional application number, if any given by the Office." There was no requirement for the Office to change its practice in any way and to issue such a number, but if under the current practice of the Office such a number was issued before the definitive application number was issued, then that would be sufficient for identifying the application.

1071. Ms. FRANCISCO (Philippines) suggested that in Rule 19(1)(ii) and (iii), the words "sent to the Office" be amended to "received by the Office." As far as item (iii) was concerned, the delegate was of the view that it was more useful to indicate the date on which the application was received by the Office rather than a reference number. However, the Delegation did not, in principle, oppose item (iii).

1072. Mr. TRAMPOSCH (WIPO) recalled that the SCP had recognized that it was not always possible for the applicant to know the date on which the papers were actually received by the Office. In such cases, the applicant would only be able to indicate the date that the papers were sent to the Office. The Office could then make a reasonable guess as to when the papers had actually been received. With respect to the opening words of item (iii), this would only refer to a reference number if such a number had been given to the application by the applicant or his representative. To cover the case in which no such reference number had been given "if any" could be inserted before the words "along with the name," as under item (i).

1073. Mr. BADRAWI (Egypt) asked whether or not national offices would be required to provide a provisional application number.

1074. Mr. TRAMPOSCH (WIPO) stated that a national office would not be required to supply a provisional application number. However, if the national Office chose to supply a number, that number could suffice for identifying the application.

1075. Mr. HERALD (Australia) said that his Delegation did not see the need to add the words "if any" in item (iii). Clearly, in item (i) the reference to "if any" was of critical important because it depended on whether or not an office had given a provisional application number. However, item (iii) concerned a reference number applied by the applicant or his representative at their own choice, as was made clear by the chapeau of that item. If no reference had been applied, that person concerned did not have an option to provide that number, because it did not exist.

1076. The PRESIDENT stated that, in view of the intervention of the Delegation of Australia, it should be left to the Drafting Committee to decide whether it was necessary to reflect the intent.

1077. Mrs. MÁRQUEZ (Venezuela) noted that Rule 16(7) referred to "formal" requirements, whereas in Rule 17(7), which also mentioned the "prohibition of other requirements," no clarification was given as regards the formal nature of the requirements. This indication did not appear either in the Spanish version of Rule 18(5) or in Rule 19(2). She therefore asked whether this was the result of an omission, or whether an alternative interpretation should be given to those differences in wording.

1078. Mr. TRAMPOSCH (WIPO) said that it appeared that there was an inconsistency between the paragraphs in that Rule. He suggested that the problem be referred to the Drafting Committee.

1079. Mr. STRENC (Romania) proposed to replace, at the beginning of Rule 19(2), the word "demand" with "require." This would be in line with Rules 16(7) or 15(5) or some other rule. Furthermore, the delegate suggested replacing the word "requirement" with the words "identification means."

1080. *The PRESIDENT suggested that this also be referred to the Drafting Committee. He declared Rule 19 adopted in substance and referred to the Drafting Committee.*

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Morning

1081. The PRESIDENT announced that there were cameras present in Room A that will be transmitting the meeting into Room B so that the proceedings could be followed in Room B. He noted that the following Articles, and their related Rules, would be discussed in the order listed: Articles 10, 11, 12, 13, and 4. He noted that the discussion on Article 4 was deferred so as to allow for the distribution of the new proposal of the Delegation of Sudan. He invited Deputy Director General Shozo Uemura to address the Committee.

1082. Mr. UEMURA (WIPO) stated that, based on his observation of the deliberations of the previous week and the great attendance at the extra sessions on Friday and Saturday, he was impressed with the willingness of all participants to find solutions that would enable the Committee to successfully conclude the Diplomatic Conference. He noted that, although more than a third of the Diplomatic Conference had passed, there were still many issues which concerned not only the Basic Proposal but also the proposals from various delegations. He reiterated that the International Bureau was always available to delegations for any advice, suggestion or information which maybe useful when making a proposal. He highly recommended that the submission of proposals on paper would facilitate and accelerate the deliberations. He expressed the hope that a heightened sense of compromise and cooperation would lead towards a successful conclusion of the Diplomatic Conference.

Article 10: Validity of Patents; Revocation

1083. The PRESIDENT invited the International Bureau to introduce Article 10(1).

1084. Mr. BAECHTOLD (WIPO) reviewed the substance of Article 10(1). He noted that it had to be borne in mind that Article 10(1) applied only in respect of non-compliance with formal requirements, so that no Contracting Party would be prevented to apply this Article on substantive grounds. He stated that Article 10(1) did not apply to the failure to comply with formal requirements with respect to granted patents, but only during the application stage. He drew the attention of the Committee to the fact that the provision would not apply when a translation or evidence had not been filed under Article 6, paragraphs 3 and 6. He stated that where the non-compliance with such formal requirements occurred

as a result of a fraudulent intention, then no Contracting Party would need to apply this provision, and that the interpretation of the terms "fraudulent intention" would be left to national law. He finally explained that the words "revoked or invalidated" were meant to cover any sanctions which have equivalent effect as revocation or invalidation.

1085. Mr. RAJAN (Ireland) noted the references in Article 10(1) to Article 6(1), (2), (4) and (5) and Article 8(1) to (4). He stated that although the International Bureau said that that Article 10(1) was restricted to requirements in respect of applications, Article 8(1) to (4) concerned communications and is not restricted to communication in respect of applications. He also noted that the International Bureau had previously stated, in response to an earlier query by the Delegation of Ireland, that Article 10(1) also applied to quasi-judicial proceedings before an office. He stated that his Delegation, upon further reflection, was concerned about Article 8(4)(b). He noted that in Ireland, as in some other jurisdictions, the Patent Office is legally competent to deal with the matters like the revocation of granted patents on grounds such as lack of novelty, and with matters such as grant of compulsory licenses, and that in such proceedings before the Office, it was not unusual for the Office to receive conflicting evidences from the parties concerned. He stated that it was not appropriate for the PLT to regulate matters relating to judicial or quasi-judicial proceedings and proposed that the wording in Article 8(4)(b) "except as prescribed in the Regulations in subparagraph 4 (b)," be replaced by "in respect of any quasi judicial proceedings or as proscribed in the Regulations".

Article 8: Communications; Addresses

1086. The PRESIDENT suggested to return to Article 8(4)(b) before continuing with Article 10. He stated that the proposal of the Delegation of Ireland was to amend Article 8(4)(b) such that the last phrase would read "except in the case of any quasi-judicial proceedings or as prescribed in the Regulations." He asked whether any delegation, pursuant to Rule of Procedure 32, objected to a consideration of the proposal to amend adopted text.

1087. Mr. BADRAWI (Egypt) stated that the Articles referred to in Article 10(1), namely, Article 6, paragraphs (1), (2), (4) and (5) and Article 8, paragraphs (1) to (4), dealt with substantive matters which should be subject to appeal to a court. He stated that the disallowance of such an appeal was contrary to the Egyptian constitution.

1088. The PRESIDENT stated that he would invite the International Bureau to make comments in regard to Article 10(1) in a moment, but suggested that the discussion on Article 8(4)(b) continue beforehand.

1089. Mr. SHALIT (Israel) supported the comments of the Delegation of Ireland. He noted that in Israel, affidavits were required in a testimony in judicial procedures such as in revocation procedures before the Commissioner, opposition procedures before the Commissioner, and also at certain other stages in the procedure where there was need for testimony. He asked whether it would be possible to allow for such procedures as well.

1090. Mr. HERALD (Australia) supported the proposed change in regard to what might be called generally "quasi judicial proceedings." He stated that such proceedings may require evidence which goes beyond a simple declaration and that it would be contrary to the intention of the Treaty if such procedures were forced out of offices and into courts. He noted that the Treaty should encourage the less expensive proceedings before the Offices. He stated that he therefore supported the inclusion of a reference to quasi-judicial proceedings. As a peripheral issue, he suggested that the Drafting Committee, given the reference in Article 10(1) to Articles 6 and 8, consider whether Articles 6 and 8 should explicitly be subject to Article 10.

1091. The PRESIDENT suggested that the comments of the Delegation of Australia regarding Article 10 be addressed after the conclusion of the discussion on Article 8(4)(b).

1092. Ms. SAHA (India) stated that Article 10(1) imposed a certain degree of restriction on the power and jurisdiction of a court of law, which was not permitted by the Indian judicial system and thus was not acceptable in its present form. She noted that Article 1 and 41 of the TRIPS Agreement allowed a Contracting State to implement the provisions of TRIPS within their own legal framework.

1093. The PRESIDENT requested that the discussion on Article 10 be stayed in favor of returning to Article 8.

1094. Mrs. BOLAND (United States of America) supported the proposal regarding an insertion of text in Article 8(4)(b).

1095. *The PRESIDENT, noting that there were no objections to adopting Article 8(4)(b) with its last clause amended to read "except in respect of any quasi-judicial proceedings or as prescribed in the Regulations," declared it adopted and referred to the Drafting Committee.*

Article 10: Validity of Patent; Revocation

1096. The PRESIDENT invited the International Bureau to comment on the proposal raised by the Delegation of Australia in respect of Article 10.

1097. Mr. TRAMPOSCH (WIPO) suggested that, from a drafting point of view, the objective of the proposal could be achieved by changing, in Article 6(8), "Article 5" to "Articles 5 and 10," and in Article 8(8), "subject to Article 5 and" to "subject to Articles 5 and 10 and".

1098. The PRESIDENT asked whether there was any objection to considering these matters, since they had already been adopted, and, if not, whether there was any support for the proposal.

1099. Mr. BADRAWI (Egypt) suggested that any discussion of Article 6 and 8 prior to the approval of Article 10 itself was premature.

1100. The PRESIDENT proposed that the issue raised by the Delegation of Australia be set aside until after the conclusion of the discussion of Article 10. He noted that the Delegations of Egypt and India had raised concerns regarding Article 10(1), and invited the Secretariat to comment.

1101. Mr. TRAMPOSCH (WIPO) stated that it had never been the intention of Article 10(1) to require any modification in the judicial legislation of a Contracting Party. He noted that the patent legislation of a country typically contained certain grounds on which the competent authority could revoke or invalidate a patent. He stated that the intent of Article 10(1) was that the matters referred to in this paragraph could not be included among such grounds on which the competent authority could invalidate or revoke a patent. He stated that, if the Committee so desired, the International Bureau could suggest a modification to Article 10(1) to make its intent more clear.

1102. Mr. VIDAURETTA (Argentina) said that Article 10(1) was intended to protect the patent once it had been granted, such that it was a solid instrument which protected the right. He considered, however, that the wording of this Article, whereby no Office, tribunal, appeal body or any other competent authority of a Contracting Party could revoke or invalidate the patent, was part of an area governed by the jurisdiction and competence of the tribunals of each Contracting Party, whose competence and jurisdiction often stemmed from the constitutional order. In Argentina, the Patent Office could not revoke a patent for formal reasons or for reasons of substance. However, tribunals could revoke any patent without distinguishing between the clauses through which knowledge of the subject matter was made possible. Article 10 as worded would not therefore be acceptable to Argentina. He proposed drafting this article such that once a patent had been granted, it could not be revoked or invalidated by the failure to meet one or more of the formal requirements, without reference to any inhibition of competence on the part of tribunals or higher appeal bodies. The proposed wording would eliminate the doubt generated by the original wording as regards allowing courts to be familiar with aspects in which they had original competence.

1103. Mr. KARUNARATNE (Sri Lanka) supported the comments made by the Delegation of India. He stated that his Delegation could not accept any provision which restricted the freedom of the courts in the administration of justice. He also stated that his Delegation could support Article 10(1), if the interpretation given by the International Bureau was clearly reflected in the Notes.

1104. Mr. TRAORÉ (Mali) asked for clarification of Article 10(1)(a). Since this Article referred to Articles 6(1) to 6(5), and these Articles related to the form and content of the application, he said that in Mali the reasons for a patent being invalidated or revoked included the inadequacy of the description contained therein. In this case, he wished to know whether Article 6(1)(a) would apply to such a situation.

1105. Mr. TRAMPOSCH (WIPO) stated that the provision would not apply to the substantive requirements with respect to a patent. He also stated that even though Article 6(1) did incorporate the requirement for a specification, it did not create any obligations with respect to the sufficiency of that specification. He also stated that if it was not clearly stated in Note 10.02 or elsewhere, the International Bureau would add a clarification to that effect.

1106. Mr. JAFAR (Bangladesh) supported the comments of the Delegations of India and Sri Lanka, and proposed that Article 10(1) be modified and the words "by a court" be deleted.

1107. Mr. BOGDANOV (Russian Federation) stated that his Delegation was not in a position to guarantee that the court will not revoke or invalidate patents. However, it could undertake to ensure that the legislation of the Russian Federation would not make provision as regards the grounds for application of invalidation of the patents for non-compliance with formal requirements with respect to an application. He noted that the legislation of the Russian Federation already makes no provision for such ground. He proposed that Article 10 be drafted in such a manner as to ensure that Contracting Parties did not provide for revocation or invalidation of a patent on the grounds of non-compliance with formal requirements

1108. Mr. EL FAKI ALI (Sudan) supported the comments of Egypt, India, and Sri Lanka. He stated that it was a constitutional right to come before a court or board of appeal. He proposed that the reference to "court" in Article 10(1) be deleted.

1109. Mr. STOHR (EPO) supported Article 10(1) as it appeared in the Basic Proposal. He stated that the provision provided for legal certainty for patentees as well as for third parties since it established the principle that formal deficiencies, which occurred during the granting procedure, could not be a ground for revocation of a patent that has been granted despite these deficiencies. He asked for clarification as to the relationship between Articles 10 and 22. In particular, he queried whether a Contracting Party that entered a reservation under Article 22 would be entitled to revoke a granted patent on the basis that there is more than one invention contained in this patent.

1110. Mrs. BOLAND (United States of America) expressed the view that Article 10 should be retained for the benefit of patent owners. She supported a clarification of the Article along the lines of that discussed by the International Bureau and proposed by the Russian Federation. She stated that the patent legislation of Contracting Parties should not provide revocation or invalidity on the grounds of formal matters. She noted that, as a result, the courts, boards of appeal and other competent authorities would not have the power to revoke a patent on such grounds. With specific reference to the intervention of the Representative of the EPO, she confirmed that lack of unity of invention in a granted patent would not be a grounds for revocation in the United States of America.

1111. Mr. FRYER (ABA) supported the previous comments of the Delegation of the United States of America and the suggested clarification made by the International Bureau.

1112. Mr. KHAFAGUI (WASME) said that Article 10 of the Treaty stated that once a patent had been granted, it could be neither revoked nor withdrawn by a tribunal on the grounds that one or more of the requirements relating to an application were not complied with, unless this was a result of a fraudulent intention. In the same way as the Delegations of Egypt, India and Sudan, he pointed out that Article 8 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948, expressly provided that everyone had the right to an effective remedy by the competent tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 68 of the Egyptian Constitution of September 1971 expressly enshrined the Article in question, since recourse to justice was an inviolable right guaranteed for all. In that regard, he specified that it was forbidden to include in an Egyptian law any provision liable to exempt any administrative act or decision from the censure of tribunals. As a result, he considered that the rules of the Constitution and the principle of legality should be respected, and noted that Article 10 violated a rule which was part of all constitutions, even if the patent-related act was not a sovereign one and evaded constitutional verification. Finally, he pointed out that Article 10 was also incompatible with Article 32 of the 1883 Paris Convention which prescribed the opposite solution. Consequently, WASME was in favor of deleting Article 10.

1113. As regards the end of the subparagraph, which provided for an exception in the case of non-compliance with the formal requirement as a result of a fraudulent intention, he said that this exception was unnecessary since, under the "*fraus omnia corrumpit*," rule, fraudulent acts could be

annulled without comment. WASME said that it also supported the deletion of the subparagraph containing this exception.

1114. In conclusion, he said that in purely legal terms the Treaty could not be considered to affect adversely the rules of legal remedy by tribunals dealing with civil, criminal or administrative cases relating to patent law. Furthermore, if administrative appeals were made to the Office, the provisions of the Treaty and its Regulations applied. Thus, in the case of dispute between these provisions and the rules of national law, the provisions were applied automatically.

1115. Mr. BEIER (FICPI) proposed that the list of authorities in Article 10(1) be deleted as being unnecessary to the application of the Article.

1116. Mr. VAN HORN (AIPLA) supported Article 10(1) as proposed in the Basic Proposal with clarification along lines indicated by the Delegation of the United States of America. He stated that, as a matter of certainty both for the patent owner and third parties, as well as fairness and justice, the patent should not be open to revocation or invalidation because of some technicality or formal matter that has not been observed.

1117. Mr. TRAMPOSCH (WIPO) suggested, in the light of the interventions by the delegations and representatives that have spoken, be amended to read along the lines: the text "(1) Once a patent has been granted, non-compliance with one or more of the formal requirements with respect to an application referred to in Articles 6(1), (2), (4) and (5) and 8(1) to (4) may not be a ground for revocation or invalidation of the patent, either totally or in part, except where the non-compliance with the formal requirement occurred as a result of fraudulent intention." He noted that the effect of the amendment was to delete the list of authorities and to make clear that the provision related to a restriction on the grounds for revocation as suggested by the delegations.

1118. Mr. BADRAWI (Egypt) stated that the new wording proposed by the International Bureau solved many problems and eliminates many objections that were mentioned as regards judicial proceedings. He proposed that it was sufficient to refer to Article 2 of the Paris Convention on Industrial Property that provided that each country may have its own judicial and administrative procedures.

1119. Mr. TRAMPOSCH (WIPO) explained that the suggested text provided that non-compliance with the formal requirements concerned could not be a ground for revocation of the patent.

1120. Ms. SAHA (India) requested additional time to consider the suggestion of the International Bureau.

1121. The PRESIDENT requested that the International Bureau distribute its suggestion in writing, and proposed that the Committee return to Article 10(1) when the draft was ready. He invited the International Bureau to introduce Article 10(2).

1122. Mr. BAECHTOLD (WIPO) introduced Article 10(2), and noted, in particular, that the terms "revoked" and "invalidated" in this provision again were to be interpreted broadly as including other sanctions which have equivalent effect.

1123. Ms. SAHA (India) stated that, since Article 10(2) the revocation of patent was not restricted to formality matters had included revocation on grounds of substantive law, it should not be included in the Treaty. She noted that in Indian substantive law there is a provision for revocation of patents by the State in the public interest. She also noted that Article 73 of TRIPS, provided for the possibility of revocation of patent for security considerations. She stated that, in both cases, there was no obligation on the part of the State to provide an opportunity for giving observations to the patentee.

1124. Mr. TRAMPOSCH (WIPO) recalled that the question raised by the delegate had been discussed in the SCP which had considered Article 10(1) to be in respect of a procedural matter and therefore appropriate to be included in the Treaty. He explained that the concern about security matters was fully addressed in Article 4. With respect to revocation in the public interest, he noted that the TRIPS Agreement would, in the case of compulsory licenses in the public interest, require consultation with the patent owner, so that Article 10(2) would be in line at least with that portion of the TRIPS Agreement. With regard to the drafting of paragraph (2), he suggested that the reference to the authorities be deleted, as had been suggested with regard to paragraph (1).

1125. Ms. SAHA (India) stated that the suggested amendment did not change the substance of the Article and was, therefore, not acceptable to her Delegation.

1126. Mrs. MALDONADO HINCAPIÉ (Colombia) said that her Delegation associated itself with the comments made by the Delegation of India, since it considered that the current wording of Article 10 involved aspects of substantive law such as the right to defense. By referring to such a right, the Treaty would deal with subjects specific to administrative procedure which lay outside the Treaty's field of regulation. In that connection, her Delegation requested that the issues relating to form, which were not substantive, be made more explicit.

1127. Mr. BADRAWI (Egypt) supported the statement made by the Delegation of India, and said that, in the light of Article 2 of the Paris Convention for the Protection of Industrial Property, Article 10 should be deleted in its entirety.

1128. Mr. BARTELS (Germany) stated that the principle expressed in Article 10(2) constituted one of the most fundamental principles of procedural law. He expressed the view that, in principle, it should not be necessary to include it in a Treaty because it would seem naturally applicable. If, however, there were doubts in this regard, its inclusion was absolutely indispensable.

1129. Mrs. BOLAND (United States of America) supported the retention of Article 10(2), and concurred with the Delegation of Germany stating that, if there was any doubt about the applicability of this procedural safeguard, its retention was even more necessary. She recalled that the provision had been given great consideration over the many meetings of the Committee of Experts and the SCP and said that she could support a similar clarification as in paragraph (1).

1130. Ms. FRANCISCO (Philippines) expressed the view that a provision along the lines of Article 42 of the TRIPS Agreement would be sufficient.

1131. Mrs. MARCADÉ (France) said, in line with the comments of the Delegations of Germany and United States of America, that Article 10(2) was an important paragraph in that it offered the possibility for the patent owner to make observations in cases where the patent was invalidated or revoked. Since this was a fundamental principle, as made clear by the Delegation of Germany, it was essential that it be included in the Treaty, if doubt existed as to whether it had been observed.

1132. Mr. STOHR (EPO) said that paragraph (2) was an expression of a fundamental principle of procedural law, namely the right to be heard, and supported the retention of Article 10(2) for the reasons given by the Delegations of Germany, the United States of America and France.

1133. Mr. TRAMPOSCH (WIPO) recalled that Article 10 had been discussed over five years of deliberations and adopted by a consensus in the SCP. He noted that Article 10(2) was completely in line with Article 42 of the TRIPS Agreement. Referring to Article 41(5) of the TRIPS Agreement, he asked whether a similar provision could be included in a new paragraph (3) to Article 10 to clarify that Contracting Parties were not obliged to establish a judicial system for the enforcement of Intellectual Property rights distinct from that for the enforcement of law in the general.

1134. Mr. BADRAWI (Egypt) questioned the need to retain Article 10 given the fact that the TRIPS Agreement already contained equivalent obligations.

1135. Mrs. EL MAHBOUL (Morocco) said that her Delegation supported the proposal made by India and Egypt, and wished to draw attention to the end of Article 40.2 of the TRIPS Agreement which specified that the procedure (should) comprise a means of identifying and protecting confidential information, unless this were contrary to existing constitutional provisions. Another possible way to reach a compromise would be to mention the formal requirements in Article 10(2) which would be drafted as follows: "a patent may not be revoked or invalidated, either totally or in part, for reasons of form, without the owner being given the opportunity to make observations..."

1136. The PRESIDENT invited comments on Article 10(2).

1137. Mr. HABIBI (Libyan Arab Jamahiriya) supported the proposal made by the Delegation of Egypt to delete Article 10.

1138. Mr. BÜHLER (Switzerland) endorsed the statements made by the Delegations of Germany, the United States of America, France and the representative of the EPO supporting the retention of Article 10(2).

1139. Mr. RAJAN (Ireland) said that it appeared inconceivable for a Court to revoke or invalidate a patent without the owner being given an opportunity to make observations on the intended revocation or invalidation. To do so would be contrary to natural justice. He therefore favored the retention of Article 10(2).

1140. Mr. UNGLER (Austria) endorsed the views expressed by the Delegations of Germany, the United States of America and the EPO, and supported the current draft of Article 10(2).

1141. Mr. TRÉPANIÉ (Canada) supported Article 10 in its entirety. He stated that while Article 10(1) referred to formal matters, Article 10(2) referred to procedural matters involved in invalidation and revocation. He stated that it is a fundamental legal principle and for these reasons the Delegation supported the principles contained in Article 10.

1142. Mrs. PETIT (Belgium) said that for the reasons outlined by previous delegations, her Delegation also supported the retention of Article 10(2).

1143. Ms. LÖYTÖMÄKI (Finland) endorsed the statements by the Delegations of Germany and the United States of America supporting the retention of Article 10(2), stating that the provision enshrined an important principle of procedural law.

1144. Mr. MORIYASU (Japan) supported the retention of Article 10(2) for the reasons given by the Delegations of the United States of America, Germany, France and the representative of the EPO.

1145. Ms. HUJEROVÁ (Czech Republic) supported the retention of Article 10(2) for the reasons given by the Delegations of the United States of America, Germany, France, Finland and the representative of the EPO.

1146. Mr. STRENC (Romania) supported the retention of Article 10(2) for the reasons given by the Delegations of the United States of America, Germany, France and the representative of the EPO, he stated that the right to be heard constituted a fundamental principle of procedural law which was within the sense and the scope of the Treaty.

1147. Mr. CONGREGADO LOSCERTALES (Spain) said that his Delegation also supported the retention of Article 10(2) for the same reasons as put forward by previous delegations.

1148. Mr. HOMLSTRAND (Sweden) associated his Delegation with the observations made by the Delegations of Germany, the United States of America, France, and others. He emphasized that the principle embodied in paragraph (2) was so fundamental that he had originally not deemed it necessary to have it included in the draft PLT, but that he, after listening to the previous discussion, was now convinced that paragraph (2) really had its proper place in the Treaty.

1149. Mrs. REJNHOLD JØRGENSEN (Denmark) stated that Article 10(2) contained a fundamental principle and supported its retention.

1150. Mr. HERALD (Australia) supported the retention of Article 10(2).

1151. Mr. SHEHU-AHMED (Nigeria) supported the retention of Article 10(2) and emphasized the need to ensure the application of the principle of fair hearing enshrined in most of national laws and constitutions.

1152. Mrs. LAGARMILLA (Uruguay) said that her Delegation also supported the inclusion of Article 10(2), since this provision formed part of the due process and the legal process of being heard could not be denied to anyone.

1153. Mr. JUNG (Republic of Korea) supported the retention of Article 10(2) and informed delegates that the application of a similar provision in the Korean Patent Act had proved to be beneficial in avoiding misunderstandings.

1154. Mr. BOUCOUVALAS (Greece) supported the retention of Article 10(2).

1155. Mrs. MODESTO (Portugal) supported the retention of Article 10(2) for the reasons given by the Delegations of Germany, France and the EPO.

1156. Mr. BADRAWI (Egypt) stated that Article 10(2) contained a fundamental principle of procedural law, which was already guaranteed by constitutions and by Article 42 of the TRIPS Agreement. Given these legal obligations, he asked why it was necessary to include an identical obligation into the draft PLT.

1157. Mr. TRAMPOSCH (WIPO) observed that membership of the PLT was not limited to members of the WTO, and that there were a substantial number of States that were, as Members of the WIPO and the Paris Union, eligible to join the draft PLT without being bound by the TRIPS Agreement.

1158. Mrs. MÁRQUEZ (Venezuela) said that her Delegation associated itself with the Delegations that had supported the retention of Article 10(2), since the paragraph in question dealt with that an aspect that was clearly procedural rather than one of substance, and that guaranteed the right to be heard in any proceedings, be they administrative or judicial. Article 10(2) of the Treaty should therefore be retained.

1159. Ms. HAJDÚ (Hungary) supported the retention of Article 10(2) for the reasons given by the Delegations of the United States of America and Germany.

1160. Mr. OMOROV (Kyrgyzstan) supported the retention of Article 10(2) with the amendment suggested by the International Bureau to delete, as in paragraph (1), the reference to "the Office, a court, a board of appeal or any other competent authority."

1161. Mr. PRAMUDYO (Indonesia) expressed a preference for deleting Article 10(1), because it would limit the jurisdiction of national courts. He supported the retention of Article 10(2), noting that it was important for the applicant to be heard prior to the revocation or invalidation his right.

1162. Mr. HE (China) supported the retention of Article 10(2) because it contained a fundamental right of the applicant under procedural law that was already guaranteed under his country's legislation.

1163. Mr. PIANO (Slovenia) supported the retention of Article 10(2) for the reasons given by the Delegations of the United States of America and the EPO.

1164. Mr. MATENJE (Malawi) supported the retention of Article 10(2) since the right to be heard was guaranteed in his country's constitution as a fundamental principle of natural justice.

1165. Mr. BOGDANOV (Russian Federation) supported the retention of Article 10(2) because it contained an indispensable fundamental principle.

1166. Mrs. PII (Lesotho) supported the retention of Article 10(2).

1167. Mr. SANGALE RONDO (Equatorial Guinea) said that his Delegation joined the other Delegations that had supported the retention of Article 10(2), since no one could be denied the possibility to seek remedies and make observations so as to defend his or her rights, as a matter of principle.

1168. Mr. ROUTMAN (ABA) supported the retention of Article 10(2) for the reasons given by the Delegations of Germany, France, the United States of America, Japan and EPO. He noted that the right to be heard prior to invalidation of a patent was a fundamental due process right that should be self-evident.

1169. Mr. VAN HORN (AIPLA) supported the retention of Article 10(2).

1170. Mr. BEIER (FICPI) stated that, as a federation of patent attorneys, FICPI gave the highest attention to the right of a patent owner to be heard. Since this did not seem to be self-evident, he urged delegations to retain Article 10(2).

1171. Mr. MAYSON (Liberia) supported the retention of Article 10(2) as a principle of due process of law.

1172. Mr. JONG (Democratic People's Republic of Korea) supported the retention of Article 10(2).

1173. Mrs. AMMAR (Tunisia) said that her Delegation supported all the delegations that had preceded it and that had spoken in favor of retaining Article 10(2).

1174. Mr. ZOUA (Cameroon) said that his Delegation also supported the proposal made by the Delegations of Germany, United States of America and others, and spoke in favor of retaining the two paragraphs of Article 10. She also suggested that for reasons of style the word "pas" ("not") should be deleted from Article 10(2).

1175. The PRESIDENT suggested to refer the drafting point with respect to the French text to the Drafting Committee.

1176. Mr. WALKER (United Kingdom) concurred with the Delegation of Germany and pointed out that Article 10(2) provided for a fundamental principle. Since it was not universally recognized by all delegations, he strongly supported its retention.

1177. Mr. NIYONKURU (Burundi) said that his Delegation supported Article 10(1) and (2), and suggested that the wording of the two paragraphs should be harmonized, i.e. by deleting from paragraph two "by the Office or by a tribunal, appeal commission or any other competent authority of a Contracting Party", as had been done in paragraph one.

1178. Mr. TRAMPOSCH (WIPO) suggested the deletion of the words "by the Office, a court, a board of appeal or any other competent authority of the Contracting Party" from paragraph (2), as had already been done in paragraph (1).

1179. Mr. BADRAWI (Egypt) said that he had opposed Article 10(2) for a purely technical reason, namely because it was already contained in the TRIPS Agreement. If, however, Article 10(2) was retained, it should, again from a purely technical viewpoint, not contain any restrictions.

1180. Mr. TRAMPOSCH (WIPO) asked for clarification whether the statement of the delegates was that the Delegation of Egypt, while not supporting Article 10(2), was prepared not to block a consensus to retain it in the draft Treaty.

1181. Mr. BADRAWI (Egypt) stated that, while he was convinced of the necessity to provide parties a right to be heard, his original objection was based on the fact that such principle should not be included in a Treaty on procedural matters. He requested that, if the principle was retained, it should not be subject to any restriction in order to avoid its abuse by administrative authorities.

1182. The PRESIDENT noted that the Delegation of Egypt would not object to the adoption of this text.

1183. Mr. HAFEZ ABDELAZIZ (Egypt) said that he did not oppose the adoption of Article 10(2) provided that the phrase "at least one opportunity" be replaced by "the opportunity."

1184. The PRESIDENT noted that this amendment would not seem to make any change in substance and could, therefore, be referred to the Drafting Committee.

1185. Ms. SAHA (India) asked whether the suggestion made by the International Bureau to add a third paragraph, stating that the provisions do not create any obligation to put into place a distinct judicial system, had been withdrawn, or whether it would be taken up later.

1186. Mr. TRAMPOSCH (WIPO) said that the discussion of a suggested new paragraph (3) would be taken up in conjunction with the discussion of paragraph (1).

1187. The PRESIDENT asked whether there were any objections to changing the words "at least one opportunity" to "the opportunity."

1188. Mr. SHALIT (Israel) pointed out that such an amendment would entail consequential changes in Articles 11(6), 12(5) and 13(5).

1189. The PRESIDENT proposed the adoption of Article 10(2) with the deletion of the words "by the Office, a court, a board of appeal or any other competent authority of a Contracting Party", and with the change of the words "at least one opportunity" to "the opportunity."

1190. Ms. SAHA (India) asked for confirmation that Article 10(2) did not in any way compromise or dilute the security concerns addressed in Article 4.

1191. Mr. TRAMPOSCH (WIPO) confirmed that the security concerns in Article 4 would take precedence over Article 10(2).

1192. *The PRESIDENT declared Article 10(2) adopted in substance as amended and referred to the Drafting Committee.*

Article 11: Relief in Respect of Time Limits

1193. The PRESIDENT invited the International Bureau to introduce Article 11.

1194. Mr. BAECHTOLD (WIPO) introduced Article 11 recalling that the current draft was the result of long discussions in the SCP, which made possible to reconcile different systems of relief in respect of time limits.

1195. Mr. BARTELS (Germany) withdrew the proposal by the Delegation of Germany with regard to Article 11(1) in document PT/DC/7.

1196. Mr. SHALIT (Israel) asked whether a Contracting Party was obliged to provide for the extension of time limits even though paragraph (1) was a "may" provision.

1197. Mr. BAECHTOLD (WIPO) referred to Article 11(2) according to which a Contracting Party that did not provide for the extension of time limits under paragraph (1)(ii) would be obliged to provide continued processing.

1198. Mr. CONGREGADO LOSCERTALES (Spain) pointed out that the title of Article 11 in the Spanish version read "*recursos en materia de plazos*" ("Appeals in Respect of Time Limits"). He said that the word "*recursos*" was not suitable to define the content of the Article, which in turn could cause ambiguity. His Delegation proposed replacing the word "*recurso*" with the word "*prórroga*" ("extension") or "*disposiciones*" ("provisions").

1199. *The PRESIDENT declared Article 11(1) adopted in substance and referred to the Drafting Committee.*

1200. The PRESIDENT invited the Delegation of Germany to introduce its modified proposal on Article 11(2).

1201. Mr. BARTELS (Germany) referred to the Explanatory Notes 11.01 and 11.02 and stated that Article 11 obliged a Contracting Party to provide relief in respect of time limits either in the form of an extension of a time limit under paragraph (1) or continued processing under paragraph (2). He noted that, under the bracketed language in Rule 12(5)(a)(i), no Contracting Party would be obliged to grant more than one instance of relief in respect of the expiry of time limits, and said that it was necessary to remove the texts within the square brackets. He emphasized that, despite the explanations in the Explanatory Notes, the actual wording of Article 11(2) did not ensure Contracting Parties that they did not have to grant more than one instance of relief, because it referred only to paragraph (1)(ii) and not to all of paragraph (1). He said that this might cause problems when the expiry of a time limit did not lead to a direct loss of rights. He explained that German law provided for means to appeal the rejection of an application, and that these means provided full relief to the applicant since he could comply, during this procedure and until the final decision of the court, with all requirements he had failed to comply with before the expiry of the time limit. He stated that, despite this flexible procedure, the current draft of Article 11 would oblige Germany to provide another instance of relief, namely the continued processing. He noted that this multiplicity of relief might cause confusion between the rules of administrative appeal

and court procedure and the rules concerning continued processing under the draft PLT. He therefore proposed to extend the reference in Article 11(2) to both items of paragraph (1) so that the provision would read as follows:

“(2) [Continued Processing] Where an applicant or owner has failed to comply with the time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office in respect of an application or a patent, and that Contracting Party does not provide for extension of a time limit, under paragraph (1)(i) or (ii)...”

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1202. Mr. JENNY (EPI) stated that the proposal of the Delegation of Germany was a step backwards. During the discussion at the SCP, a compromise solution had been reached to the effect that applicants had a guarantee that they could either ask for a retroactive extension of a missed time limit, or request further processing. According to the proposal by the Delegation of Germany, as soon as a country gave the possibility to extend a time limit, either before or after the expiration of the time limit, there was no obligation for that country to provide further processing. Therefore, he expressed the hope that the proposal would not find any support.

1203. Mr. BARTELS (Germany) said that his Delegation understood the need for a relief in respect of time limits, but that Article 11 did not cover all possible systems to grant this relief. In Germany, after the expiration of the time limit, the applicant could ask for an extension of the time limit until he received the final decision of the Office. In this case, there would really be no need to grant continued processing. He questioned whether Article 11 would allow continuing this practice in Germany without having to change the law. Furthermore, against a decision of the Office, one could lodge an appeal within one month from that decision. It was difficult to allow for a two months time limit for an appeal in Germany, because this time limit of one month for an appeal was a general provision of procedural law. The delegate asked, in case there was no support for his proposal, whether it was possible to find a solution on the basis of the last proposal contained in document PT/DC/7, namely to introduce a time limit of at least one month. This would give all Contracting Parties the possibility to maintain a two months time limit.

1204. Mr. TRAMPOSCH (WIPO) explained that the provision was crafted by the Standing Committee to allow a number of different procedures to accomplish one particular result. That result was that there should be a period after the expiration of a time limit during which the applicant or owner could request relief for having missed that time limit, and the relief would be granted on presentation of such a request plus the payment of the fee with no other requirements. That relief could be requested during a two-month period. The procedures as described by the Delegation of Germany would be considered to fulfil these provisions, except that the provisions did require a two-month time limit.

1205. Mr. VIDAURRETA (Argentina) said that his delegation shared the views expressed by the Delegation of Germany, basically for the same reasons. He therefore supported the reduction of the period provided for in Rule 12 to one month, as proposed by the Delegation of Germany. With regard to Article 11, he proposed that its provisions could be made optional, in view of the fact that the treaty would be more successful if it reflected in sufficiently broad terms the real situation in the various Contracting Parties.

1206. Mr. BEIER (FICPI) suggested to use, in the fourth line of Article 11(2), the words “that time limit” instead of the word “any time limit.”

1207. Mr. BELKAID (Morocco) asked, on the subject of Article 11(2), whether a Contracting Party that did not provide for extension of a time limit was under the obligation to provide for continued processing.

1208. Mr. TRAMPOSCH (WIPO) said that, if a Contracting Party did not provide for extension of a time limit based on a request which was filed after the expiration of the time limit under paragraph (1)(ii), the introduction of continued processing under paragraph (2) would be mandatory.

1209. Mrs. ABD EL GAWAD (Egypt) sought clarification whether the extension of time limits under Article 11(1) and (2) was considered to apply in situations of a request or an appeal to a particular committee, or was an extension of the time limits because of a failure to comply with the official formalities within a certain period of time. In the latter case, it seemed to be necessary to specify in the Regulations the time limits in question and the terms of extending those limits.

1210. Mr. TRAMPOSCH (WIPO) said that relief in respect of time limits applied in situations where there was a failure to accomplish something by the time the original time limit expired.

1211. Mrs. EL MAHBOUL (Morocco) said that she had a reservation regarding Article 11(2).

1212. Miss EL KATEB (Tunisia) had a reservation regarding paragraph (2) of the Article.

1213. Mr. STOHR (EPO) said that Article 11(2) was the core provision of the whole Article, making it mandatory to provide for relief of missed time limits, either in form of an extension of the time limit requested after its expiry, or through continued processing. The Delegation had always supported the concept set out in the Basic Proposal and was concerned that, although this clearly was a provision which safeguarded the rights of applicants, the discussion seemed to produce more and more doubts in that respect. Regarding the proposal by the Delegation of Germany, the delegate expressed concern that it would weaken the proposed concept. Therefore, a solution should be sought on the level of the Regulations.

1214. Mr. HERALD (Australia) said that from his Delegation's point of view, the presumption underlying the Diplomatic Conference was that the resulting Treaty was going to require changes in national laws. He felt that Article 11(2) was the critical part of Article 11, since everybody could make mistakes, offices included. Therefore, a reasonable mechanism was needed to address situations where time limits were missed. He said that he could not support the German proposal because it broke down the necessary relationship between paragraphs (1) and (2).

1215. Mrs. BOLAND (United States of America) expressed full support to the interventions made by the Delegations of Australia and the EPO. She said that the balance that had been reached in the Basic Proposal for Article 11 was an important one, and should be maintained.

1216. Mr. TRAMPOSCH (WIPO) asked for clarifications whether the interventions of the Delegations of Morocco and Tunisia could be understood as entering reservations in the sense that the delegations did not support that provision, but that they would not block a consensus for its adoption into the Treaty.

1217. Mrs. EL MAHBOUL (Morocco) said that she did not wish to block the consensus, but that she nevertheless wanted the reservations expressed by her Delegation to be reflected in the Conference record.

1218. Mrs. ABD EL GAWAD (Egypt) said that her Delegation reserved its position with respect Article 11(2), but would not object to the adoption, of that provision.

1219. *The PRESIDENT declared Article 11(2) adopted in substance and referred to the Drafting Committee.*

Article 11: Relief in Respect of Time Limits

Rule 12: Details Concerning Relief in Respect of Time Limits Under Article 11

1220. The PRESIDENT opened discussion on Article 11(3), (4), (5) and (6) and Rule 12(1) and (2). He proposed to change, in Article 11(6), the words "at least one opportunity" to "the opportunity."

1221. Mr. YAMAMOTO (JPAA) proposed the deletion of items (iii) and (v) from Rule 12(5).

1222. Mrs. BOLAND (United States of America) referred to paragraph 12 of document PT/DC/8, where the deletion of the term "intended" in Articles 11(6), 12(5) and 13(5) was proposed. She said that her Delegation would be satisfied if the exact meaning of that term could be further clarified in the Notes.

1223. Mr. TRAMPOSCH (WIPO) said that the International Bureau would include the relevant elaboration in the notes.

1224. Mr. BADRAWI (Egypt) said that, with view to the amendment to Article 10(2), it appeared necessary to amend also Article 11(6), and to change the words "at least one opportunity" to "the opportunity."

1225. Ms. CHNG (Singapore) said that, according to Article 11(2), it would appear that if the applicant were not to comply with the requirements after the expiration of the time limit, the Contracting Party should provide for continued processing and, if necessary, reinstate the right of the applicant. This presupposed that there was some discretion left to the Contracting Party, whether or not to grant the extension. Concerning the prohibition of other requirements in paragraph (5), she said that it appeared that a Contracting Party would not be able to ask the applicants for reasons as to why such a delay had occurred.

1226. Mr. TRAMPOSCH (WIPO) explained that the intent of Article 11 as compared to Article 12 was that a Contracting Party could not require the furnishing of reasons for which the time limit was missed. The reason for using the work "if necessary" in respect of continued processing was that under different national systems providing for continued processing, some considered that the rights had been lost upon the expiration of the time limit and others consider those rights only to be lost upon the expiration of the period for requesting continued processing. Therefore, in some cases, rights would have to be reinstated and in other cases the rights would not have to be reinstated and there would simply be continued processing.

1227. Mr. MOUKOURI (Congo) suggested an improvement to the wording of the French version of paragraph (5), involving the deletion of the word "*que*," proposing that it should read as follows: "... *aucune partie contractante ne peut exiger des conditions autres que celles qui sont indiquées ...*" ("...no Contracting Party may require that requirements other than those referred to...").

1228. The PRESIDENT proposed to refer this issue to the Drafting Committee.

1229. *The PRESIDENT declared Article 11(3) to (6) and Rule 12(1) and (2) adopted in substance and referred to the Drafting Committee.*

1230. The PRESIDENT opened discussion on Rule 12(3) and (4).

1231. Mr. EDGAR (IPIC) said that his Delegation had consistently taken the position that the right to be notified was of fundamental importance. It was the position of the Delegation that Rule 12(4) should provide a period of not less than two months from notification by the Office of a failure to comply with a time limit. Furthermore, he suggested that the time limit in Rule 12(4) should run from the notification by the Patent Office of the missed time limit.

1232. Mr. BARTELS (Germany) referred to document PT/DC/7 containing a proposal of the Delegation of Germany concerning Rule 12(4). The Delegation proposed the following wording for that provision: "The time limit referred to in Article 11(2)(ii) shall expire not earlier than at least one month after a notification of the Office that the applicant did not comply with the time limit fixed by the Office."

1233. Mrs. MARCADÉ (France) said that her Delegation had always supported the need, in the case of continued processing, to have the time limit not observed calculated from the time of notification by the Office. In France, interested groups in general and applicants in particular were moreover very much in favor of such notification, which was very important in terms of the applicant's security. Finally, she added that specifying a time limit of two months "calculated from the notification," would clarify the difference between Article 11(1)(ii) and paragraph (2) of the same Article. She concluded by saying that her Delegation supported the proposal by the Delegation of Germany concerning paragraph 4 of document PT/DC/7.

1234. Mr. IWASAKI (Japan) recalled that a requirement of notification was not inserted into the Basic Proposal in order to avoid a heavy burden on the Offices. This was a very serious problem for Japanese Patent Office, which dealt with 400,000 applications per year. Therefore, the Delegation opposed the proposal by the Delegation of Germany.

1235. Mr. BEIER (FICPI) expressed support for the proposal of the Delegation of Germany. Continued processing was surely a blessing for applicants and it should be a safety net for cases where a delay was

unintentionally missed. However, it could only have effects if the applicant knew which term he had missed. Therefore, FICPI very strongly supported that the time limit should start from notification and that notification was made mandatory.

1236. Mr. JENNY (EPI) expressed strong support of the proposal for the Delegation of France.

1237. Mrs. LÖYTÖMÄKI (Finland) said that her Delegation supported the Basic Proposal on Rule 12(4).

1238. Mr. BÜHLER (Switzerland) said that his Delegation supported the proposal made by the Delegation of France and the suggestion to retain the two-month period.

1239. Mrs. PETIT (Belgium) said that her Delegation supported the proposal submitted by Germany as amended by the Delegation of France, namely two months calculated from the date of notification.

1240. Miss EL KATEB (Tunisia) said that her Delegation supported the Delegation of France regarding the date from which the time limit should begin, i.e. the date of notification.

1241. Mr. BADRAWI (Egypt) expressed support for the proposal that the time limit should be counted from the date of notification.

1242. Ms. CHNG (Singapore) sought clarification on the exact date as of when the time limit had to be calculated from. Would the time period start running from the date when the notification was sent by the Office, or from on the date of the receipt of the notification by the applicant?

1243. Mr. BAECHTOLD (WIPO) explained that, as was the case in other provisions of the Treaty, it would left to national law whether notification was to be understood as when the notification was sent or when it was received.

1244. Mr. BADRAWI (Egypt) said that it should be counted from the date of receipt of the notification by the applicant.

1245. Mr. HERALD (Australia) said that his Delegation did not object to the changes proposed to Rule 12(4), conditional upon the maintenance of paragraph 5(vi) concerning relief in respect of *inter partes* proceedings. The position of his Delegation would be different if item (vi) would be deleted.

1246. Mr. HE (China) said that his Delegation supported the Basic Proposal. The Office in China received a large number of applications. The applicant would know of a time limit in advance, and giving yet another time limit would not seem to be of assistance.

1247. Mr. STOHR (EPO) said that his Delegation supported those delegations which had spoken in favor for starting continued processing from the date of the notification informing the applicant of his failure to meet that time limit.

1248. Mr. MERRYLEES (ABAPI) said that his Delegation supported the proposal of the Delegation of France. He also associated his Delegation with the Delegations of FICPI, IPIC, EPI regarding the need for a notification.

1249. Mr. SHALIT (Israel) supported the intervention of the Delegation of France.

1250. Mr. STRENC (Romania) supported the proposal of the Delegation of France.

1251. Mr. BADRAWI (Egypt) expressed support for the provision of notification.

1252. Mr. HERALD (Australia) noted that, in the context of Article 3(6), it had been stated that an advertisement in a local newspaper could constitute a valid notification, if it was provided for under national law. He queried whether this would also be the case under Rule 12(4).

1253. Mr. TRAMPOSCH (WIPO) explained that, as under Article 3(6), this matter.

1254. The PRESIDENT noted that a majority of the Committee seemed in favor of the proposal by the Delegation of Germany, with a change of the time period from one month to two months.

1255. Mr. HE (China) expressed a reservation to that provision, but said that his Delegation was not opposed to the adoption of this paragraph under consideration.

1256. Mr. IWASAKI (Japan) said that his Delegation could follow the consensus for the time limit of two months. However, he asked the Committee to note that, from a practical point of view, it was impossible for the JPO to issue a notification in every case under Article 11.

1257. *The PRESIDENT declared Rule 12(3) and (4) adopted in substance and referred to the Drafting Committee.*

1258. The PRESIDENT opened discussion on Rule 12(5).

1259. Mr. SHALIT (Israel), referring to document PT/DC/25, proposed an additional exception under Rule 12(5) in respect of which an extension of time limit should not be mandatory, namely, relief in respect of a time limit for a procedure before the Office concerning the prosecution of an application after the applicant has been notified by the Office that the prosecution of another application of a different applicant is being suspended until the completion of that procedure. He explained that, in Israel, examination of an application may be deferred where the examiner intends to cite an earlier application not yet published until the publication of that earlier application (after its examination and acceptance). In such instances, extensions of time were not normally given to the earlier applicant because this was against the interest of the later applicant.

1260. Mr. BARTELS (Germany) referred to the proposal of his Delegation in document PT/DC/7 to delete Rule 12(5), item (vii). It did not see the necessity of this exclusion where a request for expedited or accelerated processing had been granted. It should be left to the Office if it wished to give relief in that case. Furthermore, the Delegation proposed to delete the square brackets around item (v) and to maintain the remaining wording in Rule 12(5).

1261. Mr. IWASAKI (Japan) said that the Delegation of Japan wished to propose the deletion of the brackets in item (i). In principle, it welcomed in principle the relief in respect of time limits since the Treaty aimed at user-friendliness in almost all aspects. However, the Delegation wished to insert in item (i). Since it objected to the idea of second and any subsequent relieves. The relief procedure should only be applied to an applicant's unintentional or *bona fide* mistake. The provision for numerous subsequent reliefs would jeopardize the balance between applicant and third party in terms of monitoring patent rights. As regarded item (v), the Delegation expressed concern that relief in respect of a time limit before a board of appeal or other review body with the Office would cause delay in the working of such bodies which needed to operate effectively and quickly to avoid damaging the rights of the parties involved. The Delegation therefore supported the inclusion of item (v).

1262. Mr. BEIER (FICPI) stated that his organization strongly supported deletion of the restriction mentioned in item (vi) from the list of exceptions. In its view, a patent owner or an opponent who had missed a time limit for an action in *inter partes* proceedings, such as opposition proceedings within the Office should not be treated more restrictively than an applicant who had missed a time limit in examination proceedings.

1263. Mr. HERALD (Australia) stated that his Delegation supported the Delegation of Germany's proposal to delete item (viii). The fact that an applicant had asked for expedited examination did not remove the likelihood that problems would occur and the Delegation thought that relief should not be excluded. In respect of item (viii) in respect of *inter partes*, the Delegation was of the view that it would be appropriate not to include that text. With reference to the comment by FICPI proceedings, the Delegation of Australia had, for many years, argued that *inter partes* proceedings should be excluded from this mechanism. It was not of the view that extensions of time should not be given in *inter partes* proceedings, it was rather that the mechanism provided for in Articles 11 and 12 was not appropriate to deal with situations where the rights of a third party were involved. In that respect, and noting the concerns that had been expressed consistently for some years by FICPI, the Delegation had prepared a proposed agreed statement for the Committee which was in the process of being translated.

1264. The PRESIDENT invited the Delegation to read out the text to allow for reflection.

1265. Mr. SPANN (Australia) read the proposed statement: "When adopting Rule 12, subparagraph (5)(vi), and Rule 13, subparagraph (3)(vii), the Diplomatic Conference understood that, while it was appropriate to exclude actions in relation to *inter partes* proceeding from the relief provided by Article 11 and Article 12, it was desirable that the national law or the applicable law of Contracting Parties provide similar relief in those circumstances which takes into account the competing interests of third parties."

1266. The PRESIDENT invited comments on the proposed statement as well as Rule 12(5).

1267. Mr. STOHR (EPO) gave his organization's views on the list of exceptions under Rule 12(5). As to item (i), it wished to delete the square brackets and to limit the exceptions to relief under Article 11(1)(ii) and Article 11(2) so that continued processing would also have to be granted where a time limit that had been extended under Article 11(1)(i) was not complied with. As to item (v), it was in favor of deleting the text in square brackets so that there would be no general exemption from the obligation under Article 11(1)(i) or (ii) in regard of relief in respect of time limits for action before review bodies. Under item (vi), however, it wished to keep the possibility to make exceptions with regard to time limits in *inter partes* proceedings. As to (vii), it was in favor of deleting the text in square brackets.

1268. Mr. UNGLER (Austria) stated that the Delegation of Austria supported the deletion of the square brackets in items (i) and (v) and the deletion of the text in item (vii) in accordance with the President's proposal.

1269. Mr. HE (China) stated that, since speeding up the processing was in the interest of the effective protection of the applicants' rights, his Delegation proposed that no relief be provided in the following cases: Firstly, the case where relief had already been granted, as under item (i). Secondly, the case provided for in item (v), namely where relief in respect of a time limit for an action before a board of appeal or other review body constituted in the framework of the Office had already been granted. Thirdly, the case provided for in item (vii), where relief in respect of a time limit for an action in a procedure before the Office in respect of which a request for expedited or accelerated procedure or other processing had been granted because the expedited processing requested by the applicant had already been granted. If relief was given in such a case, it would be against the applicant's desire for a speeded up processing. In conclusion, the Delegation's opinion was to delete the square brackets while retaining the language in the square brackets in items (i), (v) and (vii).

1270. Mr. TRAMPOSCH (WIPO) asked for confirmation of his understanding that the Delegation of China wished to keep items (i), (v) and (vii) in the final Treaty, that is, to maintain the text and delete the square brackets.

1271. Mr. HE (China) confirmed that this was the intention of the Delegation of China.

1272. Mr. JUNG (Republic of Korea) declared that his Delegation supported the retention of items (i), (v) and (vii), and supported the deletion of the square brackets in these items. Especially with regard to item (i), the proposed relief in respect of a time limit as provided for in Article 11 was intended to prevent a loss of right by mistake. The proposed relief should not enable applicants or owners to extend on purpose the time limit fixed by the Office. In a case where an applicant who had not complied with the second time limit requested a second relief, it could be assumed that non-compliance with the second time limit was not the result of a mistake but was intentional. If item (i) were to be deleted, an applicant could theoretically extend a time limit for an unlimited period. Thus, the Delegation of the Republic of Korea supported the retention of item (i). In addition, it should be noted with regard to all items in this Rule, that the Office was not required to provide the relief referred to in items in Rule 12(5). In other words, if a Contracting Party choose to give relief on its own authority, it might provide for the relief even with respect to all the exceptions prescribed in Rule 12(5). This interpretation was supported by Article 2(1) which provided that Contracting Parties were free to provide for more favorable requirements. The Delegation therefore opposed the deletion of items (i), (v) and (vii).

1273. The PRESIDENT, for the sake of clarity, said that he interpreted the position of the Delegation of the Republic of Korea to be that it wished to delete the square brackets around the text in items (i), (v) and (vii), and to keep the text that was included in the brackets.

1274. Mr. JUNG (Republic of Korea) confirmed that this was so.

1275. Mr. BOUCOUVALAS (Greece) stated that his Delegation supported the deletion of the square brackets in item (i) of Rule 12(5)(a), and also the deletion of the texts in items (v) and (vii) that were in square brackets.

1276. Mrs. BOLAND (United States of America) said for the record that, while her Delegation's document PT/DC/8 went into detail on a number of these items, the only item that now concerned her Delegation was in item (vii). Her Delegation opposed the inclusion of that item.

1277. Mr. WEARMOUTH (United Kingdom) said that his Delegation, regarding item (i), recognized the need to allow at least one opportunity for an extension and fully supported that principle. However, it strongly rejected the proposition that anyone who had already benefited from one extension should have an automatic right to further extensions. This could lead to abuses whereby an applicant or a patent owner might use the system to the detriment of third parties, particularly in those instances where compliance with an outstanding requirement was not a prerequisite for the extension. In this particular case, the Delegation wished to see the brackets removed and the text retained. On item (v), in its experience, one of the biggest delays in proceedings before review bodies stemmed from grants of extensions and this again could create considerable uncertainty for third parties. It therefore opposed the proposal that a time limit should be extendable as of right in proceedings before such bodies and wished the square brackets removed and the text retained. Regarding item (vi), it wished this provision retained and, for the record, was opposed to the intervention by the Representative of FICPI. Finally, turning to item (vii), it believed that extension should be available where expedited or accelerated processing had been granted in the same way as in normal processing. The Delegation therefore strongly resisted introduction of this provision.

1278. Mr. JENNY (EPI) indicated that his organization wished to support the deletion of item (vi) for the reasons brought forth by FICPI. As to the exceptions in square brackets, he proposed to delete items (i), (v) and (vii). As to item (vii), even if expedited or accelerated processing had been granted, it could happen that, in the examining proceedings, in order to show inventive step, the applicant would be required to furnish evidence based on further experiments. In such a case, it should be possible to extend the time limit since otherwise the application could be refused because the applicant could not carry out the further experiments in time. Such cases arose at least in chemical applications. As to the second or subsequent relief, a compromise could be the suggestion of the Delegation of the European Patent Office to limit this exception to relief under Article 11(1)(ii) and 11(2).

1279. Mr. YAMAMOTO (JPAA) indicated that JPAA supported the deletion of item (v) and proposed the deletion of item (iii) for the sake of user-friendliness.

1280. Mr. TRÉPANIÉ (Canada) said that his Delegation wished items (v) and (vii) to be deleted for the reasons that had already been mentioned by previous speakers.

1281. Mr. RAJAN (Ireland) indicated that, with respect to items (i) and (v), his Delegation was in favor of the deletion of the square brackets and the retention of the text. With respect to item (vii), it favored the deletion of the text.

1282. Mrs. ABD EL GAWAD (Egypt) declared that her Delegation believed that there was no need to delete items (v) and (vii). However, it was in favor of deleting the square brackets around item (i) and keeping the remainder of the text.

1283. The PRESIDENT, summarizing the discussions, said that there seemed to be very strong support for maintaining the language or adding to the language in item (i) which was for the time being in square brackets. There was continued support for items (ii), (iii) and (iv); with respect to item (v). There was some difference of opinion, but a majority had spoken in favor of including the language and therefore deleting the square brackets. He noted that inclusion of the language would leave flexibility for all Contracting Parties. No one would be required to, and no one would be prevented from, providing extensions even in that situation. Item (vi) was clearly supported item (vii) had received very little support. There had been little or no support for alternative proposal. In particular, the proposal by the Delegation of Israel had not received any support. Based on that discussion, he proposed adoption of Rule 12(5)(a) with the inclusion of the language appearing in items (i), (ii), (iii), (iv), (v) and (vi), but with the deletion of the language in item (vii). Having received no objection to that proposal, he declared Rule 12(5)(b) adopted in substance and referred to the Drafting Committee in that form. With the absence of any

opposition to the inclusion of subparagraph (b), he declared Rule 12(5) adopted in substance and referred to the Drafting Committee.

Article 12: Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office

Rule 13: Details Concerning Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12

1284. The PRESIDENT invited the International Bureau to introduce Article 12 and that related Rule 13.

1285. Mr. LEWIS (WIPO) explained that Article 12 provided for the re-instatement of rights after a finding of due care or unintentionally by the Office. In contrast to Article 11, Article 12 was not limited to time limits fixed by the Office, but applied any time limit for an action in a procedure before the Office. It also only dealt with time limits where failure to comply had the direct consequence of causing loss of rights with respect to an application or patent. The Explanatory Notes explained exactly what was meant in this respect. The conditions for re-instatement were set out in items (i) to (iv). In order to make the meaning of this item (iii) clearer, the International Bureau suggested to replace the words "grounds on which it is based" by the words "reasons for the failure to comply with the time limit." Item (iv) provided for a funding by the Office that the failure to comply with the time limit occurred in spite of all due care required by the circumstances having been taken or, at the option of the Contracting Party, that any delay was unintentional. These two possibilities for the Contracting Party had been discussed at some length over several meetings of the SCP. The consensus had been reached within that Committee that these two options should be provided to take account of the differing approaches by the different Offices. An explanation was also included in the Explanatory Notes. In the paragraph (a), as a consequential change to what had been suggested in paragraph (1), the International Bureau suggested that the word "grounds" in the second line of the English text be replaced by "reasons." In paragraph (5), as a consequential amendment to amendments adopted under Articles 10 and 11, it was suggested that the words "at least one opportunity " be replaced by "the opportunity."

1286. The PRESIDENT invited comments on Article 12(1).

1287. Mr. SHALIT (Israel), referred to the proposal of the Delegation of Israel (document PT/DC/15). He noted that Article 12(1) related to loss of right with respect to an application or a patent. In this respect, the Delegation felt that the provisions of this Article should apply to a patent application but had some reservations about its application to patents. When rights in a patent were lost because of the owner's failure to take some action, the patent rights immediately became available to the public. The Delegation therefore felt that the public whose rights were affected should have an opportunity to challenge any request for re-instatement of a patent right. In particular, the public might be able to prove or to show that, although the owner said that his reasons had been unintentional or gave adequate reasons, this was not the case. Therefore, an opportunity for the public to oppose should be provided in case of any re-instatement of rights in a patent.

1288. Mr. PAL (India) said that this provision for the re-instatement of right dealt with the case where loss of right was the direct consequence of a failure to comply with a time limit and when such failure was unintentional or happened despite of due care. When there was loss of right in an application or patent, the invention fell into the public domain. Re-instatement of the right in such application or patent would be likely to affect third parties. The grounds that it was unintentional or in spite of due care were too wide and might be misused or invite dispute between the Office and the applicant or patentee, which would lead to unwanted litigation. For all these reasons, the Delegation was unable to accept this particular provision.

1289. Mr. TRAMPOSCH (WIPO) mentioned that this issue had come up during the discussions in the Standing Committee. In fact, at one point, there had been a provision in the Treaty for intervening rights. However, the Standing Committee had decided that intervening rights should be left to national law. He referred to the explanatory Notes in document PT/DC/5, in particular Note 12.10, that made this clear.

1290. Mr. WEARMOUTH (United Kingdom), recalling that Note 12.06 referred to a reservation by the Delegation of the United Kingdom, said that the Delegation now wished to lift that reservation.

1291. Mrs. BOLAND (United States of America) indicated that the Delegation of the United States of America had no concerns with the particular language used in item (iv) of Article 12(1). However, in paragraph 14 of document PT/DC/8 that contained the proposals by her Delegation, there appeared a

proposed Agreed Statement concerning the level of care that could be imposed under the “in spite of all due care” requirement. In particular, the Delegation, after discussion with its interested circles, had become aware of the fact that this standard as it was currently applied in certain offices throughout the world, was an extremely high standard that often precluded relief in situations where relief should be granted. The distinction was that a standard applied to cases only beyond the control of applicant *versus* a standard where an applicant or a patentee might rely on trustworthy or dependable procedures and personnel. The Delegation therefore wished to propose that Agreed Statement to the Conference for their consideration, to ensure that the relief that may be provided under Article 12 was in fact meaningful relief in all Contracting Parties.

1292. Mr. HERALD (Australia) declared that his Delegation would certainly go along with supporting the Agreed Statement if the reference to all due care could not be interpreted as meaning an exceedingly high standard. The Delegation certainly gave considerable support to the last four lines of the Agreed Statement.

1293. Mr. IWASAKI (Japan) said that his Delegation opposed the Agreed Statement regarding the re-instatement of rights in paragraph 14 of document PT/DC/8 proposed by the Delegation of the United States of America. The Delegation believed that the interpretation of “in spite of all due care required by the circumstances” and “unintentional” in Article 12(1)(iv) should be left to the Contracting Parties. Re-instatement of rights might result in disadvantages for third parties. The Delegation believed that extreme caution should be exercised by offices under Article 11 as well as Article 12. With regard to Article 12, in particular, it was indispensable that the Office that admitted re-instatement of rights carefully consider the possible disadvantages to third parties. The Office should have its own jurisdiction to judge the balance between the re-instatement and the possible impact caused by the re-instatement. A similar approach was also taken in the PLT regarding the requirement of evidence, namely “reasonable doubt” under Article 6(6). The Explanatory Note for Article 6(6) indicated that it was up to each Contracting Party to interpret the phrase “may reasonably doubt the veracity of any matter...” Each Contracting Party should have its own jurisdiction to judge if the matter in question was reasonably doubtful, taking the domestic background into consideration. In conclusion, the Delegation strongly opposed any provision and any Agreed Statement that restricted the Contracting Parties’ right to reflect their legislative interpretation. The Delegation said that the text in Article 12 be retained and strongly objected to the Agreed Statement proposed by the Delegation of the United States of America.

1294. Mr. VIDAURRETA (Argentina) said that his Delegation was in agreement with Article 12 of the Basic Proposal, although he understood that subparagraph (iv) of paragraph (1) caused problems when it came to determining its scope. He explained that the legislation of Argentina accommodated subparagraph (iv) within the concept of *force majeure*, which both statutory law and case law had developed over the years. This was bound to vary from country to country, which was why his delegation supported what had been said by the Delegation of Japan in the sense that it would be appropriate to have the demarcation of the scope of that provision left to the national legislation of each Contracting Party.

1295. Mr. WALKER (United Kingdom) said that his Delegation was content with Article 12(1) as it appeared in the Basic Proposal. On the proposed statement introduced by the Delegation of the United States of America, his Delegation was happy with the text up to the last four lines. It would certainly agree that the test of due care should not be too high. It could also agree that events beyond the control of the patent owner should not influence the determination of due care. However, the Delegation raised a concern that the final part of the statement attempted to establish exhaustively the criterion for determining due care. In conclusion, the Delegation supported the first part of the statement but had reservations concerning the last four lines.

1296. Mr. JUNG (Republic of Korea) said that the “reasonable level of the due care” standard proposed by the Delegation of the United States of America was not acceptable to his Delegation. If the standard were adopted as proposed, a Contracting Party must admit re-instatement of rights where an applicant followed the guidance of his representative or an employee of the Office. Even though a patent attorney or an office member were trustworthy, dependable personnel, his or her guidance must not be the reason of the re-instatement of the right. It was not desirable if the behavior of a representative could be evidence to decide on the re-instatement issue. Every day, many office members were responding to questions by applicants or owners through several channels, such as the telephone or an Internet bulletin board. If the response could be the reason for the re-instatement of rights, an office member might hesitate to answer the question so as to respond without any error. The Delegation was worried about

this kind of situation. In conclusion, it opposed the proposal by the Delegation of the United States of America.

1297. Mr. BOUCOUVALAS (Greece) said that his Delegation supported Article 12(1) of the Basic Proposal with the amendment of item (iii) proposed by the International Bureau. Referring to the draft Agreed Statement proposed by the Delegation of the United States of America in document PT/DC/8, the Delegation opposed it because, according to its legislation and judicial practices, it was up to the judge to decide what the due care required was.

1298. Mrs. LAGARMILLA (Uruguay) said that her Delegation shared the reasoning underlying the statement by the Delegation of Japan regarding the Agreed Statement proposed by the United States of America. She mentioned that, in legislation based on Roman law, the concepts of unforeseen circumstances and *force majeure* were already traditions of long standing and had been abundantly developed in legal literature and case law, in the same way as what was known as the diligence of a good head of family. Her Delegation therefore supported the Agreed Statement proposed by the United States of America for Article 12(1)(iv).

1299. Mr. BADRAWI (Egypt) said that the text as it stood was fully satisfactory to his Delegation. It was of course willing to try and reach a certain consensus on item (iv) of Article 12(1). He pointed out that what was not satisfactory to a number of speakers lied in the expression "all due care required." What was at stake here was the qualification of "due care". Perhaps the word "all" could be taken out so as to simply say "the Office finds that the failure to comply with the time limit occurred despite appropriate due care having been taken." This would go somewhat towards mitigating the implications or the strength of the term "due care". This expression was actually the source of the misunderstandings that had prevailed so far in the discussion.

1300. Mr. VAN HORN (AIPLA) gave his organization's support of the language of Article 12(1)(iv) and agreed with the delegations that had said that the application of this due care standard or unintentional standard must be left to the Contracting Parties in individual situations. However, AIPLA was of the view that there was a need for application of these standards so that relief under those standards was effectively available. AIPLA therefore supported the statement by the Delegation of the United States of America or something similar in order for an effective relief to be available to parties affected.

1301. Mr. TRÉPANIÉ (Canada) said that since, in Canada, re-instatement of rights was done with a minimum procedure simply on request and, of course, on payment of a fee, the Delegation of Canada could fully support the text of Article 12(1), as well as the statement proposed by the Delegation of the United States of America.

1302. Mr. ZOUA (Cameroon) said that his Delegation supported the proposal made by Egypt insofar as the concept of care, which was not quantifiable, was a subjective concept that as such depended on judges. He added therefore that his Delegation could not support the proposal by the United States of America that a joint text or a text specific to all delegations should be drawn up.

1303. Mr. KUSHAN (BIO) said that his organization shares the comments from the AIPLA, in particular regarding the need for a general sense of flexibility in applying the standard of due care. He added that, to the extent an interpretation statement achieved that objective, his organization would fully support the view of adding it as had been proposed by the Delegation of the United States of America.

1304. The PRESIDENT wondered whether the proposal made by Egypt might provide a way forward and asked delegations whether a change in the text of (iv) of the word "all" before "due care" to something like "relevant" or "appropriate" might be satisfactory without any agreed statement being necessary.

1305. Mr. HERALD (Australia) suggested the word "reasonable".

1306. The PRESIDENT asked the delegations for their comments on the proposal "in spite of reasonable due care" required by the circumstances.

1307. Mr. WALKER (United Kingdom) suggested referring to "reasonable care" rather than "reasonable due care".

1308. Mr. HOLMSTRAND (Sweden) stated that his Delegation would rather prefer to delete the word "all" and retain the words "due care" because the latter was a rather established expression.

1309. Mr. EL FAKI ALI (Sudan) said that his Delegation was of the view that "all due" could be replaced by the word "reasonable", because the factor to be introduced should be flexible in order to simplify the proceedings and make them more user-friendly.

1310. Mrs. LAGARMILLA (Uruguay) said that her Delegation agreed with the text as contained in subparagraph (iv) of Article 12. She considered that the source of dispute was the interpretation of the provision, which had to be made according to the individual provisions of the Contracting Parties. She proposed that the text be left as it was and that the interpretation of the "due care" condition be left in each specific case to the national legislation of individual Contracting Parties.

1311. Miss EL KATEB (Tunisia) felt that it was desirable to retain the usual terminology "all required or necessary care," which clearly conveyed the idea that it had to be proved that the applicant had not through negligence been the cause of failure to observe the time limit.

1312. Mr. TRAORÉ (Mali) pointed out that the diligence issue was understood differently by his Delegation: the problem consisted, for the owner of a patent or for an applicant, in providing proof that he had observed due care to that end. The Delegation of Mali therefore proposed that the request be accompanied by evidence attesting that due diligence had indeed been observed to that end.

1313. Mr. BARTELS (Germany) stated that the Delegation of Germany has some sympathy for the Swedish proposal to delete the word "all" so that (iv) would read: "the Office finds it a failure with the time limit occurred in spite of due care." The Delegation wondered if defining the standard of "due care" in an Agreed Statement, would be advantageous, because it will be the judge who will decide *in fine* about the standard of "due care."

1314. The PRESIDENT summarized the discussions by saying that there seemed to be considerable opposition to any attempt to have an Agreed Statement to explain what the term "due care" means, that a desire to keep the words "due care" was stressed by many delegations and, that the word "all" seemed to create some possibility of misinterpretation, while its replacement with another term seemed to be difficult. He asked whether the Committee might be able to proceed to the adoption of Article 12(1) with the deletion of the word "all" before "due care", with the drafting changes that were proposed by the International Bureau to Article 12(1)(iii) and without the addition of an Agreed Statement.

1315. *In the absence of any objection, the PRESIDENT declared Article 12(1) adopted in substance and referred to the Drafting committee.*

Fifteenth Session
Tuesday, May 23, 2000
Morning

Article 6: Application

1316. The PRESIDENT invited the Delegation of Finland to introduce its proposal on Article 6(3) in Document PT/DC/19.

1317. Ms. LÖYTÖMÄKI (Finland) recalled that the Delegation of Finland had stated earlier that the definition of a "language accepted by the Office" in Article 1(xii) together with Article 6(3) would be contradictory to the Finnish constitution. She explained that the basic linguistic rights of the two language groups in Finland were contained in the constitution. She stated that a patent application could be filed in Finland in any language and receive a filing date, whereupon the Office would then request the applicant to file a translation into one of the official languages. She noted that, when the application became available to the public, the claims and the abstract must be translated into the other official language. She proposed that Article 6(3) be amended by adding a new subparagraph (b), so that those Contracting Parties with more than one official language should in certain cases be allowed to require part of the application in more than one official language.

1318. Mr. SHALIT (Israel) supported the proposal of the Delegation of Finland. He noted that in Israel patent applications could be filed in Hebrew or English, but that the title must be in both languages.

1319. Mr. JUNG (Republic of Korea) opposed the proposal by the Delegation of Finland. He stated that although the proposed translation requirement was limited to the title, claims and abstract of an application, it was an additional burden and was not required by other offices. He stated that if the proposal were adopted many offices may require such translations not because of constitutional restraints, but just to reduce the cost of translation. He stated that the specific problem of Finland should not be solved in the Treaty, but by other methods, such as the increase of filing fees. He noted that many offices were translating the title, claims and abstract into additional languages with such revenue.

1320. Mr. KARUNARATNE (Sri Lanka) supported the proposal of the Delegation of Finland. He noted that Sri Lanka had similar constitutional restraints with regard to language, namely, that an application could be filed in English or in other domestic languages. He noted that, while the intent of the PLT was harmonization, at the same time it should not burden the Office with translations.

1321. Ms. FRANCISCO (Philippines) supported the proposal of the Delegation of Finland, since in the Philippines the two official languages were English and the Philippine language.

1322. Mr. STOHR (EPO) stated that Article 6(3) would prohibit the EPO from requiring a translation of the claim just before the grant of the European patent in order to integrate these translations into the European patent specification. He stated that the understanding of the EPO had always been that Article 6(3) would not prevent a regional patent organization like the EPO from asking, at the grant stage, for the translations necessary to fulfill the language requirements of its Contracting States. He noted that Article 6(3) did not seem to be intended to block regional patent organizations from asking for a translation of the claims when the application is ready for grant, but that doubts could be raised whether Article 6(3), taken literally, would be construed as such. He stated that the proposal of the Delegation of Finland would clearly allow the EPO to publish the European patent in the language of the procedure and to integrate into the patent specification a translation of the claims into the two other languages of the Office which were not the language of procedure. He therefore welcomed the proposal of the Delegation of Finland with the understanding that it did not have any further impact on the European patent system and, in particular, did not provide for a basis for introducing additional language requirements on the level of the EPC.

1323. Mr. HOLMSTRAND (Sweden) supported the proposal of the Delegation of Finland.

1324. Mr. DRISQUE (Belgium) said that the delegation of Belgium supported the proposal made by the Delegation of Finland.

1325. Mr. PAL (India) stated that every part of the application as originally filed and translated subsequently was a legal document, which may come under question before a court in a litigation proceeding; consequently, a Contracting Party should have general power to call for a certified or verified copy of the translation submitted before the Office. He proposed that a provision to that effect be included.

1326. Mr. OMOROV (Kyrgyzstan) supported the proposal of the Delegation of Finland. He noted that Kyrgyzstan also had two official languages for filing applications.

1327. Mr. VIDAURRETA (Argentina) explained that legislation in Argentina provided that any translation that was filed with a State authority had to be done by a national public translator. He therefore asked whether Article 6(3) would prevent the Argentine Patent Office from demanding that a translation be done by a public translator.

1328. Mr. TRAMPOSCH (WIPO) stated that the decision of the Standing Committee was that, because of Article 6(6), additional evidence could be required in case of reasonable doubt, and that additional evidence could include a certification or a notarization.

1329. Mr. JAFAR (Bangladesh) supported the proposal of the Delegation of Finland. As in Bangladesh, Bengali is our national language, so translation in Bengali will be required by the Office.

1330. Mr. DAVIES (Canada) supported the proposal by the Delegation of Finland in principle. He noted that Canada had two official languages and permitted the filing of an application in either language without requiring a translation into the second official language.

1331. Mr. REINHOLD JØRGENSEN (Denmark) supported the proposal of the Delegation of Finland.

1332. Mr. RAJAN (Ireland) supported the proposal of the Delegation of Finland. He stated that he shared the views expressed by the Delegation of the EPO and noted that there was need for clarification with regard to the requirement on translation. He noted that the States party to the EPC were in the process of finalizing a draft agreement concerning the translation of European patents which was likely to be put to a Ministerial Conference of the Member States of the EPO in next October for adoption. He noted that, under the draft agreement, a Contracting State which did not have an official language in common with an official language of the European Patent Office could ask for a translation of the patent specification in an official language of the EPO, specified by that State, and could also ask for a translation of the claims into an official language of that State. He stated that the provisions of the Treaty should not affect the adoption of that agreement.

1333. Mr. BARTELS (Germany) supported the proposal of the Delegation of Finland. He pointed out that a translation of the claims was the basis for exploitation of a patent and that the applicant should assume the responsibility, and thus the liability, for the translation.

1334. Mr. BÜHLER (Switzerland) stated that Switzerland, a multi-lingual country, required translation in only one language accepted by the Office. He stated that the aim of the Treaty was to harmonize patent laws and reduce the burden for applicants, and suggested that the concerns of the Finnish Delegation could be taken care of by entering a reservation pursuant to Article 22.

1335. Mr. BOUCOUVALAS (Greece) supported the proposal of the Delegation of Finland.

1336. Miss EL KATEB (Tunisia) said that, as all the documents enclosed with a patent application had to be supplied in one of the languages recognized by the Tunisian Office, namely Arabic, French or English, the Tunisian Delegation joined the previous delegations that had spoken in favor of that position.

1337. Mr. MATENJE (Malawi) supported the Delegation of Finland. He stated that although in Malawi, formal transactions are, ordinarily, done in English, he foresaw that it might be possible in future to consider the use of vernacular languages in formal transactions as an option to English.

1338. Mr. CONGREGADO LOSCERTALES (Spain) said that his Delegation supported the proposal by the Delegation of Finland regarding Article 6(3).

1339. Mrs. MÁRQUEZ (Venezuela) said that her Delegation supported the proposal by Finland regarding Article 6(3). She asked for the Spanish text of the proposal to be checked, as it should end with the phrase "any of the other languages accepted by the Office."

1340. The PRESIDENT proposed that the point raised by the Delegation of Venezuela be referred to the Drafting Committee for consideration in relation to the Spanish text.

1341. Mrs. LAGARMILLA (Uruguay) said that her Delegation supported the proposal by Finland regarding Article 6(3), and along with Venezuela requested that the Spanish version of the proposal be revised.

1342. Mr. UNGLER (Austria) supported the proposal of the Delegation of Finland in view of the legal requirements under the EPC.

1343. Mr. EL FAKI ALI (Sudan) supported the proposal of the Delegation of Finland.

1344. Mr. PESSANHA CANNABRAVA (Brazil) supported the proposal of the Delegation of Finland.

1345. Mrs. BELKAID (Morocco) said that her Delegation supported the proposal by Finland.

1346. Mr. HERALD (Australia) stated that, on the one hand, translations are very expensive but that, on the other hand, there was a clear need at the national level to ensure that different language groups have

access to information. He stated that the proposal of the Delegation of Finland was a reasonable compromise in view of keeping the need for translation into other languages to a minimum.

1347. Mrs. MODESTO (Portugal) supported the proposal of the Delegation of Finland.

1348. Mr. KHAFAGUI (WASME) pointed out that the question of translations invariably raised a great many difficulties in dealings with patent offices. Therefore, in order to eliminate all translation-related difficulties, WASME preferred all applications and communications to be filed in either French or English. There were three reasons for that choice: those applications would be filed electronically; as most of the countries spoke either language or both, the use of both would enable savings to be made on the costs of translation and internationalize the work of the Office. Finally, such a view should not present problems of sovereignty, as its implications were of a commercial nature.

1349. Mr. ZOUA (Cameroon) supported the proposal of the Delegation of Finland.

1350. Ms. WEN (China) stated that her Delegation had no objection to the proposal of the Delegation of Finland, but noted that the Chinese translation, like the Spanish translation, may not be in conformity with the English version. She noted that the word "other" should not be missed in the context of "any other languages" in the Chinese translation in that portion of the text which stated that the Contracting Party, in addition to subparagraph (a), may also require a translation of the title, claims, the abstract of an application that is in a language accepted by the Office into any other languages accepted by the Office.

1351. The PRESIDENT stated that the issue raised by the Delegation of China could be referred to the Drafting Committee.

1352. Mr. BADRAWI (Egypt) supported the proposal of the Delegation of Finland to add a new paragraph providing a translation of the title, claims and the abstract of an application that is in a language accepted by the Office.

1353. Mr. EREMENKO (EAPO) supported the proposal of the Delegation of Finland. He pointed out that the Eurasian Patent Office has a provision in its constitution to receive applications in Russian, and that there were many States that had Russian as their working language.

1354. Mr. ROUTMAN (ABA) suggested that, to reduce global patent costs, a limit be put on the number of translations.

1355. Mr. VAN HORN (AIPLA) supported the stated concerns of the Representative of the ABA in requiring translations, and noted that it was a burden to the users of the system and could be very costly.

1356. Mr. BEIER (FICPI) supported the suggestion to limit the number of languages that could be required pursuant to the proposal of the Delegation of Finland.

1357. Mrs. HADJÚ (Hungary) supported the proposal of the Delegation of Finland.

1358. Mr. MERRYLEES (ABAPI) supported the proposal of the Delegation of Finland, but expressed concern at the number of translations which might be required by certain countries.

1359. Mr. JUNG (Republic of Korea) stated that it could support the proposal of the Delegation of Finland, in conformity with the majority of the delegations. However, to minimize the problems that had been referred to, he proposed, as a compromise, that translations be limited to independent claims. He noted the claims could be more than several hundred pages long in some cases. He suggested that a translation of the independent claims was enough except in the case of infringement.

1360. Mr. TOURÉ (Burkina Faso) said that his delegation supported the proposal of the delegation of Finland.

1361. Mr. SESE (Kenya) supported the proposal of the Delegation of Finland. He suggested that the number of languages be limited to minimize the burden on applicants, especially applicants from developing countries.

1362. Mr. JONG (Democratic People's Republic of Korea) supported the proposal of the Delegation of Finland in principle. He suggested that there be a limit on the number of languages. He also suggested that in subparagraph (b) the words "in any other languages" be replaced by "any other language."

1363. Mr. TRAMPOSCH (WIPO) noted that there were a number of provisions in the Treaty which dealt with issues that were evolving. He noted that some of these issues were being discussed in other fora, and others may change with changing technology, for example, with respect to machine translations that may reduce the burdens either on applicants or on offices. He suggested that the Committee consider placing the proposed new provision into the Regulations, with amendment that being subject to a unanimous vote, rather than in the Articles, in order to accommodate future changes without the need for a Diplomatic Conference. He noted that in five or ten years there may be a consensus in the PLT Assembly to make a change, one way or the other, for example, in respect of the number, or the scope, of translations.

1364. The PRESIDENT noted that the effect of the suggestion of the International Bureau was to keep the substance of Article 6(3) as it appears in Basic Proposal, with the addition of a basis providing for a Regulation containing subparagraph (b) as proposed by the Delegation of Finland. In addition, amendment of the new Regulation would be subject to unanimity. He asked if there was any objection to adopting the suggestion by the International Bureau in substance and referring it to the Drafting Committee.

1365. *The PRESIDENT, noting that there was no objection to the adoption of Article 6(3) as it appears in the Basic Proposal and with the understanding that the proposal of the Delegation of Finland would be included in the Regulations in a manner suggested by the International Bureau, declared Article 6(3) adopted in substance and referred to the Drafting Committee.*

1366. The PRESIDENT noted that all of Article 6 had been adopted with the exception of Article 6(4), which was set aside at the request of the Delegation of Argentina. He asked the Delegation of Argentina whether it would be possible to turn move forward with the discussion of Article 6(4).

1367. Mr. VIDAURRETA (Argentina) mentioned that his Delegation had previously asked for consideration of Article 6(4) to be deferred on account of the proposal that GRULAC was drawing up on Article 5, but asked whether it would be suitable to discuss the subject at the present time or subsequently.

1368. Mr. PÄTS (Estonia) proposed, on behalf of the Central European and Baltic States Group, to insert after the words "to another agency of the government." in Note 6.14 of the Explanatory Notes the following sentence: "It is recommended that these fees are to be used by the national Offices preferably for the enhancement of the efficiency in the industrial property system."

1369. Mr. TRAMPOSCH (WIPO) expressed the view that adoption of Article 6(4) would not prejudice discussion of the GRULAC proposal. Article 6(4) simply stated that fees may be required, whereas the GRULAC proposal related to the requirement of fees in respect to the filing date.

1370. Mr. VIDAURETTA (Argentina) said that his view was the same as that of the International Bureau on that point.

1371. The PRESIDENT invited the delegations to comment on Article 6(4) as well as the proposal by the Delegation of Estonia for the addition of this new sentence to the Explanatory Notes.

1372. Mr. BADRAWI (Egypt) supported Article 6(4) as it stood because it would permit the Contracting Party to ask for the payment of fees on the filing of the application.

1373. Ms. FRANCISCO (Philippines) supported the inclusion of the sentence which was read out by the Delegation of Estonia on behalf of the Central European and Baltic States. She stated that Philippine law authorizes the use of the fees which are collected by the intellectual property Office for the modernization of its administration services.

1374. Mr. UEMURA (WIPO) stated that the Industrial Advisory Commission (IAC), which was created under the direction of the Director General with the support of the Member States and which met in Geneva three weeks ago, adopted a resolution in regard to the reduction of the cost of obtaining and

maintaining intellectual property protection. He noted that one of the items in the resolution was along the same lines as that described by the Delegate of Estonia. He quoted the following passage from the resolution: "The Industry Advisory Commission urges the Member States of WIPO to develop a set of benchmarks for best practices for intellectual property fees for implementation at the national and regional level, including the principle that filing, maintenance and other fees derived by intellectual property offices should be used exclusively for purposes related to intellectual property." He drew the attention of the delegations to the last clause in particular and noted that the resolution was available in its entirety on the WIPO Web Site.

1375. Mr. TRAMPOSCH (WIPO) recalled that, at the beginning of the Conference, the Committee had indicated that the Explanatory Notes prepared by the International Bureau would be published with the Treaty and the Regulations, and would indicate that they were not adopted by the Diplomatic Conference. They would also indicate that, in the case of conflict between the Treaty and the Notes, the Treaty would prevail. He observed that, since the Notes would be a document prepared by the International Bureau, a statement which reflected a general agreement among the delegations of the Diplomatic Conference might be better reflected in a way other than in the Explanatory Notes. He noted at least two possibilities for a statement: First, a statement in the records of the Conference of the agreement of the delegations to the statement read out by the honorable Delegate of Estonia, and second, an Agreed Statement that would be agreed upon by the Diplomatic Conference in Plenary, and included with any other agreed statements adopted by the Diplomatic Conference.

1376. *The PRESIDENT, noting that there was no objection, concluded that it would be acceptable to delegations to have an indication made in the records of the Diplomatic Conference that there was agreement of this Committee to the statement that was read out by the Delegation of Estonia.*

1377. *The PRESIDENT, noting that there were no comments regarding Article 6(4) as it appeared in document PT/DC/3, declared it adopted in substance and referred to the Drafting Committee.*

Article 12: Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office

Rule 13: Details Concerning Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12

1378. The PRESIDENT invited comment on Article 12.

1379. Mrs. BOLAND (United States of America) asked the President to clarify what had been decided on the statement read by the Delegation of Estonia.

1380. The PRESIDENT explained that he had suggested that the records of the Diplomatic Conference reflect that the Committee was in agreement with the statement read out by the Delegation of Estonia. He then noted that the Delegation of the United States of America was indicating its agreement to this 67*bis*. The President invited the International Bureau to introduce Article 12(2) to (5).

1381. Mr. LEWIS (WIPO) outlined the provisions of paragraphs (2) to (5) of Article 12. He suggested that, in consequence to the amendment adopted under paragraph (1), to amend Article 12(4) by changing "grounds" to "reasons." He also suggested that, for consistency with amendments adopted under Articles 10 and 11, to amend Article 12(5) by changing "at least one" to "the."

1382. The PRESIDENT invited comments on Article 12(2) to (5).

1383. Mr. BOGDANOV (Russian Federation) noted that, whereas Article 11(1) placed an express obligation on the Contracting Parties, Article 12 did not. This created the impression it merely confines or requires certain actions of the Office with regard to the reinstatement of rights. He stated that the construction in both should provide for an obligation on the Contracting Party.

1384. Ms. LACHOWICZ (Poland) asked for clarification of the words "intended refusal expression" in Article 12(5). He asked whether it meant that the Office would have to notify the applicant of its intention to refuse a request.

1385. The PRESIDENT proposed first to deal with the issue raised by the Delegation of the Russian Federation and then with that of the Delegation of Poland.

1386. Mr. TRAMPOSCH (WIPO), with respect to the comments of the Delegation of the Russian Federation, suggested that the problem could be remedied by simply adding the words "a Contracting Party shall provide that," at the beginning of paragraph (1), but noted that the Drafting Committee could look at the exact wording.

1387. The PRESIDENT noted that the Delegation of the Russian Federation indicated its agreement with the suggestion of the International Bureau. He noted that the Committee was proceeding on the basis of consensus given that this was adopted text, and asked if there was any support for making a change along the lines of adding the words "a Contracting Party shall provide that" at the beginning of Article 12(1) and leaving the precise drafting to the Drafting Committee.

1388. Mrs. BOLAND (United States of America) supported the proposal of the Russian Federation. She noted that her Delegation considered Article 12 to be of vital importance to users of the patent system and supported the proposal to the extent that it clarified the obligations on Contracting Parties to provide the relief required.

1389. The PRESIDENT asked whether there would be any objection to readopting Article 12(1) but with the words "a Contracting Party shall provide that" inserted at the beginning.

1390. Mrs. BELKAID (Morocco) said that her Delegation had a reservation concerning Article 12(1).

1391. The PRESIDENT stated that the objections of the Delegation of Morocco had been noted and would be included in the records of the conference.

1392. *The PRESIDENT, noting that there were no objections or further comments declared Article 12(1) adopted in substance, with the words "a Contracting Party shall provide that" inserted at the beginning and referred to the Drafting Committee.*

1393. The PRESIDENT proposed that the discussion regarding Article 12(2), and related Rule 13, continue, and invited the International Bureau to respond to the question raised by Poland.

1394. Mr. LEWIS (WIPO) noted that the point raised by the Delegation of Poland is the same as that raised by the Delegation of the United States of America in regard to Article 11(6). He noted also that the same point applied in Article 12(5) and in Article 13(5). He recalled that the Delegation of the United States of America withdrew its proposal to delete the word "intended" after it was agreed that the meaning of the phrase "intended refusal" would be explained in the Notes. He stated that the intent was to cover all equivalent situations. Also, the phrase in question did not imply any particular procedure.

1395. Mr. HERALD (Australia) stated that it was his understanding that Contracting Parties could allow opposition proceedings to such extensions. While there was no apparent need for the Article to state as much, he supported the inclusion of a reference to that fact in the Notes.

1396. The PRESIDENT noted that the International Bureau indicated that this could be reflected in the Notes. He noted the absence of any objection.

1397. Mr. STOHR (EPO) expressed the view that reinstatement of rights need not to be provided for where continued processing is available with regard to the time limit in question, since continued processing is more favorable, in the sense of Article 2(1), than reinstatement of rights.

1398. Mr. TRAMPOSCH (WIPO) stated, in regard to the comments of the Representative of the EPO, that continued processing would have to be available for the time limits that are provided for in the Regulations under Article 12.

1399. *The PRESIDENT, noting that there were no further comments regarding the adopting of Article 12, paragraphs (2) to (5), with the replacement of the word "grounds" by "reasons" in paragraph (4) and the replacement of the phrase "at least one opportunity" by "the opportunity" in paragraph (5), declared those paragraphs adopted in substance and referred to the Drafting Committee.*

1400. *The PRESIDENT, noting that there were no comments regarding or objections to the adoption of Article 13(1), declared it adopted in substance and referred to the Drafting Committee.*

1401. The PRESIDENT invited comments regarding Rule 13(2).

1402. Mr. BEIER (FICPI) stated that, if Rule 13(2), item (ii) provides for the reinstatement in the case of maintenance fees, the term prescribed in that item was not sufficient. He noted that most countries allow long terms for payment after the normal due date, beyond the six-month term of the Paris Convention. As a result, in some cases, the prescribed twelve months could end before, or shortly after the discovery of the non-payment. He suggested that words to the effect of "or the end of the six months grace period provided in the Paris Convention" should be added to item (ii).

1403. The PRESIDENT stated that it would be best to take up the issue when Rule 13(3)(ii) was discussed, whereupon the discussion could return to Rule 13(2), if necessary.

1404. Mr. VIDAURETTA (Argentina) said that his Delegation considered the period provided for in Rule 13(2)(ii) excessive. The treaty already provided a number of periods and measures in favor of the applicant. If nevertheless rights lapsed or were abandoned, granting 12 months for the reinstatement of rights would be beyond the bounds of desirable flexibility, leading to a situation that could make for legal insecurity *vis-à-vis* third parties. He considered that it was possible to look for a period that would serve applicants but was not so long as to create legal insecurity. He suggested that a period of three months would be reasonable.

1405. Mr. TRAMPOSCH (WIPO) pointed out that in Rule 13(2), item (ii) was a limitation on item (i). He noted that it would be a very rare case that the cause for the failure to comply would extend for many months. However, if that were the case, then the Standing Committee had felt it would be fair to allow reinstatement after that time. He noted that the usual case under Article 12(1)(ii) would be, for example, a snow storm or an earthquake where services were restored within a short period of time.

1406. Mr. BOGDANOV (Russian Federation) expressed concern that the wording "the shorter of the following" in the chapeau of paragraph (2) was not satisfactory since the time limit indicated in item (i) would always be the shorter.

1407. The PRESIDENT stated that the point raised by the Delegation of the Russian Federation could be referred to the Drafting Committee.

1408. Mr. MERRYLEES (ABAPI) said that his Delegation felt strongly that the time limit set out in Rule 13(2) was insufficient, especially when comparing it to the similar provision in Rule 12. Rule 12 dealt with time limits established by the Office. In Brazil and many other countries having a code law type system, time limits were established by the law so that they would not have the benefit of the provisions in Rule 12. Since maintenance fees were paid on a regular basis, an owner would only discover that a time limit for payment had not been complied with was when it came to the next payment. Where the time limit for an office action was determined by the law, there would only be a time limit of not less than two months from the removal of the cause of failure following its discovery, whereas, was the time limit based on a notification by the Office, there would be a limit of not less than 12 months. The delegate suggested that item (i) depend on a notification by the Office, and item (ii) apply to the case of payment of maintenance fees.

1409. Mr. VIDAURETTA (Argentina) asked for clarification of the relationship between items (i) and (ii) of Rule 13(2). His Delegation understood that item (i) set a time limit for the case in which the applicant removed the cause of the failure, as it said: "not less than two months from the date of removal of the cause of failure to comply with the time limit for the action in question." For instance, if there was failure to pay a fee, the applicant would have a time limit of two months from the time of payment of the fee. For its part item (ii) said: "not less than 12 months from the date of expiration of the time limit for the action in question." In that case, if the due date for the fee were May 12, for instance, the maximum time limit for reinstatement of the right would be one year from May 12. In that way, there would be two time limits, since if the applicant paid the fee there would be a time limit of two months, but if he did not the time limit applicable would be 12 months from the date on which he should have paid the fee. He requested confirmation of that interpretation, which would result in an office having to be prepared to reinstate a right within the period of 12 months at the applicant's request, which could generate legal insecurity regarding the interests of interested third parties.

1410. Mr. TRAMPOSCH (WIPO) said that, in Article 12(1)(iii), the request must state the reasons for the failure to comply with the time limit. Under item (iv) of the same provision, those reasons must fulfill the

requirement that the failure occurred in spite of due care exercised by the applicant. Note 12.06 contained an example for a situation when there might be a time limit missed in spite of due care, namely where there had been an interruption in the mail service. Under Rule 13(2)(i), the time limit would be not less than two months from the date of the removal of the cause of the failure to comply. That would not be the date on which the applicant paid the fee; rather, it would be the date of the resumption of the mail service, in the example chosen. That date did not depend on an action of the applicant, but on the removal of the cause that prevented the time limit from being complied with in spite of the fact that the applicant acted with due care under Article 12. Therefore, the applicable time limit under item (i) was the duration of the cause of failure plus two months.

1411. The PRESIDENT suggested adoption of Rule 13(2) on the understanding that the point raised by the Russian Federation would be referred to the Drafting Committee and on the understanding that, if the discussion of maintenance fees would require a change, it would be possible to come back to deal with that specific issue.

1412. *The PRESIDENT declared Rule 13(2) adopted in substance and referred to the Drafting Committee.*

1413. The PRESIDENT opened discussion on Rule 13(3)(ii).

1414. Mr. BEIER (FICPI) declared that his Delegation very strongly supported the deletion of item (ii), because the payment of maintenance fees was an important and frequently occurring example for the non-compliance with a time limit.

1415. Mrs. BOLAND (United States of America) strongly opposed the inclusion of Rule 13(3)(ii) in the Treaty. The ability to pay maintenance fees under Article 12 was probably one of the most important features of the PLT. The United States of America strongly supported that type of relief for patent owners throughout the world. To the extent that there was concern with respect to certainty and third party rights, the Delegation recalled that the issue of intervening rights was left to the national law of Contracting Parties. Regarding the time period in Rule 13(2), the Delegation supported an amendment of item (ii) to the effect that the period would be computed from the expiry of the Paris Convention grace period rather than as a 12-month period.

1416. Mr. HERALD (Australia) referred to the experience to the Office of his country with cases concerning a failure to pay maintenance fees. Typical reasons for non-payment were loss of communications occurring during the change of a mandate from a patent attorney to a global patent agency, incompetent agents or applicants' loss of records over corporate restructuring, or simply lost mail. From the experience of the Delegation, the issue was extremely critical for the maintenance of the rights of the patentee, where he had taken reasonable care to look after his rights. Concerning the starting point of the 12 months period, the Delegation said that it should run from the end of the grace period under the Paris Convention.

1417. Mr. TRÉPANIÉ (Canada) said that his Delegation fully supported the proposal of the Delegation of the United States of America to delete item (ii) and to compute the time period in item (ii) as of the end of the Paris Convention grace period.

1418. Mr. BOGDANOV (Russian Federation) expressed the support of his Delegation for the deletion of item (ii).

1419. Mr. HE (China) said that his Delegation proposed to delete Rule 13(3)(ii).

1420. Mr. BOGDANOV (Russian Federation) asked for clarification as to the starting point for the time period for re-instatement in connection with the grace period under the Paris Convention.

1421. The PRESIDENT explained that Article 5*bis* of the Paris Convention stated that "a period of grace that is not less than six months shall be allowed for the payment for the fees prescribed for the maintenance of industrial property rights subject, if the domestic legislation so provided, to the payment of the surcharge." In this context, the question arose whether the time limit allowed for re-instatement should run from the end of the 6 months grace period. It would be necessary to clarify whether it should be 12 months from the end of the 6 months, or 12 months from the end of whatever period of grace might be established by a particular Contracting Party.

1422. Mr. BOGDANOV (Russian Federation) said that his Delegation did not object to calculating the time limit after the 6 months period of grace, but only in relation to the payment of maintenance fees.

1423. Mr. TRAMPOSCH (WIPO) said that it would be indicated in paragraph (2)(ii) that the grace period would be taken into consideration for computing the time limit only in the case of maintenance fees.

1424. Mr. BARTELS (Germany) expressed the support of his Delegation for the proposal of the Delegations of the United States of America and Australia. Furthermore, he stated that the time limit for re-instatement should start from the end of the grace period. Furthermore, the Delegation proposed to delete items (v) and (vi).

1425. Mr. IWASAKI (Japan) expressed support for keeping item (ii) in the text because, in the view of that Delegation, a one year period was convenient for users, but a period of 18 months was too long for the third parties to check whether that patent right was re-instated or not even if the intervening right is secured.

1426. Mrs. REJNHOLD JØRGENSEN (Denmark) said that her Delegation fully supported the proposal of the Delegation of Germany.

1427. Mr. STOHR (EPO) said that there should not be an exception for the payment of maintenance fees. Secondly, the Delegation felt that, if the Conference decided to provide for an 18 months time limit in case of maintenance fees, this 18 months time limit had to be limited to this case.

1428. Mr. BADRAWI (Egypt) said that Article 5*bis* of the Paris Convention was a discretionary provision. Under the law of his country, the time limit that was applicable in this context was nine months.

1429. Mr. TRAMPOSCH (WIPO) explained that the proposal concerned an extension of the six months period under the Paris Convention under very limited circumstances, namely in cases where the patent owner tried to pay the fee but despite of due care by the patent owner, the fee did not reach the Office.

1430. Mr. BADRAWI (Egypt) said that the grace period should be left to national legislation, particularly since it was already provided for six months minimum period provided under the Paris Convention.

1431. Mr. BÜHLER (Switzerland) said that, concerning the non-inclusion of item (ii), his Delegation would like to associate itself with the Delegations of the United States of America, Australia and Germany. With regard to the starting point of the time limit under Rule 13(2)(ii), the Delegation would prefer to start the time limit at the expiry of the grace period to allow a liberal approach by a Contracting Party.

1432. Mrs. BELKAID (Morocco) said that her Delegation was in favor of deleting item (ii) of paragraph (3).

1433. Mr. RAJAN (Ireland) sought clarification as to whether a Contracting Party would be free to deal with the issue of intervening rights during the grace period for the non-payment of renewal fees.

1434. Mr. TRAMPOSCH (WIPO) confirmed that this matter was entirely left to national legislation.

1435. Ms. FRANCISCO (Philippines) asked for clarification as to the exact meaning of the possibility to handle intervening rights by national legislation. She asked whether this required Contracting Parties to put into place a new law to deal with the situation, or the courts would be free to decide on these intervening rights depending on the evidence that had been presented.

1436. Mr. TRAMPOSCH (WIPO) stated that Contracting Parties would be free to provide for intervening rights or not to provide for intervening rights. If they did provide for intervening rights, they could do so through their legislation or through the actions of the Court, or in any other way.

1437. Mr. KUSHAN (BIO) stated that his organization represented the owners of intellectual property rights and that he was speaking from the perspective of the right holders and not of the agents. The proposal to omit item (ii) was not a wholesale extension of the Paris Convention grace period for late payment of maintenance fees. In fact, it was narrower. The interest of third parties were satisfactorily reflected through the doctrine of intervening rights. Furthermore, in practical administration, right

owners were holding rights around the world. There was often a transfer between the patent agent to a specialized firm for payment of maintenance fees. Global annuity payment firms did a fairly good job of keeping track of all the patents around the world. But there were circumstances where, during the transfer of responsibility from a patent agent to the annuity firm, mistakes could be made, even in the light of the exercise of due care. As this was a real problem that patent owners faced routinely, there was a lot of merit for making sure that mistakes that were reasonable could be overcome. In conclusion, the Representative thanked the Delegation of Australia and the other delegations that supported deletion of this item.

1438. Mr. UNGLER (Austria) said that it was very important to obtain re-instatement of rights in the case of non-compliance with the time limit for the payment of maintenance fees. Non-compliance with the time limit occurred rather often and the result of such a failure to comply was a complete loss of rights. Therefore, the Delegation supported the omission of item (ii). Furthermore, the applicable time limit should start from the expiry of the 6 months grace period mentioned in Article 5*bis* of the Paris Convention. Therefore, the time limit should be not less than 18 months from the expiry of the initial time limit.

1439. Mr. VAN HORN (AIPLA) expressed the support of his organization for the no-inclusion of item (ii).

1440. Mr. YAMAMOTO (JPAA) supported the deletion of item (ii) and proposed deletion of items (i) and (v).

1441. Mr. ROUTMAN (ABA) expressed the support of his organization for the deletion of item (ii). In addition, the Representative suggested that the applicable 12-month period be calculated from the date of expiration of the minimum grace period provided for by the Paris Convention or any longer period provided by the laws of Contracting States.

1442. Mr. RAJAN (Ireland) drew the attention of the Committee to a proposal of the Delegation of Israel contained in document PT/DC/15.

1443. The PRESIDENT read out the proposal of the Delegation of Israel concerning Rule 13(3)(ii) as contained in document PT/DC/15.

1444. Mr. BARTELS (Germany) said that his Delegation was not in favor of a wording including an 18 month time limit, because it could lead to a further discussion whether the 18 month time limit should be extended for another 6 months, and the Delegation wished to avoid such discussion.

1445. The PRESIDENT proposed that the Committee agree in substance that the time period would run from the expiration of the period of grace provided under the Paris Convention and that no reference was made to a period of 18-month period.

1446. Mr. CRAMER (EPO) asked for clarification whether the 12 months would be calculated from the minimum period in Article 5*bis*, or from the period that each individual State would apply. In the interest of harmonization, it should probably be the minimum period.

1447. Mr. TRAMPOSCH (WIPO) said that the payment of maintenance fee would probably occur at the end of the grace period provided by the Office and that should be taken into account in determining the time of the relief.

1448. Miss EL KATEB (Tunisia) suggested providing for a minimum time limit of six months, in accordance with the Paris Convention, and leaving provision for other time limits to national legislation.

1449. The PRESIDENT suggested the Committee would agree on a starting point for the time limit at the expiry of the period of grace under Article 5*bis* of the Paris Convention, meaning that whatever period of grace that was provided in a particular Contracting Party. Furthermore, he stated that no delegation was objecting to the omission of Rule 13(3)(ii).

1450. *The PRESIDENT declared that the Committee had adopted the decision not to include item ii) in Rule 13(3), and to refer Article 12(2) to the Drafting Committee.*

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1451. The PRESIDENT invited comments on any of the exceptions provided under Rule 13(3)(iii).

1452. Mr. BARTELS (Germany) said that his Delegation proposed not to include items (v) and (vi), in the Treaty.

1453. Mr. DRISQUE (Belgium) said that his Delegation was asking for the deletion of the passage in square brackets in Rule 13(3)(vi), and withdrew the reservation that it had expressed in relation to that provision, which appeared in the Explanatory Notes.

1454. Mr. HERALD (Australia) said that, as a matter of principle, his Delegation believed that Article 12 and Rule 11 should apply to the widest possible circumstances and that the reasons for excluding a provision from Article 12 and Rule 11 should have a very clear basis in the context of inconvenience to other parties, as distinct from inconvenience to the Office. It believed that item (v) and item (vi) should be deleted, but supported the retention of items (vii), (iii), (iv) and (vii).

1455. Mr. BOUCOUVALAS (Greece) supported the inclusion of item (v) of Rule 13(3) in the exceptions provided for in this paragraph, the reason being that, in Greece, if a search fee for a patent application was not paid within the prescribed time limit, the patent application was transformed into a utility model application.

1456. Mr. TRÉPANIÉ (Canada) supported the deletion of items (v) and (vi) and the retention of items (iii), (iv) and (vii).

1457. Mrs. BOLAND (United States of America) indicated that the Delegation of the United States of America, for the reasons expressed already by the delegations speaking in favor of the non-inclusion of items (v) and (vi), was also in favor of their non-inclusion. The Delegation of the United States of America further proposed a new item (viii), as contained on page 4 of document PT/DC/8, paragraph (13). It would read "in a determination of additional patent term". The literal reading of Article 12 (1) might apply to the calculation of patent term adjustment and the Delegation did not believe it was the intent of such an Article to apply to those determinations.

1458. Mr. TRAMPOSCH (WIPO) pointed out that Note 3.05, beginning on the third line of the second sentence, stated "the Treaty and Regulations also do not apply to applications for patent term extension". It therefore seemed that the intention of the Standing Committee was that none of the provisions of the Treaty would apply to patent term extensions and asked the Delegation of the United States of America whether this would be satisfactory.

1459. Mrs. BOLAND (United States of America) replied that her Delegation was presently reviewing this Note and would come back to this matter later on.

1460. Mr. STOHR (EPO) stated that his Delegation was in favor of the deletion of items (v) and (vi). The EPO believed that reinstatement of the time limit for filing a translation of a regional patent was of critical importance to patent owners. He therefore thought it only fair to give patent owners this possibility. As to the suggestion of the Delegation of the United States of America concerning an additional exception, the EPO's understanding had always been that, for example the so-called supplementary protection certificate provided in Europe for pharmaceutical products did not fall under this Treaty.

1461. Mr. BOGDANOV (Russian Federation) said that it seemed to his Delegation that, in the case addressed by the Delegation of the United States of America, one was not referring to any special request for an additional patent term. The Russian Federation's national law will provide for an additional patent term not through any new application being filed, but simply through a request on the extension of the patent term. The Delegation was therefore of the view that this kind of national procedure should be reflected in Rule 13(3) as one of the exceptions under Article 12(2).

1462. The PRESIDENT asked the Delegation of the Russian Federation whether its intention would be that Rule 13(3) should include an additional provision along the lines of the proposal by the Delegation of the United States of America. He noted the Delegation of the Russian Federation's agreement.

1463. Mr. IWASAKI (Japan) said that the Delegation of Japan supported the retention of items (i), (iii), (iv) and (vii).

1464. Ms. WEN (China) said that her Delegation supported the deletion of (ii) from the list. Regarding item (v), since the time limit extended related to a legal time limit, and had important consequences on the normal expedited processing of the application, the Delegation suggested to keep the content of item (v) and remove the square brackets around this item.

1465. Mr. BEIER (FICPI) said that FICPI also called for the broadest possible availability of the reinstatement provisions, considering that reinstatement was the ultimate recourse in the case of non compliance with the term. Therefore, in addition to what had already been said about items (v) and (vi), FICPI was also in favor of deleting the exceptions in items (i) and (vii). FICPI was aware that this kind of exceptions had already been discussed in the context of continued processing under Article 11. Reinstatement, however, was a completely different matter. It only covered unintentional failures of which the applicant was not guilty and for which he had to provide strong evidence. Reinstatement should therefore also apply to *inter partes* and to appeal procedures.

1466. Mr. GOETZ (UPEPI) said that UPEPI was strongly in favor of the deletion of items (v) and (vi) of Rule 13(3). For patents granted under the EPC, the filing of a translation in the designated countries was a possible source for failure. As for patent applications, the unintentional non-filing of a request for search or examination was one of the major sources of loss of rights.

1467. Mr. EDGAR (IPIC) said that IPIC fully supported the statements of the delegations that had supported the deletion of items (v) and (vi) and also fully supported the proposal by FICPI to delete items (i) and (vii). IPIC took this view particularly because due care must be shown in these cases and they were all cases where the difficulty occurred through no fault of the property owner.

1468. Mr. JENNY (EPI) stated that EPI fully supported FICPI's statement and suggested deleting items (i), (v), (vi) and (vii).

1469. The PRESIDENT proposed to set aside the proposal by the Delegation of the United States of America for a new item (viii), which had found support from the Delegation of the Russian Federation, in order to allow for more time to reflect on the comments made by the International Bureau. Regarding the other provisions of Rule 13(3), it had been agreed that item (ii) should not be included. The delegations which had taken the floor had no objection to items (i), (iii), (iv) and (vii). In respect of item (vi), there had been no support and, with respect to item (v), a significant majority of delegations had opposed its inclusion. He proposed to proceed with the adoption of Rule 13(3) with the inclusion only of items (i), (iii), (iv) and (vii). He invited comments on the adoption of Rule 13(3) in that form.

1470. Mr. RAJAN (Ireland) said that the question of intervening rights might arise in the case of non-filing of a translation of a regional patent and he requested that the Notes reflect that Contracting Parties were free to deal with that question.

1471. Mr. TRAMPOSCH (WIPO) referred to Note 12.10, which specifically said that intervening rights were left to the relevant law of a the Contracting Parties.

1472. The PRESIDENT again proposed adoption of Rule 13(3) in the proposed form.

1473. Mr. HE (China) stated that his Delegation did not oppose the adoption of this provision, but wished its reservation as to the deletion of item (v) to be put on record.

1474. The PRESIDENT confirmed that the reservation would be reflected in the records.

1475. Mr. BOGDANOV (Russian Federation) noted that item (iv) had not been mentioned.

1476. The PRESIDENT said that he proposed adoption of Rule 13(3) with the inclusion of items (i), (iii), (iv) and (vii), leaving aside the proposal by the Delegation of the United States of America

and noting the reservation of the Delegation of China in the records of the Diplomatic Conference. *Seeing no objections, he declared Rule 13(3) adopted in that form, subject to returning to the proposal by the Delegation of the United States of America.* Turning to the proposal for an Agreed Statement by the Delegation of Australia (document PT/DC/27), he invited the Delegation to introduce the proposal.

1477. Mr. SPANN (Australia) said that his support for item (vii) in Rule 13(3) and the corresponding portion of Rule 12 was not because extensions of time should not be available to *inter partes* proceedings, but because he did not believe that the provisions adequately provided for the third party interests involved. He hoped that national laws would extend similar relief to *inter partes* proceedings, including intervening rights of third parties. Hence, the Delegation had submitted the proposal appearing in document PT/DC/27.

1478. Mrs. BOLAND (United States of America) supported the proposal by the Delegation of Australia with the following proviso: To avoid any ambiguity and for purposes of clarification, the Delegation of the United States of America wished to add at the end of the statement the following clause: "as well as those interests of others who are not parties to the proceedings."

1479. Mr. BADRAWI (Egypt) informed the President that his Delegation had not had the opportunity to study the proposal by the Delegation of Australia because it had not received the text. He was therefore not in a position to express an opinion and requested the text to be introduced.

1480. Mr. TRAMPOSCH (WIPO) apologized for the non-delivery of the text to the Delegation of Egypt and asked if there were any other delegations that had not received it.

1481. The PRESIDENT proposed to set this question aside.

1482. Turning to Article 13, he invited the International Bureau to introduce Article 13(1) and the related Rules.

Article 13: Correction or Addition of Priority Claim; Restoration of Priority Right

Rules 14: Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13

1483. Mr. LEWIS (WIPO) explained that Article 13(1) was one of three provisions relating to priority claims, all of which were intended to be very user-friendly. The first of these was the correction or addition of a priority claim. That remedy already existed under the PCT in Rule 26*bis*.1 and the idea was to have the same provision for correction or addition of priority claims as under the PCT. Mr. Lewis then introduced Rule 14(1).

1484. The PRESIDENT invited comments on Article 13(1).

1485. Mr. BARTELS (Germany) asked for clarification as to whether Article 13 also covered internal priority.

1486. Mr. LEWIS (WIPO) replied that Article 13 did not define or restrict the priority claim, thus the answer was yes.

1487. *The PRESIDENT, seeing no further comments on nor objections to Article 13(1), declared it adopted, as modified by the International Bureau, and referred to the Drafting Committee.*

1488. Turning to Rule 14, he invited comments on Rule 14(1).

1489. Mr. BADRAWI (Egypt) wished clarification on the words of Rule 14(1) "before any technical preparations have been completed". Did the word "technical" here mean digital preparations or technical preparations in a more general sense. If it referred to electronic aspects, his Delegation would have an opinion to express, whereas if it meant technical in a general sense, the Delegation wished to replace the word "general" by some other word.

1490. Mr. THOMAS (WIPO) explained that the notion of the completion of technical preparations for publication was one which appeared in a number of provisions in the PCT Regulations. In the PCT, the notion of technical preparations had a very general sense; in the present Rules, it related to the

preparation of paper-based materials for publication, but of course, would still apply in the case of applications which were being published electronically at some stage in the future. The idea was that if, as a practical matter, the steps had been set in train to start publication so that it was no longer practical to change the contents of the application, the technical preparations would be considered completed, whether this was on paper or using some other technology.

1491. Mr. BADRAWI (Egypt) replied that his concern was about preparations which initially were on paper and which might be complemented by non-paper processing.

1492. Mr. LEWIS (WIPO) explained that this wording was used throughout the PCT. In this particular context, it was used in Rule 26bis.1(b), where the following words appeared at the end: "unless that request is withdrawn before the technical preparations for international publication have been completed.". Over a hundred countries were Party to the PCT and this was an expression which applied for those countries via the PCT in respect of international applications; any change of terminology in this Treaty would bring this Treaty into disconformity with the PCT. The term itself allowed for considerable flexibility for each country to decide what it considered to be the completion of the technical preparations.

1493. Mr. THOMAS (WIPO) added that, when electronic filing and publication would become a solid practical reality, it might be that the notion of "technical preparations for publication" would become an obsolete concept. At that stage, the Regulations under both the PCT and the PLT could be revisited to see if some alternative formulation might not be preferable in the context of electronic filing.

1494. Mr. BADRAWI (Egypt) thanked the International Bureau for the excellent clarification. The text could be further clarified by adding, for instance, a reference to the different phases that intervene during the preparation for publication.

1495. Mr. EREMENKO (EAPO) stated that he supported the inclusion of Rule 14(1) in its current state. Preparations for publication were very expensive. Since this Treaty was trying to contain costs, and since, the term "technical preparations" was broad and could refer to preparations involving paper or electronic processing, that EAPO was of the opinion that a specific reference to electronic processing was not necessary and that the text should remain as stood.

1496. The PRESIDENT recalled that this had been discussed in the Standing Committee and that the term "technical preparations" reflected language used in many different places throughout the PCT for many years.

1497. Mr. EL FAKI ALI (Sudan) suggested that, rather than changing the term here, there be an explanation in the Notes, clarifying the meaning of this expression, particularly the word "technical".

1498. Mr. TRAMPOSCH (WIPO) agreed that the International Bureau would clarify the meaning of these terms in the explanatory Notes.

1499. The PRESIDENT, on the understanding that there would be an explanation of this in the Notes, asked whether it would be acceptable to continue with the adoption of Rule 14(1) in its current form. *Seeing no objection, he declared Rule 14(1) adopted in substance and referred to the Drafting Committee.*

1500. The PRESIDENT invited comments on Rule 14(2) and (3). *In the absence of any comments he declared Rule 14(2) and (3) adopted in substance and referred to the Drafting Committee.*

1501. The PRESIDENT invited the international Bureau to introduce Article 13(2) and the related provisions in Rule 14.

1502. Mr. LEWIS (WIPO) explained that Article 13(2) provided for restoration of the priority right where the application claiming priority was not received by the Office until after the expiration of the 12 month priority period. It did not provide for an extension of the priority period provided for under the Paris Convention; provision applied only after the expiration of that period. He suggested that, for consistency with the amendment adopted in Article 12(1)(iii), item (iii) be amended to read: "the request states the reasons for the failure to comply with the priority period". He also suggested that, for consistency with the amendment adopted in Article 12(1)(iv) the word "all" be deleted from the expression "all due care".

Following the decision taken on Article 12, he also suggested that wording along the lines "A Contracting Party shall provide that" be added at the beginning of paragraph (2). Rule 14(4)(a) prescribed that the time limit be not less than two months, calculated from the date on which the priority period expired, for the receipt of the application. Rule 14(4)(b) prescribed the time limit for making the request under Article 13(2). Further requirements were contained in Rule 14(5), there were two requirements.

1503. The PRESIDENT invited comments on Article 13(2), including these three changes suggested by the International Bureau.

1504. Mr. SNETHLAGE (Netherlands) said that his Delegation could agree with the suggestions made to bring this paragraph in line with the corresponding paragraph in Article 12. He recalled that his Delegation had, in the past, made reservations on this paragraph because it had doubts as to whether the proposal was in line with Article 4C(1) of the Paris Convention. However, since the last meeting of the SCP in September, this issue had been discussed in detail and, though the Delegation still had certain doubts, it was prepared to withdraw the reservation.

1505. Mr. VIDAURRETA (Argentina) said that his Delegation had at some stage expressed a reservation concerning Article 13, because it considered it contrary to the provisions of Article 4 C(1) and (2) of the Paris Convention. Article 4C of the Paris Convention provided that priority periods started from the filing date of the first application. The date from which the 12 months of priority were to be counted was therefore the filing date of the first application. The proposal contained in Article 13(2) meant that, despite the fact that the priority period was 12 months, if the applicant showed that, in spite of due care, he had not been able to file the application, the priority period would in effect be changed to 14 months. He considered that that was a violation of the Paris Convention, as it introduced an exception to its provisions.

1506. Mr. TRAMPOSCH (WIPO), in reply to the statement of the Delegation of Argentina, said that the International Bureau recalled the statements of that Delegation during the sessions of the SCP. The opinion of the Standing Committee, in adopting this provision, had been that the Paris Convention provided a mandatory priority period of 12 months but did not prevent any country from providing a priority right after that period. Accordingly, it was the understanding of the Standing Committee, in adopting this provision, was that it was not a breach of the Paris Convention, although it did provide obligations on States that were party to the Paris Convention beyond those provided for in that Convention.

1507. Ms. WEN (China), as regarded Article 13(2), expressed concern that problems could arise where an application filed after the expiration of priority period under the Paris Convention could claim for priority right of an earlier application. In the view of her Delegation, an applicant should not have problems complying with 12 months priority period stipulated in the Paris Convention. Article 13(2) might be to the detriment of interests of the third party and the general public at large. In order to ensure that a request for a patent to be processed as soon as possible, it did not think there was any necessity to prolonging this priority period. It wished the records to reflect that opinion in the report.

1508. Mr. DRISQUE (Belgium) said that, as far as the implications of a system of reinstatement of the right of priority for the progress of patent application and granting procedures were concerned, for instance with respect to the possibility of expedited granting and the information value of search reports drawn up for other applicants, and the uncertainties that would result for those other applicants and third parties who, should that happen, would be left for a long time in ignorance of the outcome, his Delegation proposed optional wording for the provision. If that proposal was not accepted, the Belgian Delegation would reserve its position regarding Article 13(2).

1509. Mr. PAL (India) said that his Delegation associated itself with the intervention by the Delegation of Argentina. In the previous SCP meeting, the Delegation of India had made a reservation as to this provision and wished to maintain it.

1510. Mrs. LAGARMILLA (Uruguay) proposed amending the Spanish version of item (iv) of Article 13(2) so that, where it said "*toda la debida atención exigida*" ("all due care required"), the word "*diligencia*" ("care") was used in order to retain consistency with the wording of the previous articles, for example Article 12(1)(iv).

1511. The PRESIDENT proposed to refer the matter to the Drafting Committee and noted that the Delegation of Uruguay supported the inclusion of Article 13(2) on that basis.

1512. Mr. CONGREGADO LOSCERTALES (Spain) said that his delegation had also expressed a reservation regarding Article 13(2), since it appeared to conflict with the Paris Convention. Nevertheless, for the same reason as had been expressed by the Delegation of the Netherlands, his Delegation could now accept the text proposed by the President, and therefore withdrew the reservation that Spain had expressed previously.

1513. Mr. HERALD (Australia) supported the retention of Article 13(2) and noted that the procedures under Article 13(2) occurred before the publication of the application or the priority document. Accordingly, except in rare circumstances, the interest of third parties would not be affected.

1514. Ms. CHNG (Singapore) asked whether Article 13(2) would allow for a filing date that was more than 12 months from the declared priority date.

1515. Mr. LEWIS (WIPO) confirmed that this would be the case.

1516. Ms. CHNG (Singapore) noted that this would seem to contradict Explanatory Note 13.05 which stated that "the priority period, namely the 12-month period under Article 4C(1) of the Paris Convention would not be extended". To meet the 12-months requirement, perhaps the practice of PCT, could be referred to. PCT Article 48 provides an overall consideration for instances where documents were delayed due to circumstances beyond the applicant's control. With regard to the PLT however, she asked when an application would be regarded as having been received by an office when, for example, it was received in the Office in the 14th month, although the applicant could prove that the application had been sent before 12 months from the declared priority date, and that the delay was due to the postal authorities.

1517. Mr. LEWIS (WIPO) replied that, under Article 5(1) of the draft PLT, the filing date was the date on which the elements prescribed in Article 5(1) had been received by the Office. He noted that national law could, in the case exemplified by the Delegation of Singapore, regard the elements to have been received on the date they were received by the postal authorities. However, in most jurisdictions, the filing date would be the date on which all necessary elements had been received.

1518. Ms. CHNG (Singapore) asked whether an office could apply similar principles to that found in Article 48 PCT, and consider an application to be filed within 12 months from the declared priority date, even though it had actually been delayed beyond that date for reasons beyond the applicant's control.

1519. Mr. THOMAS (WIPO) explained that PCT Article 48 and PCT Rule 82*bis* did not define the priority period but referred to the Paris Convention. PCT Article 48 obliged a designated office under the PCT that, in the case of a national application, would excuse a delay in meeting the priority period, to treat an international application the same way. He emphasized, however, that there was no general interpretation of Article 48 PCT which would require states or offices to enable extension of the convention priority period under that provision.

1520. Mrs. BOLAND (United States of America) reaffirmed her Delegation's long standing support for Article 13(2), and agreed with the amendments offered by the International Bureau. She underlined that Articles 11, 12 and 13 provided relief for patent applicants and owners throughout the world in situations in which they would find themselves otherwise without recourse for a remedy.

1521. Mr. SADOU (Algeria) reiterated his country's willingness to apply provisions designed to harmonize, standardize and simplify the rules of patent applications for the applicant, but on the other hand noted that the simplification for the applicant was at the cost of complication for patent offices. She therefore wished to know, *inter alia*, as a result of the statement by the Delegation of the United States of America, whether the provision meant that the priority period was being extended.

1522. Mr. TRAMPOSCH (WIPO) noted that these provisions referred to the priority right as provided for under the Paris Convention.

1523. Mr. TRÉPANIÉ (Canada) strongly supported Article 13(2), and stated that he could accept the amendments suggested by the International Bureau.

1524. Mr. TRAORÉ (Mali) said that his delegation was conscious of the concerns that had been expressed regarding the extension of the priority period. His Delegation considered, however, that the conditions set in items (i), (ii), and up to (iv) provided sufficient guarantees for any abuse to be avoided in the implementation of the provision, and for that reason the Delegation of Mali supported the proposal made by the International Bureau for the paragraph with the amendments made thereto.

1525. Ms. FRANCISCO (Philippines) entered a qualified reservation with respect to Article 13(2) explaining that under her national law there existed already a specific provision in line with the Paris Convention. Noting that the International Bureau, in introducing Article 13, had specifically referred to a similar provision under the PCT, she informed delegates that the ratification of the PCT by the Philippines was pending before its Senate.

1526. Mr. HIEN (Burkina Faso) expressed the same concern as the Delegation of Algeria, and wished to receive a clear reply from the International Bureau to the following question: was it an extension of the priority period, which was originally 12 months, or was it an arrangement made for an applicant who had not been able to comply with the formalities to which exercise of the priority period was subject?

1527. Mr. BAECHTOLD (WIPO) explained that the application was restored as if the time limit had not been missed. The result was that an application, arriving after the 12 month period, would have to be regarded as though it had been filed within the priority period.

1528. Mr. BOGDANOV (Russian Federation) supported the retention of Article 13(2) with the amendments suggested by the International Bureau. He explained that, under Russian law, an application could, within two months after the end of the priority period, be treated as though it had been received within that period. He also stated that his Delegation did not interpret this provision as changing the time limit established by the Paris Convention.

1529. Mr. STOHR (EPO) expressed his Delegation's support for Article 13(2). He stated that this provision provided a well-balanced compromise between the general 12-month priority period on the one hand, and the interests of inventors to have a safeguard in exceptional circumstances, on the other. He also stated that the provision did not provide for an extension, but for a restoration of the priority period.

1530. Mr. BOUHNİK (Algeria) asked the International Bureau the following question: if it was not an extension of the priority period, did that mean that the filing date should not be after the 12 months of the priority period provided for in the Paris Convention?

1531. The PRESIDENT proposed that Main Committee I discuss all of Articles (1) to (15), including any discussion of the incorporation of future modifications to the PCT as proposed in Nonpaper No. 3, Article (21) and Article (22)(1) and any other reservations that arose. In addition, he proposed that Main Committee I deal with all of the Rules. All other provisions would be dealt with by Main Committee II. In the absence of any indications to the contrary, he concluded that this proposal was acceptable.

1532. The PRESIDENT then invited further comments on Article 13(2).

1533. Mr. TRAMPOSCH (WIPO) recalled that the provision under discussion had been included in the draft Treaty based on procedures that existed in a number of Member States, because such procedures were felt to be very user-friendly. Noting that each of those Member States might have a different basis for applying this procedure, he stated that it would be very difficult for the Conference to select one of those procedures as a basis and impose it on all States. He emphasized the relief offered was the most important issue for the purposes of the Treaty. He explained that the provision had been drafted in terms of the relief, and that a neutral term, "the restoration of the priority right" had been used to describe the procedures and the relief. He suggested to focus on the question whether or not this relief should be included in the Treaty, rather than looking to specify the particular legal basis for the relief. If its inclusion were considered desirable, it would be up to each of the Contracting Parties to implement the procedures in the context of their own legal system.

1534. Mr. BARTELS (Germany) supported Article 13(2) with the changes suggested by the International Bureau. He said that Germany did not presently provide for reinstatement of rights but was prepared to change national legislation in accordance with the Treaty.

1535. Mr. BÜHLER (Switzerland) supported Article 13(2) with the amendments by the International Bureau.

1536. Mr. BADRAWI (Egypt) stated that the relationship of Article 13(2) to Article 4 of the Paris Convention remained problematic. He therefore proposed to add the words "taking into consideration the provisions of Article 4 of the Paris Convention" at the beginning of Article 13(2).

1537. Mr. BEIER (FICPI) said that his organization had, for a long time, pointed to the necessity of this provision, and, since 1982, had passed several resolutions to this effect. He said that situations envisaged by the provision could easily occur, without Article 13(2), the applicant would lose his priority claim due to circumstances beyond his control. He also stated that Article 13(2) did not provide for a prolongation of the priority term but for a reinstatement of priority right during the 12 month period of the Paris Convention.

1538. Miss EL KATEB (Tunisia) said that her Delegation subscribed to the position of the Delegation of Egypt and noted the complexity of the issue of priority and of the wording of Article 13(2), which gave rise to ambiguity as regards the interpretation of the period during which priority could be claimed, in accordance with Article 4 of the Paris Convention. Consequently, she proposed that the paragraph should be reworded by the International Bureau and the phrase "Notwithstanding the priority period provided for by the Paris Convention" added at the beginning of the paragraph. Her Delegation considered that such an addition would emphasize the fact that the principle maintained was that set by the Convention and that the provision of Article 13(2) was nothing more than a special dispensation allowed in certain circumstances and subject to certain cumulative conditions.

1539. Mr. TRAMPOSCH (WIPO) noted that the word "notwithstanding" would imply that the Diplomatic Conference was of the opinion that the provision was not in compliance with the Paris Convention. He stated that the language suggested by the Delegation of Egypt was neutral, leaving it to each Contracting Party to define the relationship to the Paris Convention.

1540. Mr. JENNY (EPI) confirmed that the EPI had always supported the principle enshrined in Article 13(2). He emphasized that applicants should not be penalized for circumstances beyond their control.

1541. Mr. HIEN (Burkina Faso) emphasized that irrespective of whether the priority period were extended, this infringed one of the fundamental principles of industrial property law. The Delegation of Burkina Faso considered that the proposal put forward by the International Bureau and Egypt represented an acceptable compromise, therefore supported the latter proposal, and preferred the wording "taking account of the provisions of the Paris Convention" to the term "notwithstanding."

1542. Mrs. BELKAID (Morocco) said that her Delegation supported the proposal put forward by Egypt but preferred the wording suggested by the Delegation of Tunisia. However, if Article 13(2) were not reworded, the Delegation of Morocco wished to express a reservation in that regard.

1543. Mr. BOUHNİK (Algeria) expressed the support of his Delegation for the proposal put forward by the Delegation of Egypt insofar as the reference to the Paris Convention clarified somewhat the situation regarding the claim of priority for the filing.

1544. Ms. FRANCISCO (Philippines) asked where, in paragraph (2), the language proposed by the Delegation of Egypt would be added.

1545. Mr. TRAMPOSCH (WIPO) explained that the words would appear at the very beginning of paragraph (2). Thus, the paragraph would begin with the following words: "taking into consideration the provisions of Article 4 of the Paris Convention, a Contracting Party shall provide..."

1546. Mr. STRENC (Romania) supported Article 13(2) as currently drafted. He stated that, in the spirit of compromise, he would not oppose the proposal made by the Delegation of Egypt. He noted, however, that this addition might imply that the Paris Convention had not been taken into consideration in the other Articles of the Treaty. He said that Article 13(2) did not contravene the spirit of the Paris Convention and suggested that this be mentioned in the Explanatory Notes.

1547. Mr. BARTELS (Germany) concurred with the view of the Delegation of Romania, and asked whether the reference to the Paris Convention would have the same effect as replacing, in paragraph (1), the word "shall" by "may." He declared that he would not welcome an amendment that would have the effect of leaving it to Contracting Parties to decide whether or not they wanted to grant relief. He suggested that the word "restore" in the last line of the chapeau be replaced by "reinstate."

1548. Mr. TRAMPOSCH (WIPO) referred to Article 12 where the term "reinstatement" is used with respect to a provision that only applies if failure to comply with a time limit had the direct consequence of causing a loss of rights. He said that using that term in Article 13 would imply that there had been a loss of right, which might not be the avenue chosen by a particular Contracting Party in applying that provision. For this reason, he said, it might be useful to continue to use a different word in Article 13 than in Article 12.

1549. Mrs. BOLAND (United States of America) concurred with the view of the Delegation of Romania and the first part of the intervention of the Delegation of Germany, and expressed concern with regard to the language proposed by the Delegation of Egypt. She asked the International Bureau to elaborate on the relationship of such language with Article 15, which appeared to set out all of the Paris obligations very clearly.

1550. Mr. NIYONKURU (Burundi) said that his Delegation supported the amendment proposed by Egypt in addition to that of the International Bureau. He suggested an improvement in formal terms to the wording of the French version of this article, so as to make it less confused: either by replacing the verb "a" ("has") with "porte" ("bears") "a filing date which is later," or by deleting the epithet "*antérieure*" ("earlier"), which did not serve the purposes of understanding as it was followed by "the date which is later," thereby leading to a redundant phrase.

1551. The PRESIDENT stated that Article 15 already determined the relationship of the Treaty with the Paris Convention by requiring each Contracting Party to comply with the provisions of the Paris Convention. Referring to the concerns expressed by several delegations that introducing an additional reference in Article 13(2) might create an undesirable *contrario* argument, he asked whether Article 13(2) could be adopted without adding the suggested reference at the beginning of Article 13(2).

1552. Mr. BADRAWI (Egypt) explained that he had been aware of Article 15 when he made the proposal to add a reference to the Paris Convention in Article 13(2). The purpose of the reference was to overcome the confusion referred to by many delegates, and improve the wording from a legal point of view by ruling out any doubts or ambiguities.

1553. Mr. LEBESNERAIS (France) pointed out that, following the statement made by the Delegation of Germany relating to the amendment of the term and the use of two different words in the last line of the preamble to Article 13, in the French version the same verb "*rétablir*" ("reinstate") was used in the preamble to Article 12 and in Article 13. He therefore suggested that the Drafting Committee should deal with the matter and wished to receive confirmation of the fact that the two verbs used should be different, in line with the English version, between Article 12 which used the term "reinstate" and Article 13 which used "restore."

1554. The PRESIDENT agreed in principle with the comment made by the Delegation of France, and referred the matter to the Drafting Committee.

1555. Mr. BAECHTOLD (WIPO) noted the comments made by the Delegation of France and confirmed that it would be useful for the Drafting Committee to discuss the matter.

1556. The PRESIDENT asked whether, in the spirit of compromise, Article 13(2) could be adopted with the addition of the language proposed by the Delegation of Egypt, and with the changes suggested by the International Bureau in its introduction of the Article.

1557. Mr. BARTELS (Germany) reiterated his question whether the insertion of the words at the beginning of paragraph (2) would relieve Contracting Parties from any obligation to provide this type of relief, and declared that he could not support an insertion with such an effect.

1558. In response, Mr. TRAMPOSCH (WIPO) suggested to explain, in the Explanatory Notes, the reason for the inclusion of the language, and that it did not modify the meaning of the paragraph as a whole.

1559. Mr. DRISQUE (Belgium) asked whether a Contracting Party could settle the rights of the third parties in the context of Article 13 via its own legislation.

1560. Mr. BAECHTOLD (WIPO) referred to Note 13.14, on page 30 of document PT/DC/5, which explicitly mentioned the note corresponding to Article 12 and gave Contracting Parties free rein to resolve this problem.

1561. Mr. VIDAURETTA (Argentina) requested that the position of his Delegation regarding Article 13(2) be recorded in the Conference records.

1562. The PRESIDENT stated that the position of the Delegation of Argentina would be noted in the records of the Diplomatic Conference.

1563. Mr. PAL (India) concurred with the view expressed by the Delegation of Argentina.

1564. Mr. EL FAKI ALI (Sudan) asked for clarification regarding the legal effect of the proposed words "taking into consideration..." and proposed to use, for the sake of consistency with other provisions, the words "subject to" instead.

1565. Mr. TRAMPOSCH (WIPO) said that the language proposed by the Delegation of Egypt was not intended to mean either "subject to" or "notwithstanding", but was intended to clarify that Article 13(2) was adopted taking into account the provisions of the Paris Convention without modifying the legal meaning of the paragraph.

1566. Mr. EL FAKI ALI (Sudan) asked that this be included in the Explanatory Notes.

1567. The PRESIDENT confirmed that such a clarification would be included in the Explanatory Notes.

1568. Ms. WEN (China) expressed a reservation with regard to the adoption of Article 13(2), and hoped her position be put in the records.

1569. The PRESIDENT declared Article 13(2) adopted in substance and referred to the Drafting Committee.

1570. *The PRESIDENT, noting that there were no comments regarding or objections to Rule 14(4), declared it adopted in substance and referred to the Drafting Committee.*

1571. *The PRESIDENT, noting that there were no comments regarding or objections to Rule 14(5), declared it adopted in substance and referred to the Drafting Committee.*

1572. The PRESIDENT invited the International Bureau to introduce Article 13(3) and the related rules.

1573. Mr. LEWIS (WIPO) reviewed the provisions of Article 13(3). He noted that it was intended to address the situation where the applicant requested a copy of the earlier application on which the priority claim was based, but as a result of delays in the Office with which the earlier application had been filed, he did not get it in time to comply with the period for filing that application, which was typically 16 months. He suggested a minor amendment which could be taken up by the Drafting Committee, namely, replace the word "be" with "expire".

1574. The PRESIDENT noted that an additional change suggested by the International Bureau was to insert "A Contracting Party shall provide that" at the beginning of Article 13(3). He also stated that the Delegation of Japan had made a proposal in relation to related Rule 14, and invited the Delegation of Japan to introduce their proposal as set forth in document PT/DC/10.

1575. Mr. IWASAKI (Japan) stated that the proposal of the Delegation addressed non-compliance with the requirement under Rule 14(6)(b)(ii), and that the proposal should stand hand in hand with the proposal from the United Kingdom, as set forth in document PT/DC/12, regarding the availability of priority documents. He noted that Article 13(3) provided that the priority rights would be restored in accordance with conditions prescribed in Rule 14. He stated that Article 13(3) did not, however, address

what would happen next. He stated that it would be legally inappropriate to start the substantive examination of an application with a priority claim but without having received a copy of the priority document. He stated that his Delegation is afraid that the PLT leave the application pending for good by restoring the priority right under Article 13(3). He also stated that the reason why his Delegation has been persistent in this matter was that the Japanese Patent Office is at the loss for a solution in practical procedure in case of PCT applications, and this should be avoided under the PLT.

1576. Mr. TRAMPOSCH (WIPO) observed that the addition of a new item (iv) to Article 13(3), as proposed by the Delegation of Japan, seemed to be necessary in order to provide a basis for the requirement of submitting a copy in Rule 14.

1577. The PRESIDENT proposed that Article 13(3) and the relevant Regulations 14(6) and 14(7) be discussed first and then the Japanese proposal on Rule 14(8). He noted that the proposals regarding Article 13(3) were to amend the Basic Proposal in PT/DC/3 by adding "A Contracting Party shall provide that" at the beginning of Article 13(3) and "(iv) A copy of the earlier application is filed within the time limit prescribed in the Regulations" as new Article 13(3)(iv). He invited the delegations to comment on Article 13(3) in that form.

1578. Mr. BADRAWI (Egypt) supported the proposal of the Delegation of Japan.

1579. Mr. JACKSON (CIPA) proposed that the "and" at the end of Article 13(3)(i) be moved to the end of Article 13(3)(iii).

1580. The PRESIDENT referred the proposal to the Drafting Committee but noted that the Representative from CIPA most likely was correct.

1581. Mr. BOGDANOV (Russian Federation) asked the meaning of the words "the Office finds that" in Article 13(3)(iii), and proposed their deletion.

1582. Mr. TRAMPOSCH (WIPO) stated that "the Office finds that" was used in the PLT where the Office did not have first-hand information and had to make this finding based on other information supplied to it. Referring to the language in Article 12(1)(iv): "the Office finds that the failure to comply...", he stated that it was a determination on the part of the Office.

1583. The PRESIDENT invited additional comments regarding Article 13(3) as modified by the addition of the words "A Contracting Party shall provide that" at the beginning as suggested by the International Bureau and by the addition of new item "(iv)" as proposed by the Delegation of Japan.

1584. Ms. WEN (China) asked the International Bureau to clarify its response to the question raised by the Delegation of the Russian Federation in regard to Article 13(3)(iii), and to explain the meaning of "finds," or at least the Chinese translation thereof.

1585. Mr. TRAMPOSCH (WIPO) said that the Chinese translation would be reviewed by the Drafting Committee. In connection with the question raised by the Delegation of the Russian Federation, he stated that the second Office would need to make "a finding" or "determination" based on information that was submitted to it, namely, whether a request had been filed with the other Office, i.e., the Office with which the earlier application had been filed, in due time. He noted that only the other Office had first-hand information about when the earlier application was filed, and that the second Office needed to rely on second-hand information supplied to it to make that determination. He proposed, by way of clarification, that the word "determines" or the phrase "the Office makes a determination" or something similar thereto could be used instead.

1586. *The PRESIDENT, noting that there were no further comments regarding the adoption of Article 13(3) with the addition of "A Contracting Party shall provide that" at the beginning and with the new item "(iv)" proposed by the Delegation of Japan, declared it adopted and referred to the Drafting Committee.*

1587. The PRESIDENT proposed that the Committee take up Rule 14(6) in its entirety together with the proposal of the Delegation of Japan regarding new Rule 14(8). He noted that the proposal under Rule 14(8) related back to new Article 13(3)(iv). He suggested that the two might be combined if the proposal of the Delegation of Japan were adopted.

1588. Mr. TRAMPOSCH (WIPO) stated that the suggestion of the International Bureau would be to combine the substance of the proposal of the Delegation of Japan in document PT/DC/10 with respect to new Rule 14(8) with the existing text in Rule 14(6)(b)(ii) such that the resulting text would read "(ii) the copy of the earlier application referred to in Article 13(3)(iv) be filed with the Office within a time limit which shall not be less than one month from the date on which the applicant is provided with that copy by the Office with which the earlier application was filed, or 12 months from the date of expiration of the time limit prescribed in Rule 4(1), whichever is shorter."

1589. The PRESIDENT invited comments on any aspect of Rule 14(6) including amended Rule 14(6)(b)(ii). He asked first if there was any support for the proposal of the Delegation of Japan to make a change of this nature.

1590. Mr. EDGAR (IPIC) asked whether the sense of former Rule 14(6)(b)(ii) would be changed by the combined text. He stated that the former text permitted the applicant one month from the time he received the application from the other Office, regardless when that happened, whereas the combined text set a strict 12 month limit. He noted, by way of example, that if it took one and a half years for the other Office to provide the copy, the applicant would still have a month to file that copy under the former text, whereas, under the new text, the applicant would not even have a possibility to file the copy, even if a reason for non-compliance was out of control of the applicant.

1591. Mr. TRAMPOSCH (WIPO) said that the understanding of the International Bureau of the proposal by the Delegation of Japan was the same.

1592. The PRESIDENT invited the delegations to make further comments about Rule 14(6) and, in particular, whether there was any support for the proposal of the Delegation of Japan.

1593. Mr. HERALD (Australia) noted that, on the one hand, some offices may be somewhat dilatory in providing the documentation, which was out of the control of the applicant. On the other hand, some offices wanted to proceed with processing of the application. He observed that, while applicants should be entitled to an extension of time where the delay is due to no fault of their own, the issue seems to be one between the applicant and its national Office.

1594. The PRESIDENT noted that the Delegation of Australia had not yet taken a position in regard to the proposal by the Delegation of Japan.

1595. Mr. UNGLER (Austria) supported the proposal of the Delegation of Japan.

1596. Mr. BARTELS (Germany) asked why the time limit was drafted as it appeared in the Basic Proposal without any overall time limit of, for example, 12 months more from the expiration of the 16 months prescribed in Rule 4.

1597. Mr. LEWIS (WIPO) explained that, delays in providing copies of earlier applications, of one year were not unknown and, delays of 18 months had been mentioned. He noted that the question of whether there should be an absolute limit of 12 months or not would seem to be a practical matter. A limit of 12 months may be considered reasonable if it covered most cases. On the other hand, if it denied relief in a substantial number of cases, the Committee may want to take that fact into account.

1598. Mr. CAVAZOS TREVIÑO (Mexico) said that his Delegation did not support the proposal made by the Delegation of Japan, since it considered that the twelve-month period contained in the proposal could be excessive.

1599. Mr. TRAMPOSCH (WIPO) stated that it was the understanding of the International Bureau that the provision in the Basic Proposal was unlimited in its duration. Accordingly, if the applicant only obtained a copy two years later, he still had one month to submit that copy. In contrast that the proposal of the Delegation of Japan imposed a twelve month limitation.

1600. Mrs. BOLAND (United States of America) stated that her Delegation did not support the proposal of the Delegation of Japan and preferred the text as presented in the Basic Proposal. She recalled the negotiations that led up to paragraph (6)(b), item (ii); and stated that her Delegation had a greater deal of sympathy for the applicant who encountered delay in offices throughout the world resulting in copies of earlier applications being late filed.

1601. Mr. EDGAR (IPIC) supported the intervention of the Delegation of the United States of America. He stated that the applicant should not be penalized through no fault of his own. He noted that while the Australian and Canadian Offices were friendly to applicants, that was not always the case worldwide. He also noted that many Canadian applications are first filed in the United States Patent Office, and that for Canadians, it was not a matter between the applicant and the applicant's own national Office.

1602. Mr. BOUCOUVALAS (Greece) supported the Basic Proposal regarding paragraph (6)(a), and the comments of the Delegation of the United States of America regarding paragraph (6)(b). He stated that his Delegation could not support the proposal of the Delegation of Japan for the reasons mentioned by the Delegation of the United States of America.

1603. Mr. TRÉPANIÉ (Canada) stated that his Delegation did not support the proposal of the Delegation of Japan. It was of the view that paragraph (6)(b)(ii) should not be changed. He noted that the applicant should have a certain amount of time after he actually received the copy of the prior application and should not be penalized if an office takes one and a half or two years to act.

1604. Mr. BEIER (FICPI) stated that the proposal of the Delegation of Japan was a trap for the applicant. He also noted the possibility that a priority document would never be available because the file of the earlier application was lost in the Office concerned. He suggested that, in such a case, an applicant should be given the opportunity to prove the contents of the earlier application by, e.g., an affidavit or sworn paper and so on.

1605. Mr. BOGDANOV (Russian Federation) noted that, in regard to Article 13(3)(iii), an applicant may have requested a copy of the earlier application within the time period but not paid the required fees for that country. Such fees were required by the Office of the Russian Federation. He noted that the failure to pay such fees would not be the fault of the Office from whom the applicant requested the priority document.

1606. Mr. TRAMPOSCH (WIPO) stated that it was the belief of the International Bureau that the Standing Committee of Patents assumed that Article 13(3)(iii) referred to a properly filed request, including any required fee. This could be so clarified in the Explanatory Notes.

1607. Mr. BARTELS (Germany) stated that his Delegation did not support the insertion of maximum time limits in Rule 14(6)(b)(ii), as proposed by the Delegation of Japan. He confirmed that his Delegation supported the addition of new Article 13(3)(iv).

1608. The PRESIDENT noted that new Article 13(3)(iv) had been adopted on the basis that it was necessary, in any event, to provide proper support for Rule 14(6)(b) as contained in the Basic Proposal.

1609. Mr. VAN HORN (AIPLA) supported the text of paragraph (6)(b), item (ii), as contained in the Basic Proposal. He stated that an applicant should not be penalized for the failure of an office to provide copies which was outside his control. He noted that Offices did not always give priority to providing copies of earlier applications. He noted that, in many cases, examination could proceed without the need to consider the content of a priority document.

1610. Mr. ROUTMAN (ABA) stated that in the United States of America files had been lost completely, thus making it very difficult, if not impossible, to provide copies of priority documents. He stated that, although there is no ABA resolution to the effect, the ABA supported the Basic Proposal and opposed the proposal of the Delegation of Japan.

1611. The PRESIDENT noted that only one delegation has supported the proposal of the Delegation of Japan and that many have spoken against it.

1612. *The PRESIDENT, noting that there were no further comments regarding or objections to the adoption of Rule 14(6) with the addition of a reference to Article 13(3)(iv) in Rule 14(6)(b)(ii), declared it adopted in substance and referred it to the Drafting Committee.*

1613. *The PRESIDENT, noting that there were no further comments Rule 14(7), declared it adopted in substance and referred it to the Drafting Committee to consider, in particular, the suggestion by the International Bureau that "shall be two months" should be changed to "shall expire in two months."*

1614. The PRESIDENT invited the International Bureau to introduce Article 13(4) and (5).

1615. Mr. LEWIS (WIPO) introduced the provisions of Article 13(4) and (5). He suggested that, in paragraph (5), the words "at least one opportunity" be amended to "the opportunity" so as to be consistent with amendments adopted in Articles 11 and 12. He also pointed out that, Article 13 did not contain a provision for requiring evidence in support of the reasons referred to in paragraph (2), item (iii), which may be needed for the finding referred to in paragraph (2), item (iv). He noted that provisions for requiring such evidence had been adopted in respect of requests under Article 12 and Article 13(3). He therefore suggested that a new paragraph be added either under Article 13 or, following what has already been done in respect of the evidence under 13(3), in Rule 14. He suggested that it be left to the Drafting Committee to decide the actual wording of the provision and whether that provision should be in the Article or in the Rules.

1616. The PRESIDENT invited the delegations to comment on Article 13(4) and (5).

1617. Mr. HERALD (Australia) supported the adoption of Article 13(4) and Article 13(5) with the changes suggested by the International Bureau. He also supported the insertion, to be determined by the Drafting Committee, of a provision equivalent to Article 12(4)

1618. Mr. HÚJEROVÁ (Czech Republic) supported the suggestion of the International Bureau concerning the addition of a new paragraph, concerning evidence.

1619. Mr. BOUCOUVALAS (Greece) supported the suggestion by the International Bureau for the inclusion of a new paragraph concerning evidence in the Treaty.

1620. Ms. FRANCISCO (Philippines) supported the proposal of the International Bureau for a new paragraph in the Treaty.

1621. *The PRESIDENT, noting that there were no objections to the adoption in substance of Article 13(4) and (5), together with a new paragraph on evidence in the Treaty, declared those provisions adopted in substance and referred to the Drafting Committee.*

1622. Mrs. BOLAND (United States of America) stated that her Delegation had drafted a suggested modification to Note 3.05 to cover the issue about application for patent term extension and patent term adjustment, and that with the Note so modified, the Delegation of the United States of America could withdraw its proposal to add a new paragraph (8) to Rule 13(3).

1623. Mr. TRAMPOSCH (WIPO) acknowledged receipt of the text of the Delegation of the United States of America which read, "In Note 3.05 there would be added a reference to the Law of the United States of America and the following sentence would be added, 'they do not apply to applications for patent term adjustment for example, as in the United States of America in respect of the determination of additional patent term for delays in the issue of a patent.'"

1624. The PRESIDENT stated that the Committee would meet on the next day from 10.00 a.m. to 1.00 p.m., 2.30 p.m. to 5.30 p.m., and 7.00 p.m. to 10.00 p.m.

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1625. The PRESIDENT stated that after Main Committee I adopted the text of the Treaty, it would be reviewed by the Drafting Committee and then returned to Main Committee I. He proposed that the work of the Main Committee proceed as follows: the proposal by the Delegation of Australia for an agreed statement in relation to Rules 12(5)(vi) and 13 (3)(vii); Article 10 and the proposal by Australia to make Article 6(8) subject to Article 10, Article 14 and Rule 20, Article 1, Paper No. 3 which relates to the incorporation of revisions, amendments and modifications of the PCT into the PLT; the definition of Paris Convention: the proposal for a new Article 15*bis* and its reinstatement; Article 1(i) and Article 1(xiv) concerning the definition of procedure before the Office and the proposals for reinstatements on that by Japan and Switzerland; Article 4 on national security and the definition of Contracting Party which has been set aside pending our discussion of Article 4; Article 5 on filing date and related Rule 2: priority dates, Rule 4(4), and a proposed agreed statement by the United Kingdom in relation to access to priority documents; Article 21 which concerns the application of the PLT to existing applications and patents; Rule 21 which concerns the unanimity requirements; representation Article 7(2) in Rule 7(1); communications in Rules 8(1)(a) and 8(1)(d); new proposals or any miscellaneous matter which might have been left out of the list; and reservations under Article 22(1).

Agreed Statement

1626. He invited the Delegation of Australia to introduce its proposal regarding an agreed statement concerning Rules 12(5)(vi) and 13(3)(vii) set forth in document PT/DC/27.

1627. Mr. HERALD (Australia) stated that *inter partes* procedures should be excluded under Rules 12 and 13 since the relief in respect of time limits provided under Articles 11 and 12 were not appropriate to such procedures. He supported the proposal of the Delegation of the United States of America that the words "as well as those interests of others who are not Parties to proceedings" be added at the end of the proposed agreed statement. He also supported changing "similar relief" to "appropriate relief."

1628. The PRESIDENT noted, in addition to the changes mentioned by the Delegation of Australia, the need to correct a typographical error, namely, to change "form" to "from."

1629. Mr. HE (China) withdrew the reservation of the Delegation of China with respect to Rule 12(4).

1630. Mr. WEARMOUTH (United Kingdom) supported the proposal of the Delegation of Australia.

1631. *The PRESIDENT, noting that there were no further comments regarding or objections to the agreed statement as proposed and subsequently modified by the Delegation of Australia, declared it adopted and referred to the Drafting Committee.*

Article 10: Validity of Patent; Revocation

1632. The PRESIDENT invited the International Bureau to introduce Paper No. 2 dated May 22, 2000 regarding Article 10.

1633. Mr. TRAMPOSCH (WIPO) explained that Paper No. 2 was based on the discussion of Article 10 that had taken place in this Committee earlier. He noted that paragraph (1) was simply a redrafting of paragraph (1) of Article 10 as it appears in the Basic Proposal with the re-ordering of the phrases and the deletion of the reference to the list of authorities of a Contracting Party. He noted that the Committee had already decided to amend Article 10(2) as presented in the Basic Proposal by deleting the list of authorities and changing the words "at least on" to "the." He noted that paragraph (3), as discussed earlier by the Committee, based on the text that appears in the TRIPS Agreement in Article 41.5. He observed that the membership in the WTO and the TRIPS Agreement may not be coextensive with membership in the PLT. Accordingly, the TRIPS Agreement would not necessarily apply to every Contracting Party of the PLT.

1634. The PRESIDENT invited comments on Article 10(1) and (3) as suggested by the International Bureau in Paper No. 2.

1635. Mr. BOGDANOV (Russian Federation) supported the suggestion of the International Bureau. However, he suggested that the phrase "once a patent has been granted" in paragraph (1) was superfluous.

1636. Mr. TRAMPOSCH (WIPO) stated that the phrase set the context so that the paragraph could be more clearly understood. However, its deletion would not result in a change of substance.

1637. The PRESIDENT noted that if the phrase at the beginning of Article 10 as it appears in Paper No. 2 were deleted, the subsequent words "the patent" should be changed to "a patent". He agreed that the changes were not substantive and could therefore be referred to the Drafting Committee.

1638. Ms. SAHA (India) supported the suggestion of the International Bureau regarding Article 10(1) and (3).

1639. Mr. BADRAWI (Egypt) supported the suggestion of the International Bureau with regard to Article 10(3). He stated that it was in full agreement with the TRIPS Agreement and resolved all the problems raised in earlier discussions. He stated that the proposal of the International Bureau regarding Article 10(1) was inadequate with regard to formal requirements since what was at stake in Article 10(1) were substantive, not formal, issues.

1640. Mr. RAJAN (Ireland) proposed that Article 10(1) be amended by moving the phrase "with respect to an application" so that it immediately follows the phrase "Article 6(1), (2), (4) and (5) and 8(1) to (4)" because Article 8 did not refer to an application.

1641. Mr. TRAMPOSCH (WIPO) stated that it saw no problem with moving the phrase "with respect to an application" in Article 10(1) as proposed by the Delegation of Ireland. He explained that, with respect to the intervention by the Delegation of Egypt, the word "formal" was included in Article 10(1) by the Standing Committee on Patents to make it clear that the paragraph did not relate to any substantive requirements of patent law that may be associated with the requirements mentioned in Articles 6 or 8. He noted that Article 6, in particular, was limited to formal requirements in respect of the contents of an application. Non-compliance with substantive requirements with respect to the contents of an application would not be affected by Article 10. In particular, a patent could be invalidated for non-compliance with the substantive requirements with respect to the contents of the application. The word "formal" was included to make this clear.

1642. Mrs. EL MAHBOUL (Morocco) said that her Delegation supported the wording of paragraph (1), as proposed, and had no objection to the amendments put forward by Ireland. Furthermore, the Delegation of Morocco strongly supported the wording of paragraph (3) which reflected the comments it had made during the discussions on Article 10.

1643. Mr. VIDAURETTA (Argentina) said that his Delegation supported the new wording of paragraphs (1) and (3) of Article 10, as they appeared in Paper No. 2, prepared by the International Bureau.

1644. Mr. BADRAWI (Egypt) stated that the observations of Mr. Tramposch in regard to formal requirements did not mean that Article 10(1) refers purely to form. He stated that the proposal by his Delegation would be to avoid reference to a list of cited articles, that is to make reference to formal requirements but not to the Articles listed.

1645. Mr. BAECHTOLD (WIPO) noted that the reference in Article 10(1) to the list of Articles was the result of extensive discussion in meetings of the former Committee of Experts and of the SCP. He explained that it had been agreed that Contracting Parties should have the freedom to invalidate the patent in certain cases even where a formal mistake had been made and not been discovered by the Office during the processing of the application. An example, was where a translation of the application should have been required under Article 6(3) and had not been filed. He stated that it was felt very strongly that the text had to be very specific on which provisions should be included and which should be excluded from this paragraph. He stated that many delegations would have a problem with changing the text.

1646. Mr. HERALD (Australia) noted the intervention of the Delegation of Ireland with respect to paragraph (1). He suggested that revocation of a patent for non-compliance with the requirements of Article 8(1) to (4) should be allowed. Also, since the provisions of Article 6(1), (2), (4) and (5) expressly related to an application, the words "with respect to an application" should be deleted.

1647. Mr. TRAMPOSCH (WIPO) noted that, while Article 6 applied only to applications, a communication under Article 8(1) to (4) might be in relation to an issued patent rather than to an application. He noted that the effect of the deletion of the words "with respect to an application" would be that a patent could not be invalidated for non-compliance with formalities of a communication in relation to that patent. He noted that the Delegation of Australia indicated that that was their intention.

1648. Mr. PRAMUDYO (Indonesia) supported the proposal of the International Bureau regarding Article 10(1) and (3), including the amendment proposed by the Delegation of Ireland.

1649. Mr. BADRAWI (Egypt) stated that he had listened closely to the observations of the International Bureau concerning the delegations that favor the proposal, but noted that the Committee was still taking a survey of the various opinions. He stated that although the Articles listed contain references to objective issues, mere reference to the Articles themselves was inadequate. He noted, by way of example, that the issue of priority could be deemed a formal requirement. He proposed that the list of Articles be deleted and that the text should read, "the patent shall be revoked if there is non-compliance with formal requirements with fraudulent intention." He stated that it should be up to the authorities such as the judiciary to take a decision on such issues.

1650. Mr. EVASCO (Philippines) stated that his Delegation supported the addition of Article 10(3). He asked for confirmation as to whether Article 6(5) had been adopted, since if it had not, his Delegation would reserve its comments until all the listed Articles were adopted.

1651. The PRESIDENT confirmed that all of the Articles referred to in Article 10(1), including Article 6(5), had been adopted.

1652. Mr. HERNÁNDEZ VIGAUD (Cuba) said that his Delegation supported the wording suggested by the International Bureau for Article 10. As regards Article 10(3), he suggested that the word "stemming" should be avoided, since it might give rise to certain conceptual problems.

1653. Mrs. LAGARMILLA (Uruguay) said that her Delegation supported the proposed wording for Article 10, prepared by the International Bureau, and shared with Cuba the suggestion to omit the word "stemming" from Article 10(3).

1654. The PRESIDENT stated that the issue regarding the Spanish text in Article 10(3) would be referred to the Drafting Committee.

1655. Mr. CAVAZOS TREVIÑOS (Mexico) said that his Delegation supported the wording of Article 10, as proposed in paper No. 2, prepared by the International Bureau. His Delegation considered that the specific reference to the articles mentioned in Article 10(1) was fundamental, since it reflected the discussions that had taken place in the past few years as to what formal requirements could be included and those which could be omitted. Eliminating these references would open a debate that had already been surpassed. As to Article 10(3), his Delegation shared the views expressed by the Delegations of Cuba and Uruguay regarding the use of the word "stemming."

1656. Mr. HIEN (Burkina Faso) supported paragraph (3) of the proposal put forward by the International Bureau but sought clarification as regards paragraph (1), as proposed by the Bureau, which referred to Article 6(4) dealing with fees. If a Contracting Party required fees to be paid and those fees were not paid, could the patent not be revoked?

1657. Mr. TRAMPOSCH (WIPO) explained that, by way of example, where, during the processing of the application, and the Office had overlooked the non-payment of a fee, the Office could not, after the patent has been granted, invalidate the patent on the grounds of that non-payment. However, a patent could be invalidated for non-payment of fees, such as maintenance fees, payable after the grant of the patent.

1658. The PRESIDENT concluded that, in the discussion regarding Article 10(1) and (3), as proposed in Paper No. 2, almost all of the delegations had spoken in support of the substance of the text as proposed in Paper No. 2. He noted that there were some drafting points that could be referred to the Drafting Committee, including the suggestion by the Delegation of the Russian Federation that the introductory words "once a patent has been granted" might be superfluous and should be deleted; the suggestion by the Delegation of Ireland to move the words "with respect to an application"; and the concerns of the Delegations of Uruguay, Cuba, and Mexico, about the Spanish text for Article 10(3). He noted that there was no support for the proposal of the Delegation of Australia to delete the words "with respect to an application" in paragraph (1). There was also no support for the proposal of the Delegation of Egypt to delete the list of Articles referred to in that paragraph.

1659. *The PRESIDENT, noting that there were no objections either to the adoption of Article 10, paragraphs (1) and (3), as presented by the International Bureau, or to the referral of the aforementioned drafting issues, declared these paragraphs adopted in substance and referred to the Drafting Committee.*

Article 6: Application

Article 8: Communications; Addresses

1660. The PRESIDENT noted that the Committee had previously suspended discussion of a proposal made by the Delegation of Australia to make Article 6(8) and Article 8(8) subject to Article 10 until after completion of the discussion of Article 10. He invited the Delegation of Australia to reintroduce its proposal.

1661. Mr. HERALD (Australia) stated that Article 10 was clearly restricted to non-compliance with requirements relating to the application stage. However Articles 6(7), 6(8) and 8(7) did not, as a matter of strict narrow interpretation, exclude the possibility that the notification would be issued after the patent had been granted. In such a case Article 6(8) would then provide for any such sanction as it is provided for in its law without restraint.

1662. Mrs. BOLAND (United States of America) supported the proposal of the Delegation of Australia, and asked that the Explanatory Notes elaborate the narrow circumstances in which it would be invoked.

1663. The PRESIDENT stated that the proposal was to amend Article 6(8)(a) to read, "subject to subparagraph (b) and Articles 5 and 10" and to amend Article 8(8) to read, "subject to Articles 5 and 10." He noted that this proposal was in respect of adopted text and that, although the Rules of Procedure provide for specific procedures, the Committee was proceeding on the basis of consensus. He noted that the proposal had support, and asked whether there were any objections.

1664. Mr. BOGDANOV (Russian Federation) asked that the proposed changes be read again.

1665. Mr. STOHR (EPO) supported the proposal of the Delegation of Australia.

1666. *The PRESIDENT, noting that there were no objections to the adoption of Article 6(8)(a) and Article 8(8) with the changes proposed by the Delegation of Australia, declared then adopted in substance and referred to the Drafting Committee.*

Article 14: Regulations

1667. The PRESIDENT invited the International Bureau to introduce Article 14(1).

1668. Ms. MIYAMOTO (WIPO) reviewed the provisions of Article 14. She proposed two consequential changes to Article 14(1)(c) with respect to the deletion of "format," namely, the deletion of "and model international formats" and "or format."

1669. *The PRESIDENT, noting that there were no objections regarding the adoption of Article 14(1) with the amendments of the International Bureau, declared it adopted in substance with the amendments and referred to the Drafting Committee.*

1670. The PRESIDENT invited comments regarding Article 14, paragraphs (2) or (3).

1671. Mrs. LAGARMILLA (Uruguay) requested clarification of Article 14(3)(b), since the Spanish version referred to "*la adición o supresión de disposiciones de las disposiciones especificadas en el reglamento*" ("the addition of, provisions to, or the deletion of provisions from, the provisions specified in the Regulations"), which appeared to be a repetition that should be examined.

1672. Mr. TRAMPOSCH (WIPO) explained that Article 14(3)(b) provided a unanimity requirement with respect to some provisions of the Regulation. That unanimity requirement would also apply to the addition and deletion from Rule 21 of the Rules prescribed in Rule 21. He noted that the Spanish text would be reviewed by the Drafting Committee.

1673. Mrs. ABD EL GAWAD (Egypt) supported the proposal with respect to unanimity and to any addition to or deletion from the Regulations concerned.

1674. *The PRESIDENT, noting that there were no objections regarding the adoption of Article 14, paragraphs (2) and (3), declared them adopted and referred to the Drafting Committee.*

1675. Mrs. EL MAHBOUL (Morocco) noted that Article 14(3) stated that "the Regulations may specify" while Rule 21 stated that amendment of the Rules "shall require unanimity". She asked for clarification as to the relationship of those provisions. She also asked whether the list of Rules in Rule 21 was exhaustive or merely exemplary.

1676. Mr. TRAMPOSCH (WIPO) explained that the requirement in Article 14(2) for a three-fourths vote of the Assembly to amend any of the Regulations was the basic rule. However, here are some Regulations that the Diplomatic Conference and the SCP had agreed should require a unanimous vote in order for those regulations to be amended. He noted that the basis for the exceptions was provided in Article 14(3)(a), which stated that the Regulations may specify the particular Rules that would require unanimity. Rule 21 specified three such rules. He also explained that any amendment of Rule 21 itself to add a rule, or to delete a rule, also require unanimity. It would not make sense for three-fourths of the Assembly to be able to decide that another provision could only be amended by unanimity. He noted that Article 14(3)(b) and Rule 21 might be double provisions and suggested that this be addressed by the Drafting Committee.

1677. Mr. NIYONKURU (Burundi) said that, as regards Article 14, it had been stated that discrepancies might exist between the Treaty and the Regulations under the Treaty. He asked whether the two texts should not be consistent. Taking into account the fact that the Treaty was not self-explanatory and required Regulations, he wondered whether both texts should form part of a single document and whether this duality was not likely to mislead the uninitiated.

1678. Mr. TRAMPOSCH (WIPO) stated that the provisions of the Treaty and the related Regulations had been presented in separate documents pursuant to the Rules of Procedure. This was to allow each delegate to refer to an article and a rule at the same time. However, the Treaty and Regulations would be adopted as a single document. They would be published as such in a single volume, together with the Explanatory Notes.

1679. *The PRESIDENT, noting that there were no further comments regarding or objections to the adoption of Article 14(4), declared it adopted in substance and referred to the Drafting Committee.*

Rule 20: Establishment of Model International Forms and Formats

1680. The PRESIDENT invited the International Bureau to introduce Rule 20.

1681. Ms. MIYAMOTO (WIPO) introduced Rule 20 and suggested a number of amendments, in consequence of the deletion of the word "format" throughout the Treaty and the Regulations, so that Rule 20 would read as follows:

"Rule 20 Establishment of Model International Forms

(1) [Model International Forms] The Assembly shall, under Article 14(1)(c), establish Model International Forms in respect of:

- (i) a power of attorney;
- (ii) a request for recordation of change in name or address;
- (iii) a request for recordation of change in applicant or owner;
- (iv) a certificate of transfer;
- (v) a request for recordation, or cancellation of recordation, of a licensing agreement;
- (vi) a request for recordation, or cancellation of recordation, of a security interest;
- (vii) a request for correction of a mistake.

(2) [*Modifications Referred to in Rule 3(2)(i)*] The Assembly shall establish the modifications of the Patent Cooperation Treaty request Form referred to in Rule 3(2)(i).

(3) [*Proposals by International Bureau*] The International Bureau shall present proposals to the Assembly concerning:

- (i) the establishment of Model International Forms referred to in paragraph (1);
- (ii) the modifications of the Patent Cooperation Treaty request Form referred to in paragraph (2)."

1682. She also suggested to replace, as a consequence of the amendments suggested in Rule 20, the reference to "Rule 20(1)(b)" at the end of Rule 3(2) by a reference "Rule 20(2)."

1683. The PRESIDENT invited comments on Rule 20.

1684. Mr. HE (China) asked whether the Model International Forms were adopted by the Contracting Parties, or established by the International Bureau.

1685. Mr. BAECHTOLD (WIPO) referred to Article 14(1)(c) according to which the Model International Forms would be established by the Assembly. Therefore, the Treaty would first have to enter into force, before an Assembly could meet in order to establish the Forms.

1686. Mrs. LAGARMILLA (Uruguay) asked whether, subject to the amendments established in Rule 20, the title of that Rule would be amended and whether Rule 3(2)(iv) would be retained.

1687. Mr. TRAMPOSCH (WIPO) recalled that Rule 3(2), item (iv) had been deleted by the Committee in its discussion of Rule 3.

1688. Mr. BADRAWI (Egypt) asked for clarification regarding the text of Rule 20 with the amendments suggested by the International Bureau.

1689. The PRESIDENT explained the suggested amendments. He stated that the details could be referred to the Drafting Committee.

1690. Mr. AHLERT (ABAPI) observed that if the use of the Model Forms were to be obligatory, this might cause problems in a country like Brazil. He informed delegates that Brazilian law required not only that the representative be authorized to act before the Office, but that he also be able to receive judicial summons. He expressed concern said that a Model International Form for the power of attorney might not take this requirement into account. This could then necessitate the filing of two powers of attorney in Brazil.

1691. Mr. TRAMPOSCH (WIPO) noted that the authority to receive judicial summons appeared to be along the lines of what was referred to in the Treaty as an address for legal service. He explained that the Assembly, once it convened, would have the power to decide to include an item on the Model

International Form for the power of attorney stating that the attorney's address should be the address for legal service for the applicant.

1692. Mr. ZOUA (Cameroon) proposed also to delete the word "format" in Article 6(2) and Rule 7(2)(ii).

1693. Mr. TRAMPOSCH (WIPO) noted and stated that it had already been decided to delete these words.

1694. Mr. EL FAKI ALI (Sudan) asked the International Bureau to explain the term "security interest" mentioned in Rule 20(1)(vi).

1695. Mr. TRAMPOSCH (WIPO) explained that this item did not refer to a national security interest, which was addressed by Article 4, but rather to a financial security interest, such as an interest for securing a loan from a bank. He stated that the International Bureau would carefully look at the different language versions to make sure this meaning would adequately be reflected in all of the texts in the Drafting Committee.

1696. Mrs. ABD EL GAWAD (Egypt) proposed to include, in paragraph (1), an item to the effect that the Model International Forms ought to be translated into all languages.

1697. Mr. TRAMPOSCH (WIPO) explained that the question in which languages the Model International Forms would be established was left to the Assembly. When the Assembly convened after the entry into force of the Treaty, its composition, in so far as it had an influence on languages, would not be known. It may wish to decide not to establish a Model International Form in a language that was not utilized by any Contracting Party to the Treaty. He explained, however, that it was envisaged to establish the Model International Forms in at least the six official languages of WIPO, if required. This could be made clear in the Explanatory Notes.

1698. Mr. BADRAWI (Egypt) declared that, since the Treaty would be published in the six official languages of WIPO, the Model Forms should also be published in these languages.

1699. The PRESIDENT said that, if there was support for so doing, a provision could be included in Rule 20 stating that the Model International Forms would be prepared in all six languages. He said that the alternative would be to leave the matter for the Assembly to decide.

1700. Mr. BADRAWI (Egypt) stated that he could not understand why there should be resistance to include a provision to that effect, since the Treaty would be published in the six official languages of WIPO, and since its objective was the simplification of procedures.

1701. Mr. EL FAKI ALI (Sudan) supported the proposal made by the Delegation of Egypt noting that this would further the simplification of procedures which, after all, was the objective of the Treaty.

1702. Miss EL KATEB (Tunisia) also supported the position of Egypt.

1703. Mr. HUMAID (Yemen) supported the proposal made by the Delegation of Egypt.

1704. The PRESIDENT asked whether there were any objections to the proposal made by the Delegation of Egypt.

1705. Mr. TRAMPOSCH (WIPO) suggested to insert, in Rule 20(1), the words ", in each of the languages referred to in Article 24(1) and (2)," after both occurrences of the words "Model International Forms."

1706. Mr. BADRAWI (Egypt) supported the wording suggested by the International Bureau.

1707. Mrs. BOLAND (United States of America) stated that she would have to withhold support for this change since her Delegation was just reviewing its position on Article 24 (2). She said that she was willing to revisit this matter once Article 24 had been discussed in Main Committee II.

1708. Mr. TRAMPOSCH (WIPO) suggested to refer only to Article 24(1) which lists the six official languages of WIPO.

1709. Mr. HERALD (Australia) supported that proposal, but asked for confirmation that the wording used would not limit the number of languages available for the Model International Forms to the six official languages of WIPO.

1710. Mr. TRAMPOSCH (WIPO) said that Rule 20(1), as amended, would be a minimum provision. This had the consequence that the Assembly could go beyond it, subject to the availability of resources of the International Bureau, to provide for Forms in other languages.

1711. *The PRESIDENT declared Rule 20 adopted in substance as amended and referred to the Drafting Committee.*

Article 1: Abbreviated Expressions

Article 15: Relation to the Paris Convention

1712. The PRESIDENT invited comments on Article 15 and the definition of "Paris Convention" in Article 1(xvi). He noted that the International Bureau had submitted a suggestion in document PT/DC/6.

1713. Mr. LEWIS (WIPO) introduced Article 15 and explained that the provision was modeled after Article 2(2) of the Geneva Act regarding the Hague Agreement. He suggested, for greater conformity with that provision, to replace the word "any", at the beginning of Article 15(1), by "each." With regard to paragraph (2) he explained that this provision was modeled after Article 1(2) of the WIPO Copyright Treaty and Article 1(1) of the WIPO Performances and Phonograms Treaty.

1714. With regard to the definition of "Paris Convention" in Article 1(xvi), he withdrew the suggestion of the International Bureau made in Annex I of document PT/DC/6, and suggested to retain the language contained in the Basic Proposal (document PT/DC/3) instead. He explained that this was a provision for the avoidance of doubt, based on precedence under the Geneva Act of the Hague Agreement and the 1996 Copyright Treaties.

1715. The PRESIDENT invited comments on Article 15 with the amendment suggested by the International Bureau.

1716. The PRESIDENT declared Article 15 adopted in substance and referred to the Drafting Committee.

1717. Mr. WEARMOUTH (United Kingdom) invited comments on the definition of "Paris Convention" in Article 1(xvi).

1718. Mr. HERALD (Australia) asked whether he had understood correctly that the International Bureau had withdrawn its suggestion in document PT/DC/6 and was now suggesting to retain the text in the Basic Proposal.

1719. Mr. BADRAWI (Egypt) proposed to delete the words "signed on March 1883, as revised and amended" since they might cause confusion, particularly since the title of the Convention had not been affected by the various revisions and amendments.

1720. Mr. TRAMPOSCH (WIPO) stated that the definition used in the Basic Proposal, was that used officially by WIPO, the Organization charged with the administration of the Paris Convention. He said that this reference was also used, for example, in the Trademark Law Treaty (TLT).

1721. Mr. BARTELS (Germany) supported the Article 1(xvi) as contained in the Basic Proposal.

1722. Mr. RAJAN (Ireland) noted that the TRIPS Agreement defined "Paris Convention" as being the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967.

1723. *The PRESIDENT declared the definition of the Paris Convention in Article 1(xvi), as contained in the Basic Proposal, adopted in substance and referred to the Drafting Committee.*

Incorporation of Revisions, Amendments and Modifications of the PCT

1724. The PRESIDENT then invited the International Bureau to introduce its suggestion in Paper No. 3 concerning the incorporation of revisions, amendments and modifications of the PCT into the Treaty.

1725. Mr. TRAMPOSCH (WIPO) introduced Paper No. 3. He explained that it was based on earlier discussions in the Committee in the context of Article 6 of the PLT. He recalled that those discussions had been based on document PT/DC/6 which had suggested two options for dealing with the question of incorporating future changes to the PCT into the PLT. Option 1 was to require a vote of the PLT Assembly in order for those changes to have effect under the PLT. Option 2 was to accord those changes automatic effect, subject to the possibility of refusal by the PLT Assembly. This approach had been suggested for reasons of convenience and savings of cost in not having to convene additional and extraordinary meetings of the PLT Assembly. He recalled that the automatic incorporation of future PCT changes had not been acceptable for a number of delegations, and that the Committee had asked the International Bureau to explore the possibility of a solution that would have the legal certainty of Option 1 and the convenience of Option 2. He said that the suggestion made in Paper No. 3, in his view, provided a solution that satisfied both criteria.

1726. With regard to the individual suggestions in Paper No. 3, he explained that the definition of "Patent Cooperation Treaty" was different from the one that had been suggested in document PT/DC/6, but similar to the definition in the Basic Proposal, with the exception that it would include the Regulations and Administrative Instructions under the PCT. It would read as follows:

*"Article 1
Abbreviated Expressions*

(xviii) "Patent Cooperation Treaty" means the Patent Cooperation Treaty, signed on June 19, 1970, together with the Regulations and the Administrative Instructions under that Treaty, as revised, amended and modified;"

1727. He also presented the suggestion, in Paper No. 3, to include a new Article 15bis that read as follows:

*"[New] Article 15bis
Effect of Revisions, Amendments and Modifications of the Patent Cooperation Treaty*

(1) *[Applicability of Revisions, Amendments and Modifications of the Patent Cooperation Treaty]* Subject to paragraph (2), any revision, amendment or modification of the Patent Cooperation Treaty made after June 2, 2000, which is consistent with the Articles of this Treaty, shall apply for the purposes of this Treaty and the Regulations if the Assembly so decides, in the particular case, by three-fourths of the votes cast.

(2) *[Non-Applicability of Transitional Provisions of the Patent Cooperation Treaty]* Any provision of the Patent Cooperation Treaty, by virtue of which a revised, amended or modified provision of that Treaty does not apply to a State party to it, or to the Office of or acting for such a State, for as long as the latter provision is incompatible with the law applied by that State or Office, shall not apply for the purposes of this Treaty and the Regulations."

1728. He observed that it might be simpler and just as effective to include these provisions as two new paragraphs into Article 15. He explained that the three-fourths vote suggested in the provision, was the vote the Assembly would use to decide changes to the Regulations. Accordingly, changes to the PCT adopted by the PLT Assembly would have a status similar to the Regulations of the PLT.

1729. He recalled that the Committee had earlier considered that current transitional provisions under the PCT should not carry through to the PLT because legislation would have to be amended in order to accommodate the provisions of the PLT in any case. However, future transitional provisions under the PCT could carry through. He was now suggested that no transitional provisions of the PCT, present or future, would carry through to the PLT. Instead, the PLT Assembly itself would decide when a transitional provision was appropriate for its Members with respect to future changes to the PCT. He referred to paragraph (2) which contained the first part of that principle, whereas the second part would be

contained in the Draft Agreed Statement. Although the wording of paragraph (2) might seem complex, it was needed to cover any kind of transitional provisions of the PCT.

1730. Mr. TRAMPOSCH also introduced the suggestion to include a new item (*vbis*) in Article 16(2) that was intended to provide the Assembly the authority to make the decision mentioned in suggested Article 15*bis*(1). This new item would read as follows:

“(v*bis*) decide pursuant to Article 15*bis*(1) whether any revision, amendment or modification of the Patent Cooperation Treaty shall apply for the purposes of this Treaty and the Regulations;”

1731. With regard to the Draft Agreed Statement, he explained that this was aimed at facilitating the meetings of the PLT Assembly and to minimize cost and inconvenience on its Members. It seemed sufficient for the PLT Assembly to meet, where appropriate, at the same time as the PCT Assembly. Accordingly, each time the PCT Assembly adopted changes that were relevant to the PLT to the PCT Regulations, the PLT Assembly could be convened to adopt or reject those changes. With respect to the Administrative Instructions that might be promulgated by the Director General without convening the PCT Assembly, he noted that it would not appear burdensome, for the adoption or rejection of those Administrative Instructions for the purposes of the PLT could wait for the next meeting of the PLT Assembly. In order to make clear that the Diplomatic Conference has adopted the procedure for incorporation of future changes to the PCT with those understandings, he suggested the Draft Agreed Statement, contained in Paper No. 3, that would outline the understanding of the Conference with respect to these procedures. This read as follows:

“When adopting Article 1(xvii), 15*bis*, and 16(2)(v*bis*), the Diplomatic Conference understood that:

(1) The PLT Assembly would, when appropriate, be convened in conjunction with any meetings of the PCT Assembly.

(2) Contracting Parties of the PLT would be consulted when appropriate in addition to the States party to the PCT, in relation to proposed modifications of the PCT Administrative Instructions.

(3) The Director General shall propose, for the determination of the PCT Assembly that Contracting Parties of the PLT which are not party to the PCT be invited as observers to PCT Assembly meetings and to meetings of other PCT bodies when appropriate.

(4) When the PLT Assembly decides, under Article 15*bis*, that a revision, amendment or modification of the PCT shall apply for the purposes of the PLT, the Assembly may provide for transitional provisions under the PLT in the particular case.”

1732. He noted that the PCT did not contain any specific reference for adopting transitional provisions. However, the PCT Assembly had always proceeded on the basis that it was within its power to adopt such provisions in the Regulations. Paragraph (4) of the Agreed Statement would therefore simply state the understanding of the Diplomatic Conference that, in deciding that changes to the PCT have effect under the PLT, it was understood that the Assembly would have the power to provide for transitional provisions for its Member State. This would allow them sufficient time to incorporate those provisions into their national legislation.

1733. The PRESIDENT invited comments on the suggestions made by the International Bureau in Paper No. 3.

1734. Mr. HERALD (Australia) stated that the suggested Articles 15*bis* and 16(2)(v*bis*) as well as the draft Agreed Statement offered an ideal solution for the very difficult problem of defining the relationship between the PCT and the PLT.

1735. Mrs. ORNELAS LOERA (Mexico) said that her Delegation was satisfied with the proposals contained in Paper No.3, prepared by the International Bureau. She considered that it was preferable that what appeared as Article 15*bis* should be retained as a separate article, and not as a new paragraph within Article 15. As to the proposed agreed statement contained in Paper No.3, her Delegation could

support it as a whole, but asked whether the definition of what would be understood as a “transitional article” could be included in Article 1 of the Treaty.

1736. Mr. THOMAS (WIPO) confirmed that the PCT did not refer expressly to transitional provisions, but the PCT Assembly had considered that it had the power to adopt them. He pointed out that the word “transitional provision” in Article 15*bis*(2) could be interpreted broadly to include, for example, a transitional provision which simply said that new provisions were adopted but did not come into force for a period of one or two years.

1737. The PRESIDENT noted that both of the points raised by Mexico could be referred to the Drafting Committee.

1738. Mr. PAL (India) stated that, while he had no objections to the suggestions made in Paper No. 3, he requested clarification regarding the inclusion of about the date, June 2, 2000, in Article 15*bis*(1). He recalled that, with regard to the amendments agreed by the PCT Assembly in March 2000, some countries still had the right to enter reservations until November 2000. He also asked for clarification regarding the use of the words “transitional provisions.”

1739. Mr. TRAMPOSCH (WIPO) stated that it was expedited that the PLT would probably enter into force three to five years after June 2, 2000. The adoption or rejection of all PCT changes after that date would have to be decided for the purposes of the PLT by the PLT Assembly at its first meeting. He explained that, when a Contracting Party modified its legislation to join the PLT, that modification should accommodate the provisions under the PCT that had been incorporated by this Diplomatic Conference as of June 2, including any that had been subject to reservations under the PCT. With respect to the reference to “transitional provisions” in the draft Agreed Statement, he explained that that term did not have to be defined because there it was not intended to limit the types of transitional provisions that could be decided by the Assembly.

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1740. Mr. STOHR (EPO) suggested that the words “notwithstanding Article 15*bis*(2)” be added after the words “shall apply” in the second line of the proposed new Article 16(2), item (v*bis*). The delegate expressed support for the draft Agreed Statement. However, he queried whether a basis for point 4 of the statement, relating to the transitional provisions, should be incorporated in Article 16, or whether it was implicit in Article 16(2)(v*bis*) that the Assembly may decide on transitional provisions.

1741. Mr. TRAMPOSCH (WIPO) said that, regarding the first suggestion of the Delegation of the EPO, namely adding the words “notwithstanding Article 15*bis*(2)” to Article 16(2)(v*bis*), it did not appear that there was any overlap between Article 15*bis*(1) and (2). In fact, the separation between the paragraphs was indicated in 15*bis*(1), making that provision subject to paragraph (2). This meant that the Assembly cannot decide that a transitional provision would have applicability in the future. With respect to the second suggestion of the Delegation of the EPO, he stated that Paper No. 3 was drafted on the assumption that, if the Assembly had the power to accept or to reject future changes of the PCT, it would also have the power to put limitations on those changes. This was why it was included in the draft Agreed Statement rather than in the Treaty itself. Furthermore, he pointed out that in Article 1(xvii) on the first page of Paper No. 3, the word “revised” was added to the definition of “Patent Cooperation Treaty” and in Article 15*bis*, in order to include the future effect of revisions as well as amendments and modifications. In the parlance of the PCT, revisions would refer to actual changes to the Articles of that Treaty. This would cover the case where there may be changes to the articles of the Treaty in the future but those changes would not affect the articles of the PLT. There thus be no need to call a Diplomatic Conference to revise the PLT if it was not necessary to change the Articles of the PLT, even if the PCT articles were changed.

1742. Mr. BOUCOUVALAS (Greece) expressed the support of his Delegation for the proposal presented in Paper No. 3. The Delegation said that the contents of Article 15*bis* should be incorporated in the Treaty in a provision separate from Article 15, and that the drafting of paragraph Article 15*bis*(2) should not be changed.

1743. Mr. BARTELS (Germany) asked whether the effect of Article 15*bis*(2) would be that, if a Contracting Party to the PCT had made a reservation to the amendment of the Rules of that PCT, this amended rule would not be applicable to any Contracting Party of the PLT. Furthermore, the delegate asked whether it would not be sufficient that the PLT Assembly decided if an amendment were adopted or not. If the PLT Assembly adopted to an amendment, it would become applicable under the PLT, but if it did not adopt it, it would not have any effect.

1744. Mr. TRAMPOSCH (WIPO) stated that the provisions contained in Paper No. 3 would be described and explained extensively in the Explanatory Notes, which would be posted for comment on the SCP Electronic Forum, so that all delegates to the Diplomatic Conference would have a chance to review the changes to the Notes before they were finalized. Regarding the question whether Article 15*bis*(2) would apply to particular Contracting Party or to all Contracting Parties, the situation would be as follow. If a provision of the PCT Regulations was amended by the PCT Assembly, and the PCT Assembly adopted a transitional provision that stated that the amended provision would not apply to any Contracting State if it conflicted with its laws, that transitional provision would not apply directly under the PLT. However, when the PLT Assembly considered whether changes to the PCT Regulations should have effect under the PLT, that Assembly itself could also decide to adopt transitional provision giving the opportunity of a reservation. These provisions were crafted in that way because PCT Contracting States may have different concerns in respect of the need for transitional provisions than the members of the PLT. It was even possible that there would be cases where the same country would have different concerns in applying a provision of the PCT to international applications than in applying them to national applications. There could also be a provision in the PCT, the amendment of which might have a very small effect on Contracting States Offices, because it applied in the international phase. However, as incorporated into the PLT, it would apply to the national Offices because they were applying the equivalent of that phase in their national procedures. Therefore, there might be a need for a transitional provision under the PLT, when there was no need under the PCT. Because there were so many different possibilities in so many different combinations, the most reasonable solution seemed to be to completely insulate the PLT from transitional provisions under the PCT, and to give the PLT Assembly the right to adopt its own transitional provisions when they were necessary.

1745. Mr. TRAMPOSCH then referred to the second point of the Delegation of Germany, namely the question why the PLT Assembly could not simply reject provisions, but needed the power to adopt reservations. The reason for this was the possible case in which a majority of the members of the PLT Assembly were prepared to implement a provision that originated in a change of the PCT, but a few members would need a transitional provision. A requirement for the Assembly to reject the provision for all members simply because a few of its members may have some difficulties in implementing that provisions for a period of time was not considered desirable.

1746. Mr. THOMAS (WIPO) added that, it was foreseen that the PCT Assembly and the PLT Assembly would meet simultaneously to consider proposed changes. It was to be hoped that if the PCT Assembly reached decisions unanimously, that there would be unanimous agreement as to the principles of changes to the Regulations also in the PLT Assembly. In practice, there might be different kinds of reservation provisions needed in the two contexts, one set of reservations provisions for the PCT Member States, and another for PLT Member States.

1747. Mrs. BOLAND (United States of America) expressed the support of her Delegation for the provisions in Paper No. 3.

1748. Mr. BOGDANOV (Russian Federation) referred the words "is consistent with" in the third line of Article 15*bis*(1), and pointed out that the Russian text read "does not contradict." Perhaps, the words "which are relevant to," or "which relate to the articles of this Treaty," or "which concern or which touch upon the articles of this Treaty," could be used. Regarding Article 15*bis*(2), the Delegation felt that the consequence of the adoption of such a paragraph could be that reservations which PCT Members had made with reference to the adoption of a particular provision could lose their effect. The delegate asked whether that meant that States Members of the PLT and the PCT could no longer make reservations under the PCT. It appeared to the Delegation that, as was reflected in the Agreed Statement, the PLT Assembly itself could determine transitional provisions with reference to a particular provision of the PCT. And that being so, it seemed that there was no need for Article 15*bis*(2).

1749. Mr. TRAMPOSCH (WIPO) said that the intention of the words "which is consistent with" was to avoid any implication that the PCT Assembly would have any ability to change the Articles of the PLT. The Articles of the Treaty could only be changed by a future Diplomatic Conference. Therefore, it was important to keep this phrase in the paragraph. Changing it to a phrase such as "which relate" would seem to have the consequence that was tried to be avoided, namely, that the Assembly would have the power to change the Articles of the Treaty based on future changes to the PCT.

1750. Concerning the need for paragraph (2), he referred to Article 6(1)(ii), which provided that a Contracting Party could apply requirements relating to the form and contents, compliance with which under the PCT may be required by the Office of, or acting for, any State Party to that Treaty. This meant that, if the transitional provisions of the PCT would be incorporated into the PLT, and if any Contracting State of the PCT made use of a transitional provision, that provision would be available to all Contracting Parties under the PLT. There could be cases where a transitional provision was provided for in the PCT for the particular purposes of one Contracting State, and it might not be appropriate for that transitional provision to be available to all of the Contracting Parties under the PLT.

1751. Ms. FRANCISCO (Philippines) was of the view that her Delegation felt that any transitional provision in the PCT could be accepted or rejected by the PLT Assembly in the future or any time. Therefore, it seemed that paragraph (2) was not necessary. The reference, in paragraph (1), to June 2, 2000 could also be deleted, because the PLT Assembly could, adopt any amendment, revision or modification that happened between June 2 and the convening of the PLT Assembly. Therefore, the delegate supported the view that paragraph (2) was not necessary and paragraph (1) could be revised, so that all revisions, amendments or modifications could be subject to adoption by the PLT Assembly and that PLT Assembly could provide for any transitional provisions, if necessary.

1752. With respect to the draft Agreed Statement the delegate asked who would determine the propriety in the cases mentioned. For example, in No. 1, who would determine the propriety of convening the PLT Assembly in conjunction with the PCT Assembly? With respect to No. 2, the delegate queried who, in addition to determining the propriety, would actually consult the Contracting Parties of the PLT, in addition to States party to the PCT.

1753. Mr. TRAMPOSCH (WIPO) explained that the Treaty was drafted in such a way that current transitional provisions under the PCT would apply under the PLT, but that future transitional provisions would not pass through to the PLT. It seemed that, in the future, this would add another complication to the PLT Assembly, because the considerations for transitional provisions under PCT may be very different than those under the PLT. In effect, the PLT Assembly would have to take several steps. First, it would have to decide whether the PCT transitional provisions were appropriate to all of its Members States. Then, it would have to take another step and decide whether there were additional transitional provisions that would be appropriate beyond the transitional provisions of the PCT and, whether those would apply for all its Member States or only some. When the two Assemblies met together, the PCT Assembly could consider one set of transitional provisions for the PCT. The PLT Assembly could consider another set of transitional provisions for the PLT. There was no objection to deleting paragraph (2) with respect to future transitional provisions, but it then would become necessary to distinguish between current transitional provisions and future transitional provisions. This was not an easy matter, because the transitional provisions were adopted in May 2000, but declarations could be submitted until November or December 2000. With respect to the draft agreed statements, Mr. Tramposch explained that the Director General convened all bodies of WIPO. The Director General, under the provisions of the PCT, undertook the consultations with respect to the PCT Administrative Instructions. So it was very clear that it would be the Director General in both of those cases.

1754. Mr. BADRAWI (Egypt) said that his Delegation agreed with the statements of the Russian Federation and the Philippines. He suggested deleting paragraph (2) from Article 15*bis*. In addition to the arguments already adduced, the Delegation was of the view that everyone did not understand the wording in the same way. Concerning paragraph (1), it appeared that there was no value in the date mentioned in that paragraph, because a Treaty was considered to exist from the day on which it entered into force and of course. Therefore, the date should be modified to the entry into force of the Treaty. Regarding the voting issue and the reference to three-fourths of the votes cast, the delegate expressed his preference for a decision reached by unanimity rather than by a majority.

1755. Mrs. WEIL-GUTHMANN thanked the International Bureau for the proposal contained in Paper No. 3 and said that her Delegation was satisfied with the solutions proposed by the International

Bureau, in particular the express approval procedure, within the PLT Assembly, for the amendments made to the PCT so that they could be incorporated in the PLT.

1756. Her Delegation wondered nevertheless whether the wording of Article 1(xvii) was compatible with that of Articles 15*bis* and 16, and compatible with the desired aim of the International Bureau. Article 1(xvii) stated: "Patent Cooperation Treaty (PCT) means the Patent Cooperation Treaty, signed on June 19, 1970, together with the Regulations and the Administrative Instructions under that Treaty, as revised, amended and modified." She pointed out that when the PLT referred to the PCT, this was the Patent Cooperation Treaty including all the amendments made subsequently. Article 15*bis* mentioned the PCT as at June 2, 2000 and the amendments subsequently expressly approved, incorporated in the PLT within an assembly. In conclusion, Article 1(xvii) allowed the automatic incorporation of the PCT amendments in the PLT, whereas Article 15*bis* allowed the incorporation of the amendments only if they had been expressly approved by the PLT Assembly.

1757. Consequently, the Delegation of France said that paragraph (xvii) should be amended so as to achieve wording closer to that used in Annex I of document PT/DC/6, and proposed the following: "Patent Cooperation Treaty (PCT) means the Patent Cooperation Treaty, signed on June 19, 1970, together with the Regulations and the Administrative Instructions under that Treaty, as amended on June 2, 2000 and, as appropriate, the amendments made after that date subject to the conditions provided for in Article 15*bis*."

1758. Mr. THOMAS (WIPO) said that the difficulty with the approach suggested by the Delegation of France was the meaning of the words "Patent Cooperation Treaty" would be different in different contexts. If the PCT Regulations, for example, were to change in the future, then for any user of the PCT, the words "Patent Cooperation Treaty" included those changes. In the context of the PLT, the PCT would not include those changes. In Paper No. 3, the words "Patent Cooperation Treaty" had their normal meaning and thus meant the same for the purposes of the PCT and for the PLT. However, it was recognized that the changes which were made to the PCT, including the Regulations and Administrative Instructions, which took place after the Diplomatic Conference had agreed on the matter, should not apply for the purposes of the PLT and the PLT Regulations. For example, a change which was made to the PCT Regulations in 2003, would become part of the PLT Regulations if the PCT were not in force. The important thing was that that change would not be relevant for the purposes of the PLT without there having been a decision explicitly made by the PLT Assembly.

1759. Mr. VIDAURRETA (Argentina) said that his Delegation agreed with the proposal contained in Paper No.3, prepared by the International Bureau. However, he considered that the observations made by the Delegation of Mexico should be taken into account.

1760. Mr. BEIER (FICPI) asked whether it was envisaged that an amendment of the PLT be incorporated into the PCT by a standard or simplified procedure.

1761. Mr. THOMAS (WIPO) explained that the whole of the PCT was not incorporated in the PLT. The provisions of the PCT, which were incorporated in the PLT, were requirements as to form and contents. There were provisions in the PLT, which clearly needed to be considered by the PCT Assembly, for example, regarding the extension of time limits. The International Bureau would carefully consider the PLT provisions with the view to presenting proposals to the PCT Assembly for adopting any necessary changes.

1762. Mr. BADRAWI (Egypt) suggested the addition, in Article 15*bis*(1) of the words "and that would be applicable to the PLT."

1763. Mrs. WEIL-GUTHMANN (France) said that her Delegation again questioned the wording of Article 1(xviii), in particular its translation into French, and wished to know the opinion of the International Bureau in that regard. In the English text, reference was made to the Patent Cooperation Treaty "as revised, amended and modified." The French text, by contrast, provided that the Patent Cooperation Treaty was "*tel qu'ultérieurement révisé et modifié*" ("as subsequently revised and modified"). The French Delegation considered that the French and English texts did not have the same meaning, that Article 1(xviii) should be translated differently in French, and that "*ultérieurement révisé et modifié*" ("subsequently revised and modified") should be replaced by "*tel qu'il a été révisé, amendé et modifié*" ("as revised, amended and modified").

1764. Mr. TRAMPOSCH (WIPO) said that the Drafting Committee could look at this matter very carefully.

1765. Mr. EL FAKI ALI (Sudan) said that his Delegation agreed with the Delegations of the Philippines and Egypt on their views expressed on paragraphs (1) and (2) of the new Article 15*bis*. Either paragraph (2) needed to be amended so that Contracting Parties of the PLT were given the same prerogative as PCT to Member States, or paragraph (2) should be deleted. Concerning paragraph (1), the applicability of revisions, amendments and modifications should be as of the entry into force of the Treaty and not as of the June 2, 2000.

1766. Mr. TRAMPOSCH (WIPO) reiterated that, with respect to paragraph (2), it was not just a question for the PLT Assembly but also a question for the PCT Assembly. If the PCT Assembly were deciding on transitional provisions that would carry over to the PLT, it would make work considerably more complex and would not serve Member States. On the other hand, if the question of transitional provisions were divided so that the PCT Assembly could decide for its Member States and the PLT Assembly for its Member States, then the procedure would be more straightforward under both Treaties. With respect to the date of June 2, 2000 as opposed to the entry into force of the Treaty, the latter would cover all changes to the PCT between now and the date of entry into force, so that delegations would be committing themselves to provisions that they have not yet seen.

1767. Mr. HERALD (Australia) expressed support for Article 15*bis*(2), and for the reference to June 2, 2000, in paragraph (1) of that provision. The delegate said that, having regard to the very wide range of effects which could occur as between the PLT and the PCT, and the sometimes very complex interrelationships between the two Treaties, it was vital for the success of both the PLT in the future and the continuing success of the PCT to modify its laws from time to time on a regular basis. It was vital that the two processes were separated. This is the only effective way to ensure that both Treaties could proceed onwards in a clean, efficient, uncontroversial manner.

1768. Mr. TRÉPANIÉ (Canada) expressed the support of his Delegation for the text of Paper No. 3.

1769. The PRESIDENT noted that a very large majority of the delegations was in support of the substance of Paper No. 3. Concerning its adoption, he declared that the suggestion in respect of Article 16 was the responsibility of Main Committee II, and could not be adopted by Main Committee I.

1770. *The PRESIDENT declared the contents of Paper No. 3, except in respect of Article 16, adopted in substance and referred to the Drafting Committee.*

Article 1: Abbreviated Expressions

1771. The PRESIDENT opened discussion on Article 1(i) and (xiv).

1772. The PRESIDENT invited the Delegation of Switzerland, then the Delegation of Japan, to introduce their proposals in documents PT/DC/23 and PT/DC/11, respectively.

1773. Mr. BÜHLER (Switzerland) said that his Delegation understood the expression "procedure before the Office" in item (xiv) of Article 1, as read together with the expression "Office" in item (i), as not referring to proceedings before a court or any other judicial body responsible under national law for hearing civil, criminal or administrative actions or matters governed by patent law. However, this understanding was, in its opinion, not adequately reflected in the Notes. In the Delegation's view, there was a need to clarify this point, especially taking into consideration the modifications in Article 10 and, also, in view of some proposals of FICPI. Although the Delegation had initially intended to propose to the Committee an Agreed Statement on items (i) and (xiv), it could accept that the interpretation of these items be reflected in the Notes or the Records of the Conference, provided that the Conference shared the understanding of the Delegation of Switzerland.

1774. Mr. IWASAKI (Japan) stated that the Delegation of Japan felt deep concern about the scope of the Treaty as regards its application to the administrative appeal system in Japan. It therefore had difficulties in accepting item (i) and item (xiv). The Delegation noted that the proposal of the Delegation of Switzerland in document PT/DC/23 went into the same direction as the Delegation of Japan's proposal in document PT/DC/11. Japan had a comprehensive administrative appeal law. This law empowered the hierarchically superior body to deal with complaints lodged by interested persons against the

administrative actions taken by an inferior body and regulated the applicable procedure. This meant that a body functioned as a tribunal for the complainants, using the terminology of the proposal of the Delegation of Switzerland. In principle, any complaint against any decision by the Office was subject to the administrative appeal law. This law provided for an exception in respect of appeals against decisions by patent examiners, which were within the competence of the patent appeal board, which was a unit of the Japanese Patent Office (JPO). When an appeal was lodged against a decision made by the JPO, the difficulty was that the JPO acted as a body called upon to decide the legitimacy or appropriateness of that decision. If the PLT were to cover these administrative appeal related matters, the Government of Japan would encounter serious difficulties because the administrative appeal law was of a very fundamental and general nature for the structure of the Government and governed the treatment of any administrative appeal action taken by any administrative body. There could not be a derogation to this law only in respect of patent related matters. Where the JPO functioned in respect of administrative appeals, this situation corresponded to the tribunal mentioned in document PT/DC/23. The Delegation of Japan therefore proposed to exclude, in view of its administrative appeal law, these matters from the scope of the PLT. The Delegation did not insist on its original proposal if there was another better proposal to deal with that situation. It could accept any modification of its proposed text or, alternatively, if the proposal by the Delegation of Switzerland should cover the legal situation of Japan, with or without modifications, it could withdraw its proposal and adhere to that proposal. However, the important point was that the Delegation of Japan could not accept any situation where the PLT would appear to apply to any action by the JPO under the administrative appeal law of Japan.

1775. The PRESIDENT invited comments on the proposals by the Delegations of Switzerland and Japan. Recalling that Article 1(i) had already been adopted and that Article 1(xiv), concerning the definition of the procedure before the Office, had not yet been adopted, he also invited comments on that definition.

1776. Mr. VIDAURETTA (Argentina) said that his Delegation shared the points of view expressed by the Delegations of Japan and Switzerland. He considered that it would be difficult for Contracting Parties to make an exception in a single branch of law as regards procedures and resources, and that the proposals of the Delegations of Japan and Switzerland were complementary and that both could therefore be welcomed.

1777. Mr. JUNG (Republic of Korea) declared that his Delegation strongly supported the proposals made by the Delegations of Switzerland and Japan, with a preference for the former. It also thought that it was not clear from the current provisions whether the PLT covered the tribunals responsible under national legislation for hearing civil, criminal or administrative actions or matters governed by patent law. The proposal by the Delegation of Switzerland embodied the principle of separation of powers which was the basic philosophy of a governmental organization in almost all countries.

1778. Mrs. BOLAND (United States of America) said that her Delegation supported item (xiv) of Article 1 as presented in the Basic Proposal. With regard to the proposal by the Delegation of Switzerland, the Delegation of the United States of America could not support that Agreed Statement. It felt strongly that, if the appeal body, or some other internal Office body that handled administrative matters, was in fact constituted within an Office, that body fell within the definition of the term "Office" and it should not be excluded by the Agreed Statement.

1779. Mr. KUNIN (United States of America) indicated that, for similar reasons, his Delegation had concerns with the draft agreed statement proposed by the Delegation of Japan. At this time, the Delegation of the United States of America did not understand the full scope of the proposal and would appreciate identification of the provisions of the Treaty that would conflict with Japan's administrative appeal law. Otherwise it would seem to it that such a broad agreed statement would allow certain Contracting Parties to avoid some potentially important provisions of the Treaty.

1780. Mr. HERALD (Australia) said that his Delegation shared the concerns of the Delegations of Japan and Switzerland in respect of tribunals external to the Office as well as the concerns of the Delegation of the United States of America. As between the two proposed statements, the Delegation of Australia had a fairly significant preference for that of the Delegation of Switzerland as better in principle but suggested a change to the wording in the second line of that proposal, in English, where it was said: "of this Treaty did not cover the tribunals responsible under national legislation" to "did not cover the tribunals constituted external to the Office."

1781. Mr. BADRAWI (Egypt) expressed the same concerns regarding this Article as far as the word "Office" was concerned. In his country, judicial bodies were not an "Office." The judiciary could never be considered as an "Office". However, there was, within the Office, a branch that could receive complaints. He therefore thought that "Office" should mean the Office concerned with granting patents and receiving complaints, and that it should not in any way mean a tribunal or a judicial body.

1782. The PRESIDENT asked for the views of the Delegations of Switzerland and Japan on the proposal by the Delegation of Australia.

1783. Mr. IWASAKI (Japan), in response to the question of the Delegation of the United States of America, explained that the conflict between the PLT and the administrative law of Japan was wide-ranging. For example, as to the relief provided in Articles 11 and 12 and Articles 7 and 8, the two systems were regulated by quite different procedures. As to the modification proposed by the Delegation of Australia concerning tribunals constituted outside the Office, in the case of Japan, administrative appeals took place in a unit of the JPO. That board was not under the control of the JPO but governed by the administrative appeal law. The Delegation doubted whether this board could be considered as a tribunal external to the Office, according to the modification suggested by the Delegation of Australia.

1784. Mr. BÜHLER (Switzerland) indicated that his Delegation could, with respect to the proposal of the Delegation of Australia, accept the wording added to its own proposal. He asked whether this wording would also meet the concerns of the Delegation of the United States of America.

1785. The PRESIDENT noted that the Delegation of the United States of America agreed that this was so.

1786. Mr. OMOROV (Kyrgyzstan), referring to the proposal by the Delegation of Switzerland, said that it seemed to him that, generally speaking, the problem here related to the very understood concept of separation of powers. The situation reflected was not fully in line with the situation in his country but, looking at the proposal by the Delegation of Japan, he understood that it was possible that there would be a situation where general administrative procedures could, to a greater or lesser extent, be considered as involving work done by the Patent Office. It could perhaps simply be said that this would be an administrative body as understood by the national law of a State. In order for due account to be taken of the specific features of the situation in Japan, that his Delegation could support the proposal.

1787. Mr. TRAMPOSCH (WIPO) asked the Delegation of Australia for clarification as to whether the wording proposed by that Delegation implied that "external to the Office" should also cover the case where a board was controlled external to the Office or controlled by legislation external to the Office.

1788. Mr. HERALD (Australia) replied that, in the view of his Delegation, the fact that a tribunal happened to be located in the same Office, in terms of a physical building, was not the criterion.

1789. Mr. RAJAN (Ireland) stated that his Delegation wished to associate itself with the statement concerning Article 1 proposed by the Delegation of Switzerland. He noted that the Treaty should not conflict with the TRIPS Agreement since those States represented here which were Members of the WTO had an obligation to comply with the TRIPS provisions. Article 41(4) of the TRIPS Agreement, provided: "Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case..." The opportunity for review of administrative decisions could rest with the tribunal set up in the Patent Office or outside the Patent Office or with the court. In the view of his Delegation, no distinction should be made in the Treaty between a tribunal and a court, both of which undertook judicial review of final administrative decisions. Article 41(2) of the TRIPS Agreement provided: "Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays." It was the Delegation's experience that the procedures of a tribunal located in the Office were usually less complicated and costly than those of a court. The Delegation therefore did not wish to make a distinction between tribunal and court in the Treaty.

1790. The PRESIDENT proposed to set this issue aside to allow for further informal consultations.

Article 5: Filing Date

1791. The next issue was Article 4 and the definition of "Contracting Party". However, since the Delegation of Sudan had made a proposal on Article and was not present, the President proposed to set this issue aside for a short period and to turn to the next issue which was Article 5 on the filing date and the related Rule 2. In the context of Article 5, there had been a proposal by GRULAC which was found in document PT/DC/30, which he invited GRULAC to introduce.

1792. Mrs. BERENDSON (Peru), speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), welcomed the Delegations that had supported the amendments to Article 5(1) proposed by GRULAC. However, taking into account that other Delegations had expressed difficulties in accepting the proposed amendments, GRULAC had reworded its proposal. In relation to Article 5(1)(a)(ii), the text of the Basic Proposal was retained but it was proposed to incorporate a new paragraph (c) in Article 5(1). Contracting Parties whose legislation required that the applicant provide both indications allowing his or her identity to be established and the applicant to be contacted by the Office could therefore act accordingly. At the same time, flexibility would be granted so that the Contracting Parties which accepted proof allowing the applicant's identity to be established or the applicant to be contacted by the Office could proceed in this manner. As regards the requirement to pay fees, the proposal by GRULAC included a new paragraph (d) worded as follows: "A Contracting Party may require, for the purposes of the filing date, the payment of a fee within a period of one month from the date of receipt of the elements mentioned in paragraph (a)." The meaning was consistent with the corresponding provision contained in the PCT, and the proposal could therefore be considered balanced. In conclusion, she said that owing to a typographical error, the words "a más tardar" ("at the latest") had been included in the GRULAC proposal in square brackets, but did not form part of the proposal.

1793. Ms. FRANCISCO (Philippines) asked whether the Agreed Statements proposed by the Delegations of Japan and Switzerland would also cover a situation where an Office within the industrial property Office had jurisdiction over administrative complaints involving patents and whether such Office would be prohibited from acting with respect to issues that might arise in relation to matters covered by the PLT.

1794. Mr. MOUKOURI (Congo) said that the question of the filing date had already been the subject of lively debate and that the Congo's position was that the filing date could not be accorded without taking into account the payment of fees. The alternative provided by the GRULAC proposal, which consisted in according the filing date within a period of one month from the date of receipt of the elements referred to for the payment of a fee, met the concern of the Delegation of Congo which therefore supported the GRULAC proposal.

1795. Miss EL KATEB (Tunisia) said that her Delegation supported the proposal by GRULAC to incorporate the additions in Article 5, in particular paragraphs (c) and (d).

1796. Mr. PRAMUDYO (Indonesia) confirmed his Delegation's full support of the new proposal by GRULAC in document PT/DC/30.

1797. Mr. PAL (India) said that his Delegation associated itself with to the delegations that had supported the GRULAC proposal in totality.

1798. Mr. HERALD (Australia) stated that the Delegation of Australia had some reservation about GRULAC's paragraph (c). With reference to paragraph (d), the Delegation could agree with the suggestion. However, his Delegation wished to raise two issues. First, throughout the Treaty and the Rules, consistently every time limit was two months. However the Delegation could accept one month. Second, as regards the expression "a Contracting Party may for the purpose of a filing date...", it was not altogether clear whether the filing date was the date on which the elements were received, or it was determined by the date of payment of the filing fee. His Delegation would prefer a provision which indicated that a Contracting Party could require the payment of a fee and the failure of paying the fee would lead to loss of the filing date or something along those lines.

1799. Mr. KOGDA (Burkina Faso) said that one of his Delegation's major concerns regarding Article 5 was the payment of fees. Taking into account the fact that the GRULAC proposal provided a satisfactory response to this concern, the Delegation of Burkina Faso strongly supported it.

1800. Mr. BADRAWI (Egypt) indicated that his Delegation's opinion was that the proposal made by GRULAC was a very sound one as far as paragraph (c) was concerned and paragraph (d) was acceptable. However, the major source of concern under Article 5(1)(a), were items (i) and (iii), namely the express or implicit indication to the effect that the elements were intended to be an application. The delegate stated that he could not see what was meant by an implicit indication and felt that these matters should be explicit. He therefore suggested that the word "implicit" be deleted. As regards Article 5(1)(a), item (iii) which read: "a part which on the face of it appears to be a description, where a Contracting Party may for the purposes of a filing date...", he thought that a detailed description enabling an understanding of the drawing and the relevant elements was needed. A description *per se* was not sufficient. Item (iii) should be inserted into subparagraph (b) and should read: "a detailed description comprising the details of the subject of the invention accompanied by a drawing or something of the same kind", if this should prove necessary."

1801. Mr. BOUCOUVALAS (Greece), referring to document PT/DC/30 concerning Article 5(1)(a), said that his Delegation fully supported the inclusion of the two subparagraphs (c) and (d) as presented in that document and introduced by GRULAC.

1802. Mrs. BOLAND (United States of America) noted that the phrase "except as otherwise prescribed in the Regulations and" previously suggested by the International Bureau, was absent from this document. If that phrase was absent, the expression "no later than" had to be retained. On the issue of paragraph (c), while the Delegation felt that the drafting could be improved in the Drafting Committee, it could accept that paragraph because it did provide flexibility to those Contracting Parties that wanted to be very flexible with respect to subparagraph (a)(ii). Subparagraph (d) caused the Delegation some concerns. First, in its view, the issue of the payment of a fee really should be dealt with in Article 6(4), as under the Basic Proposal. If the matter were to be addressed in Article 5, the Delegation would certainly prefer the standard two month period to be provided. Most importantly with respect to this provision, it felt that the failure to pay the fee must not result in the revocation of the filing date. It could only result in the abandonment of the application. It was important that applications that had their origin in a country that would be applying that provision must give rise to a regular national filing under the Paris Convention. And for those going into a second country that would apply this provision, still, the grant of a filing date could be important for novelty purposes.

1803. Mr. TRAMPOSCH (WIPO) asked for some clarification from the Delegation of Peru on two matters. First, with respect to the drafting of the introductory words of Article 5(1), the International Bureau's understanding from the Delegation of Peru earlier intervention was that it was not in fact making any proposals with respect to the introductory words, so that the proposal would be compatible with the suggestions that had been made by the International Bureau earlier with respect to the introductory words of Article 5(1). The second question related to a statement made by the Delegation of Peru with respect to subparagraph (d), that the intention was for this subparagraph to be compatible with the provisions of the PCT. Mr. Tramosch sought further clarification because, if his understanding was correct, under the PCT, if the fee was not paid, the filing date would not be lost.

1804. Mrs. BERENDSON (Peru) specified that the inclusion of the words "*a más tardar*" ("at the latest") in the text of the proposed Article 5(1) was a typographical error and that the phrase did not therefore form part of the proposal. However, agreement had been reached to include the words "at the option of the applicant, on paper or as otherwise permitted by the Office," as proposed by the International Bureau. The proposal regarding paragraph (d) reflected GRULAC's intention that this provision should be consistent with the PCT. In that connection, a reasonable period of time would be allowed for the payment of the filing fee so that the failure to make the payment would not affect the filing date.

1805. Mr. THOMAS (WIPO) explained that under the PCT, the fees which were due on the filing of an application, were payable within one month following receipt of the papers or, in this context, the elements constituting the application. However, the filing date would be accorded even if the fees were not paid, or even if the fees were only partly paid. If the fees were not paid within one month from the date of receipt, the PCT receiving Office would invite payment of the missing fee and, for this purpose, there was a further one month time limit given by the receiving Office. If the fees were still not paid within that further one month period, the receiving Office declared that the application was considered to be withdrawn. However, under those circumstances, the filing date would be retained by the application. The GRULAC proposal was not consistent with the PCT system, in the sense that the non-payment of fees would result in the loss of the filing date. It was less liberal in relation to the applicant than the PCT procedure.

1806. Mrs. BERENDSON (Peru) specified that GRULAC's intention was to ensure that paragraph (d) was consistent with the provisions of the PCT. She said that the Delegation of Venezuela could provide technical clarification of the proposal.

1807. Mrs. MÁRQUEZ (Venezuela) said that the explanation given by the Representative of the International Bureau was consistent with GRULAC's interpretation of its own proposal. As regards the payment of the fee within a certain period of time after filing, GRULAC had no objection to considering it within the proposal such that the failure to pay the established fee would not affect the application filing date, although this could cause the application to be abandoned.

1808. Mr. TRAMPOSCH (WIPO), with respect to those clarifications, queried whether the delegations speaking on behalf of GRULAC could agree that the requirement for a filing fee be included in Article 6, rather than in Article 5; as this would seem to make the results that were intended by the delegations easier to achieve.

1809. Mrs. MÁRQUEZ (Venezuela) said that the GRULAC proposal was intended to apply to Article 5, since the payment of the fee related to the filing date in the legislation of the countries within the Group. However, consideration had been given to all the difficulties expressed by other Delegations, and to making the proposal as flexible as possible and consistent with other international agreements.

1810. Mr. TRAORÉ (Mali) said that his Delegation appreciated the improvements that had been made by GRULAC to Article 5 but could not support GRULAC's proposal regarding paragraph (d) insofar as that paragraph provided a period of one month from the date of receipt for the payment of the requisite fees. The legislation of Mali specified that the filing date was the date of receipt of the application, provided that at the time of receipt the application contained, *inter alia*, proof of payment of the requisite fees.

1811. Mr. BARTELS (Germany), stated that his Delegation did not support subparagraphs (c) and (d), of the GRULAC proposal. It did not see advantage in including subparagraph (c), because the information referred to was not very different than that already contained in subparagraph (a)(ii). The SCP had taken the view that the granting or the filing date should be a matter which should be harmonized to the maximum possible. This is why an exclusion in respect of Article 5 had been inserted in Article 2, in respect of provisions which were more favorable to the applicant. If Article 2 were maintained as it stood now and a provision for the possibility for a Contracting Party to be more liberal were adopted, the Delegation feared that more confusion than necessary would be created. Regarding subparagraph (d), the Delegation did not think that fees should be mentioned in the context of the granting of a filing date, as had been stated already by other delegations. The payment of a fee in respect of an application was a matter of Article 6. The mention of fees in Article 5, could also create confusion since it had been agreed that the filing date should not depend on the payment of fees. It was also the Delegation's understanding and that GRULAC did not intend to make the payment of fees a condition for the grant of a filing date. In order to prevent confusion, the Delegation did not support subparagraph (d).

1812. The PRESIDENT proposed for the time being to limit the discussion to subparagraphs (c) and (d), as they were included in the proposal of GRULAC in document PT/DC/30. As to Article 5(1)(d) as proposed by GRULAC, he proposed, at this point, not to concentrate on the precise drafting or even on the question of whether this would be dealt with in Article 5 or in Article 6, but rather on the principle of whether delegations could support the idea of essentially following the PCT approach. That is, there would be a requirement of paying fees within a one month period, failing which a sanction could be applied, except that no sanction could be applied that would result in the loss of filing date.

1813. Mr. KOUROUMA (Guinea) said that his Delegation endorsed and strongly supported the GRULAC proposal put forward in document PT/DC/30, but requested the drafting committee to improve the wording of the proposal in line with the PCT.

1814. Mr. EREMENKO (EAPO) stated that the Delegation of EAPO supported the GRULAC proposal particularly for subparagraph (d). The International Bureau had just explained that, as a rule, the PCT Regulations referred to payment of a fee when elements of an application were submitted. This meant that it was not necessary for all of the application documents to be submitted at that time. Although, the fees always had to be paid. With reference to the proposal made by the Delegation of Egypt, as regards subparagraph (a)(iii), which dealt with "a part which on the face of it appears to be a description," the Delegation of EAPO had found nothing similar in the PCT, where the reference was simply to the

description of an invention as an element that could be used when determining a filing date. Therefore, the Delegation would support the statement of the Delegation of Egypt in that regard. On subparagraph (c), it seemed to the Delegation that, generally speaking, this was redundant, in view of subparagraph (a).

1815. The PRESIDENT, explained that, PCT Article 11(1)(d) referred to the filing date, which referred to "a part which on the face of it is a description". Accordingly item (iii) did, in fact, follow the approach taken in the PCT. But for the moment, he asked that the discussion be kept to the proposal of GRULAC.

1816. Mrs. BELKAID (Morocco) said that her Delegation supported the proposal by GRULAC concerning Article 2(c). As regards paragraph (d), she added that in view of its national legislation, whereby the conditions for according the filing date included the payment of requisite fees, her Delegation agreed to the principle of the payment of a fee for the allocation of a filing date, without a period of payment beginning from the date of receipt. Consequently, her Delegation proposed that paragraph (b) should provide that a Contracting Party could, for the purposes of according the filing date, a fee to be paid.

1817. Mr. OMOROV (Kyrgyzstan) said that his Delegation agreed with the suggestion by the International Bureau to include a sub-paragraph (d) within Article 6(4), which would result in a two-month time limit for paying the required fee in accordance with the provisions of Article 6. Concerning (c), his Delegation agreed with the delegations who stated that this sub-paragraph is redundant because a similar sense is already included in paragraph (1)(a). He hoped however that paragraph (1)(a)(ii) could be made a little clearer and could refer to a part which is a part of a description of an invention.

1818. Mr. BADRAWI (Egypt) suggested that the two situations that existed, namely, countries that stipulated payment of fee with the application, failure of which will necessitate a sanction or failure of the application, and countries that did not stipulate such a condition. This could be reflected in Article 6(4).

1819. Mr. BOGDANOV (Russian Federation) confirmed that his Delegation supported the proposal put forward by GRULAC relating to the payment of fees for applications. He explained that it did not want a Patent Office to become a payment-free depository of priority documents. In this respect, he stated that the filing date should be established in accordance with the three elements that are set forth in paragraph (a) and must, however, be conditioned by the payment of a fee. With reference to when the fee should be paid, he suggested a longer period of a year at least. If the applicant did not want to receive a patent but did want his application to be considered as a priority document and to be kept within the Office, which may or may not consider the application as a priority document and may decide not to keep that document, then a fee should be paid for that action. He concluded by stating that Article 5 should include a relevant provision on payment of a fee.

1820. Mr. TRAMPOSCH (WIPO) noted that, with respect to the suggestion of a fee for the retention of the application for one year, if the filing fee is not paid, the Office would still have the possibility to require a retention fee in order to retain the application in its files.

1821. Mr. MONKOURI (Congo) said that the concerns previously raised were those shared by many Offices as regards receiving a huge number of applications, providing the relevant services, and not being paid. This concern therefore corresponded to the requirement to pay a fee. Furthermore, he added that the GRULAC proposal was perfectly suited to Article 5 relating to the filing date, and not to Article 6 where its importance would be minimized.

1822. Mr. CAVAZOS TREVIÑO (Mexico) said that the GRULAC proposal was necessary since it would allow Offices to identify the applicant and to make contact with him or her. That principle was also recognized in PCT Rule 10. Strong support clearly existed for the proposal put forward by GRULAC and it was important for proponents that paragraphs (c) and (d) remained in Article 5.

1823. Mr. HE (China) said that his Delegation is of the view that (c) is not very clear. Although the addition of this item into the PLT might have some advantage, he believed that it would be better to delete it because in paragraph (1)(a), item (ii), there was already a clear requirement in this respect. With respect to subparagraph (d), he stated that his Delegation favoured the procedure in PCT. That is within certain time limit the application should be deemed to be withdrawn, but it should have the filing date.

1824. Mr. NIYONKURU (Burundi) said that his Delegation supported the GRULAC proposal, in particular as regards paragraph (c). He added, however, that it was opposed to paragraph (d), which introduced a

time limit for the requirement to pay the fee, and emphasized the need to avoid a situation where the Diplomatic Conference gave the impression that it had hampered the initiatives and inventions of those who were poorest; at all events the most intelligent were not always the wealthiest.

1825. Mr. CONGREGADO LOSCERTALES (Spain) said that his Delegation supported the proposal by GRULAC with regard to Article 5, both in relation to paragraph (c) and paragraph (d), although the wording of paragraph (c) could be clarified.

1826. Mr. HERALD (Australia) stated that although he had supported the GRULAC proposal, the preferred position of his Delegation was not to have a reference to fees in Article 5 but in Article 6. Referring to the proposed time limit of one month he noted that under the PCT, the minimum time period for payment before the application was withdrawn was in fact two months, and not one month. He also stated that the relief under Article 12 should be available in respect of the time limit under subparagraph (d).

1827. Mr. SADOU (Algeria) said that his Delegation was in full agreement with the GRULAC proposal and its retention in Article 5, but understood the concern of those who were not in favor of its retention as a necessary element for fixing a filing date, as well as that expressed by the Delegation of Burundi. He added that apart from the "financial" aspect of the document, or the fact that a fee was paid, an entirely legal consideration existed. Thus, in Algeria the filing date was that on which fees were paid and could be considered a kind of security for the applicant since, owing to the first applicant principle, the payment of fees, established on the basis of a receipt containing a number and a date, allowed any possible error as regards the actual applicant to be avoided. He therefore wished that these aspects be taken into account so as to determine whether this requirement would be retained, since it gave rise to a filing date.

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1828. Ms. LACHOWICZ (Poland) said the Delegation supported the proposal by GRULAC concerning Article 5(1)(c). It was essential for the Office to have the possibility to easily identify the applicant and contact him. Such possibility was not given in Article 5(1)(a)(ii), since it allowed only one of the above elements to be provided. Inclusion of the provision to that effect seemed to be important, particularly in the light of the considerations to restrict mandatory representation.

1829. Mr. RAJAN (Ireland) noted that Article 6(4) already provided that a Contracting Party may require that fees be paid in respect of the application. The additional provision in subparagraph (d) of the GRULAC proposal appeared to prescribe a time limit for payment of the application fee. In the view of that Delegation, a fee should not be a prerequisite for the recording of a filing date, and non-payment of the application fee within a prescribed time period should not result in a loss of filing date. If that interpretation was confirmed, the Delegation said that it could support the GRULAC proposal.

1830. Ms. FRANCISCO (Philippines) said that it was the understanding of her Delegation that proposed subparagraphs (c) and (d) would not have any effect on the requirements of filing date. While the Delegation could go along with the substance of subparagraph (c), it believed that this was already covered by Article 5(1)(a)(ii). With respect to subparagraph (d), the Delegation said that Article 6(4) seemed to cover the substance of this subparagraph. However, should it become necessary to include subparagraph (d) in the Treaty, the Delegation was of the view that such provision should be included in Article 6. In the spirit of compromise, the Delegation was willing to support a time limit with the sanction being that provided under the PCT at the most.

1831. Mr. VAN HORN (AIPLA) said that his Organization supported the Article 5(1) as set out in the Basic Proposal, with a preference for the use of the word "or" in paragraph 1(a)(ii). Furthermore, the delegate expressed a very strong preference for not mentioning the filing fee relative to a filing date. He strongly believed that this was not a filing date issue. The practice in the United States of America, for example, provided great benefit and flexibility for the Office and for applicants. The filing fee was not a filing date issue and could be paid either at the time of filing, or at a later time in response to a notice, subject to a surcharge for late payment. The Office did not process the application until the filing fee was received. Nor were copies of that application provided to the applicant. In practice, the actual number of

applicants who would go to the trouble and expense of preparing an application and yet not pay either the filing or the retention fee, would be very small.

1832. Mr. BEIER (FICPI) said that his Organization fully support the intervention of the Delegation of Australia. As far as subparagraph (d) was concerned, FICPI was of the opinion that the provision was in fact narrower and less favorable than the PCT and, therefore, could not be acceptable. The introduction of such a provision would be a step backwards as far as the user was concerned. For example, where the applicant wished to pay the filing fee within the month term by bank remittance, but the bank deducted their fees from the amount to be paid, the fee would not be sufficient and the filing date would be lost.

1833. The PRESIDENT said that he would temporarily suspend discussion of Article 5(1) to allow time for further informal consultations, and opened discussion on the rest of Article 5 and Rule 2.

1834. Mr. BAECHTOLD (WIPO) introduced Article 5(3) and (4), and Rule 2. As regards Rule 2, he pointed out that same drafting changes were suggested for that Rule as had already been adopted in Rule 6(1) and (2).

1835. Mr. BADRAWI (Egypt) stated that, concerning Article 5(1)(iii), the description mentioned in that provision should be clear as stated in Article 29 of the TRIPS Agreement, namely sufficiently clear and complete for the invention to be carried out by a person skilled in the art. Paragraph (1)(iii) only referred to a description that was explicit, and one could not imagine adopting this kind of provision. The delegate said that a reference to the TRIPS Agreement was necessary in paragraph (1)(a) and had to be linked to paragraph (1)(b). Furthermore, the delegate said that he was opposed to discussing paragraphs (3) and (4) separately from paragraphs (1) and (2).

1836. Mr. HERALD (Australia), referring to the statement of the Delegation of Egypt, stated that Article 29 of TRIPS was a substantive issue and thus not relevant to the PLT.

1837. The PRESIDENT recalled that, if discussion on an issue was suspended, it was done so on the understanding that, if the resumed discussion of such a provision would necessitate the reopening of a provision already adopted, this could be done.

1838. Mrs. BOLAND (United States of America) expressed the support of her Delegation for Article 5(3).

1839. Mr. BOGDANOV (Russian Federation) said that his Delegation generally supported Article 5(3). As a matter of drafting, the delegate suggested to use the wording "requirements applied under paragraphs (1) and (2)," because those paragraphs did not establish requirements, but gave an authorization to apply such requirements.

1840. Mrs. REINHOLD JØRGENSEN (Denmark) expressed support for Article 5(3).

1841. Mr. STOHR (EPO) expressed support for Article 5(3) as proposed in the Basic Proposal.

1842. Mr. GRIGORIEV (EAPO) expressed the full support of his Delegation for Article 5(3).

1843. Mrs. EL MAHBOUL (Morocco) said that her Delegation could adopt paragraph (1) *ad referendum*.

1844. The PRESIDENT proposed to adopt Article 5(3) on the understanding that should any change in paragraph (1) require reopening discussion on that provision, this would be done.

1845. *The PRESIDENT declared Article 5(3) adopted in substance and referred to the Drafting Committee.*

1846. The PRESIDENT opened discussion on Article 5(4). He pointed to one typographical error in the text in the third line of subparagraph (a), where reference was made to paragraph (5) instead of paragraph (6).

1847. Mr. BARTELS (Germany) said that his Delegation supported the text of the Basic Proposal without the text in square brackets.

1848. Mr. STOHR (EPO) suggested, in Article 5(4)(b), replacing the word “may” in the first sentence of that provision by the word “shall.” This would mean that, whenever the requirements for according a filing date were not met within the relevant time limit, the application should be regarded as not having been filed. Regarding subparagraph (a), the delegate suggested the inclusion of an obligation to inform the applicant of the new filing date in case the original date had been deferred.

1849. Mr. LEWIS (WIPO) said that paragraph (b) was deliberately drafted in the form of a “may” provision. The “may” referred to the time limit, namely “may provide that where one or more of the requirements are not complied with within the time limits prescribed in the Regulations, the application shall be regarded as not having been filed.” At least one Contracting Party had indicated that it did not wish to apply time limit at all, and there was some question as to whether that situation would be adequately covered if the words “shall” were used. The conclusion of the SCP was that it was better to use a “may” provision, to provide for this situation.

1850. Mr. PAL (India) opposed the inclusion of the words “no later than” in paragraph (4).

1851. Ms. WEN (China) expressed support for paragraph (4) without the words appearing between square brackets.

1852. Mr. EL ALI FAKI (Sudan) said that, if paragraph (4) was adopted before paragraph (1), it should be possible to reopen discussion on the former provision if necessary.

1853. The PRESIDENT noted that adoption of Article 5(4) was proposed on the understanding that, should any change in paragraph (1) require a return to paragraph (4), discussion on the latter point would be reopened.

1854. *The PRESIDENT declared Article 5(4) adopted in substance and referred to the Drafting Committee.*

Rule 2: Details Concerning Filing Date Under Article 5

1855. The PRESIDENT opened discussion on Rule 2.

1856. Mr. WALKER (United Kingdom) asked why the two month time limit in Rule 2(2)(ii) and (3)(ii) were different from the three month time limits in, for example Rule 6(2), Rule 7(6) and Rule 11(2), where there had been no notification.

1857. Mr. BAECHTOLD (WIPO) explained that the SCP had concluded that, in respect of the filing date, for reasons of legal security, it would not be advisable to have a too long period of time. It had therefore limited the time limit to two months in Rule 2(2)(ii) and (3)(ii).

1858. Mr. WALKER (United Kingdom) stated that his Delegation could support a period of two months.

1859. *The PRESIDENT declared Rule 2, paragraphs (1) and (2) adopted in substance and referred to the Drafting Committee.*

Article 5: Filing Date

Rule 2: Details Concerning Filing Date Under Article 5

1860. The PRESIDENT invited the International Bureau to introduce Article 5, paragraphs (5) and (6) and Rule 2.

1861. Mr. BAECHTOLD (WIPO) introduced paragraph (5) emphasizing that an office would not be required to make any special check for missing descriptions or drawings. Also, the paragraph did not apply where the Office discovered the omission in a different procedure, for example in the course of substantive examination. With regard to paragraph (6), he pointed out that this provision addressed the situation where the missing part of the description or the drawing was filed subsequently. He said, as a general rule, the filing date would, under subparagraph (a), be the date on which the missing part of the description or drawing was received by the Office, whereas subparagraphs (b) and (c) addressed two situations in which the earlier date of receipt of the incomplete application could be preserved as the filing

date. He also suggested to change, in the chapeau of Rule 2(4), the reference "subject to Rule 4" to "subject to Rule 4(3)."

1862. The PRESIDENT invited comments on Article 5(5).

1863. Mr. VIDAURETTA (Argentina), speaking on behalf of his Delegation and the Delegations of Brazil, Colombia, Cuba, Uruguay and Venezuela, introduced the proposal contained in document PT/DC/26. Those Delegations considered that Article 5(5) appeared to be contrary to the spirit of the Treaty, since if the applicant complied with the requirements of Article 5(1), the filing date was to be recognized. Paragraph (5) was unclear since, although it appeared to indicate that there was no obligation for the Office to study the description in order to ascertain whether something was missing, this fact could not be determined by just any employee of the patent office, but had to be established by a person with minimum technical knowledge of the subject. This would require the Office to organize a previous stage within the patent process for the purposes of analyzing the description, in addition to the usual procedures of carrying out an examination of form and of content. Article 5(5) appeared to make the filing date dependent on the applicant supplying the elements missing from the description, despite the fact that paragraph (1) stated that it was sufficient to file a part that appeared to be a description, thereby implying that an incomplete application could be filed. If the intention of Article 5(5) was to inform the applicant of what was missing from the description, this should be done in another part of the procedure, but not at the time the filing date was accorded.

1864. Mr. TRAMPOSCH (WIPO) referred to Explanatory Note 5.19 and confirmed that the intent of the SCP, when adopting paragraph (5), had never been to impose any burden on the Office to actually check the application, but simply to oblige the Office to notify the applicant if it happened to notice during the check for the filing date that a part was missing.

1865. Mr. VIDAURETTA (Argentina), thanking the International Bureau for the explanation provided, considered that it was necessary for Contracting Parties to be able to comply with their obligations under the Treaty. If the Treaty contained an obligation to review applications in order to verify whether they were complete for the purposes of the filing date, Article 5(5) should preferably be optional.

1866. Mr. BADRAWI (Egypt) asked what sanction was provided with regard to a situation in which the applicant did not file the missing part even though he had been notified by the Office in accordance with Article 5(5) and (6).

1867. Mr. LEWIS (WIPO) replied that Article 5(5) and (6) were meant to give an applicant the opportunity to file missing parts as quickly as possible in order to minimize the loss of filing date. If, however, the applicant did not do anything, the Office would proceed on the basis of the application as received. Whether the description was in fact insufficient for the application to proceed to the grant of a patent, would then be determined in the course of substantive examination in the case of those offices which had substantive examination, or in those offices which did not, it would be a ground for revocation or invalidation on the grounds that the description did not fully describe the invention.

1868. Mr. BLINNIKOV (EAPO) noted that the situation where some pages were missing from a description would appear to be addressed already by Article 5(3) which obliged an office, in such a case, to notify the applicant immediately. He said that paragraph (5) seemed to be a continuation of paragraph (3), but that it appeared to refer to substantive deficiencies of the application. He observed that the payment of fees for the filing of an application could constitute a test whether the applicant was really willing to proceed on the basis of the application as received by the Office.

1869. Mr. JONG (Democratic People's Republic of Korea) supported the proposal made by the Delegations of Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela in document PT/DC/26 because it was more flexible than the Basic Proposal.

1870. Mr. PAL (India) supported the proposal submitted under document PT/DC/26.

1871. Mr. BOUCOUVALAS (Greece) supported the proposal presented in document PT/DC/26.

1872. Mr. STOHR (EPO) stated that his Delegation understood the concern voiced by the Delegation of Argentina. He proposed that, to address this concern, the word "obviously" be inserted before the words

“missing from the application...” in Article 5(5). He explained that this addition could make it clear that there was no need for a check at the filing date stage.

1873. Mr. CAVAZOS TREVIÑO (Mexico) expressed his Delegation’s support for the proposal contained in document PT/DC/26, since he considered that it reflected a more flexible text which would enable a greater number of countries to accede to the Treaty.

1874. Mrs. BOLAND (United States of America) concurred with the view expressed by the representative of the EPO, and expressed a preference for the Basic Proposal. She said that the provisions of Article 5 did not oblige a Contracting Party to check the application, and stated that she would be ready to accept the addition proposed by the representative of the EPO if it found wide acceptance. She emphasized that the provision was very important for users of patent systems throughout the world in a situation where a part of the application was obviously missing. She stressed that, if an office noticed such a deficiency, it should promptly notify the applicant, so that he could minimize any loss of rights.

1875. Mr. HERALD (Australia) said that he understood the sentiments put forward by the Delegations of Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela, but emphasized that an obligation on offices to check for whether or not there are missing pages from the description had never been contemplated. He stated that most offices had experience in situations where a defect was manifestly apparent. He expressed concern with regard to the proposal made in document PT/DC/26 because it would not oblige an office to notify the applicant even where it stumbled across the fact that there were missing parts. This would allow a situation where an office could knowingly be aware that the applicant had failed to file a substantial part of the specification and ignore it, which would be an unfortunate and undesirable outcome. While expressing some sympathy for the proposal made by the representative of the EPO, he proposed to rephrase the beginning of paragraph (5) as follows: “Where the Office, without necessarily checking for completeness of the description, finds that a part of the description appears to be missing...”

1876. Mr. BOGDANOV (Russian Federation) supported Article 5(5) as contained in the Basic Proposal. He stated that it would be strange and unfriendly if an office did not inform the applicant if it discovered an error. He stated that, while his Delegation was open to some rewording, it wished to retain the substance of the provision.

1877. Mr. VIDAURETTA (Argentina) said that although it was clear that it was not compulsory for an Office to review the application at the time it was filed, it appeared that there should be no objection to the provision being optional. With regard to the comments made by the Delegations of Australia and the Russian Federation, his Delegation specified that notification was given to the applicant at different stages of the process in different countries. He considered that the point in the process when the application was filed was not the best time to review the description, since the Office had no obligation to conduct a review at that time. This did not mean that the applicant would not be informed when part of the description was missing, but merely that there was no obligation to conduct the examination at the time the application was filed.

1878. Mr. BADRAWI (Egypt) supported the proposal made by the Delegations of Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela. He noted that it reflected his domestic legislation.

1879. Ms. FRANCISCO (Philippines) supported the proposal made by the Delegations of Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela in document PT/DC/26. She also pointed out that a Contracting Party might accept the description in a language that was not accepted by the Office so that any deficiencies could only be discovered after the Office had received the translation. She expressed concern that in such a case, the filing date would be unclear.

1880. Mr. MORENO PERALTA (Panama) said that his Delegation supported the proposal put forward by Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela, contained in document PT/DC/26, such that Article 5(5) should be left with greater flexibility for national Offices.

1881. Mrs. EL MAHBOUL (Morocco) said that her Delegation fully supported the proposal put forward by Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela, relating to Article 5(1)(c), expressed her fears regarding Note 5.19 to paragraph (5), and specified that these provisions, which were based on PCT Article 14(2), obliged the Office to notify the applicant. The Delegation of Morocco said that the

provision, as drafted by the countries of the Andean Group, complied with Moroccan legislation and that it fully supported the provision.

1882. Mr. TRAMPOSCH (WIPO) re-iterated that an office was only obliged to notify if it happened to find that a part was missing, and stressed that there was no obligation for the Office to specifically check for missing parts.

1883. Mrs. BERENDSON (Peru) said that her Delegation supported the proposal put forward by Argentina, Brazil, Colombia, Cuba, Uruguay and Venezuela in document PT/DC/26, designed to make the provision contained in Article 5(5) optional, for the same reasons as expressed by the Delegations that had spoken in favor of the proposal.

1884. Mr. TRÉPANIÉ (Canada) said that it happened, particularly in fax transmission, that pages were missing. He stated that it would be highly unfair and unfriendly to applicants if an office, were it to find pages missing, would not be obliged to advise him of this fact. In order to make clear that an office was not obliged to specifically check for missing parts, he proposed to draft the first sentence of Article 5(5): "Where...the Office happens to find..."

1885. Mr. BÜHLER (Switzerland) said that his Delegation also supported the Delegations of Australia and the Russian Federation. It preferred the text as it stood in document PT/DC/3, but was open to the suggestions made by the Delegations of the EPO, Australia and Canada to clarify Article 5(5). It was clear to his Delegation that the Office was not required to check whether a part of the description or drawing was missing but, if it happened to find so, it should do so.

1886. Mr. BARTELS (Germany) stated that the Delegation of Germany supported the Basic Proposal on this point.

1887. Mr. DRISQUE (Belgium) stated that the Delegation of Belgium supported Article 5(5) as it stood in the Basic Proposal. In the spirit of a compromise, it could also accept an amendment as proposed by the Delegation of the EPO.

1888. Mr. HIEN (Burkina Faso) said that his Delegation supported the proposal made by Argentina and the other countries, since there were two occasions when it could be ascertained that the description was complete: when examining the application for the purposes of according a filing date and at the time the content was examined. It therefore appeared logical that from that time onwards, notification should be made optional, as proposed by the Delegation of Argentina.

1889. Mrs. MARCADÉ (France) agreed that, following the discussions on Article 5(5), it should be emphasized that the Office was not obliged *ex officio* to examine whether a part of the description was missing but that, if an omission was observed, it should inform the applicant accordingly. She therefore suggested that a conditional concept should be included in paragraph (5) and that what was clearly indicated in the notes should be reflected, i.e. that the Office was in no way obliged to conduct such an examination. In that regard, she proposed that if, when according the filing date, the Office observed inadvertently that a part of the description appeared to be missing from the application or that the application referred to a drawing which did not appear to be included, it would notify the applicant promptly.

1890. Ms. LÖYTÖMÄKI (Finland) said that her Delegation supported the Basic Proposal, and could accept the addition suggested by the Delegation of the EPO. The change suggested by the Delegation of Canada would also be acceptable.

1891. Mr. VIDAURETTA (Argentina) said that the proposal in document PT/DC/26 related to the procedure for granting the patent. If at the time the filing date were fixed, an Office was obliged to inform the applicant of elements missing from the application, the Office would have to review the application. If such an obligation were not established, but were left optional, Offices would not be bound to verify the application at the time of filing. Such Offices could continue their practice of according the filing date to the application and leaving for a later stage of the process the examination of the application and the corresponding notification to the applicant so that he or she might comply with the requirements that had not been satisfied. He said that if the provision were clarified so as to establish that such preliminary verification of the application was not compulsory, the provision would be acceptable to the Delegations making the proposal.

1892. The PRESIDENT remarked that it seemed to him that, if the proposal in document PT/DC/26 was to be accepted, this would essentially be the equivalent of deleting Article 5(5). If it were deleted, there would be nothing in the Treaty that would prevent an office, if it noticed something missing, from notifying the applicant. No delegation had said that it did not actually want to notify the applicant if something was missing and there should therefore be some drafting to make it more clear that there was no obligation on the Office to do any checking.

1893. Mrs. MÁRQUEZ (Venezuela) said that her Delegation agreed with the sense of Article 5(5). It was not that Offices did not wish to notify the applicant if they discovered that part of the description was missing, but that it should be clear when notification could be given. She observed that the word "*compruebe*" ("verifies"), which appeared in the Spanish text of paragraph (5), would imply an obligation to conduct a comprehensive examination so as to determine whether anything were missing from the description. If the word "*compruebe*" ("verifies") could be replaced by the term "*encuentre*" ("finds"), the provision would become clearer.

1894. Mr. BLINNIKOV (EAPO), considering the President's suggestion to keep paragraph (5) and also taking into account the views expressed by the Delegation of Venezuela, wished to submit a compromise proposal. He recalled that the Delegation of the Russian Federation fully supported this paragraph. He noted that some countries do check the application in accordance with their laws; there were other countries which did not carry out such checks. The compromise proposal was to state that, "where, in establishing the filing date, the Office checks and discovers that part of the description appears to be missing...". In the case of an office which was obliged under its law to check the application, then this too would be satisfactory.

1895. Mrs. MÁRQUEZ (Venezuela) suggested that the opening sentence of paragraph (5) could read as follows: "Where, in establishing the filing date, the Office finds that...appears to be missing..." This wording could solve the problem.

1896. Mr. EL ALI FAKI (Sudan) stated that his Delegation supported the proposal made by the Delegations of Argentina, Brazil, Colombia, Uruguay, Cuba and Venezuela which did not provide the need for an office to notify the applicant. Otherwise, if no notification was given, the Office would be required to decide to reject the application. Another procedure should be found which would be favorable to the applicant. Usually national Offices would act along these lines so that consequently, the amendment proposed would, as has been said by the Delegation of the Russian Federation, be favorable to the applicant and this was the reason of the Delegation of Sudan support. With regard to the concerns expressed by the Delegation of Canada and other delegations, the Delegation of Sudan considered that, if the words "which appear to be a complete description" were included in Article 5(1), item (iii), this would solve the problem.

1897. Mr. BODIN (Sweden) stated that his Delegation supported the last proposal by the Delegation of Venezuela.

1898. Mr. IWASAKI (Japan) said that his Delegation supported the text as contained in the Basic Proposal. It could also accept the modification suggested by the Delegation of the EPO.

1899. Mr. HE (China) said that his Delegation supported paragraph (5) as contained in the Basic Proposal. It also supported the Delegation of the EPO's proposal to add "obviously" to clarify that provision.

1900. Ms. FRANCISCO (Philippines) asked the Delegation of Venezuela whether it proposed to revert back to the text of Article 5(5), as it stood in the Basic Proposal, what in English, used the word "finds", or whether the meaning was "happens to find or discovers."

1901. The PRESIDENT summarized the discussion: He concluded that many delegations were essentially in agreement in substance, but a provision was needed that made it clear that there was no obligation on the Office to actually check or to put in place any procedure to make a determination as to whether there was something missing. If the Office happened to find or discover, there would be an obligation to notify. In view of this agreement in substance, the matter could be referred to the Drafting Committee.

1902. Mr. HERNÁNDEZ VIGAUD (Cuba) said that his Delegation supported the wording proposed by the Delegation of Venezuela. It also appeared necessary to align the translations or versions of Article 5(5) in all languages, so that they all expressed the idea on which a consensus appeared to have been reached.

1903. Mr. BOGDANOV (Russian Federation) said that his Delegation fully agreed with the proposal by the Delegation of EAPO, suggesting that the Office “check and find”. If one of these functions were not carried out by the Office, the Office would not notify the applicant, but if it both checked and found, then it would be obliged to notify.

1904. The PRESIDENT thought that this suggestion could be considered by the Drafting Committee. What was important was that the text make it clear that there was no obligation for the Office to actually carry out a check, and there was clear agreement on that point. He proposed that paragraph (5) be adopted in substance and referred to the Drafting Committee. After the precise drafting in all of the languages was finalized, it could be looked at again.

1905. *Seeing no objections, the PRESIDENT declared Article 5(5) adopted in substance and referred to the Drafting Committee.*

1906. Turning to Article 5(6), subparagraph (a), the PRESIDENT invited comments.

1907. Mr. HERALD (Australia) recalled that, in the SCP, the expression “not later than” had been proposed to allow examining Offices to assess whether or not a missing description or drawing actually constituted new subject matter. His Delegation accepted that the text in square brackets should not be included. However, recognizing the possibilities of examining Offices assessing whether missing parts of descriptions or drawings contained new subject matter, it suggested that an explanation be included in the Explanatory Notes along the lines of that “this provision does not prevent an office from amending the application in accordance with the applicable law to include a missing part of the description or a missing drawing”.

1908. Mr. BAECHTOLD (WIPO) stated that the International Bureau would include an Explanatory Note along these lines proposed.

1909. The PRESIDENT recalled that the language “no later than” in square brackets was not actually part of the Basic Proposal.

1910. *Seeing no comments nor objections, the PRESIDENT declared Article 5(6)(a) adopted in substance as set out in the Basic Proposal, and referred to the Drafting Committee.*

1911. The PRESIDENT invited comments on Article 5(6)(b).

1912. Mr. IWASAKI (Japan) wished to express his Delegation’s concern about the feasibility of the provision under paragraph (6)(b) for filing missing parts. From the viewpoint of the implementation of this subparagraph, the Delegation had repeatedly objected to this provision in meetings of the SCP. In its view, the determination of whether a missing part of a description was completely contained in the earlier application, prescribed in Rule 2(4), item (iv), could not be carried out as part of the formal examination. In spite of the comment in Note R2.04, the indication as to where that missing part or missing drawing was contained in the earlier application as prescribed in Rule 2(4), item (iv) was given, might not suffice for a simple determination, particularly where there were several earlier applications. It should be also noted that the earlier application might have been filed in a different language from the later filed application that had a missing part. The Delegation of Japan therefore wished to interpret this subparagraph in the following manner and to go on record of this Diplomatic Conference on this point. The actual action taken by the Office for the determination that the missing part of an application is completely contained in an earlier application is to be entirely left to the jurisdiction of the Contracting Parties. In other words, if a Contracting Party found new matter in the missing part in the course of substantive examination or if a person found new matter in the missing part after the patent was granted, the filing date would be changed in line with Article 5(6), following the determination in substance that the missing part or drawing contained new matter.

1913. Mr. TRAMPOSCH (WIPO) confirmed that the statement read out by the Delegate of Japan accorded with the understanding of the International Bureau on this provision.

1914. Mr. BOGDANOV (Russian Federation) said that his Delegation shared the concern of the Delegation of Japan. It had supported the proposal of that Delegation, in the SCP, to delete subparagraph (b). It therefore suggested deletion of paragraph (6)(b). As regards subparagraph (a), it objected to the inclusion of the words "no later than" and would also suggest the possibility of deleting the words "whichever is later." The effect of those deletions would be that the filing date could then be one of two dates. But it would be left to the Contracting Parties to determine that date according to whether their legislation provided for checking how far the substance of the earlier application coincided with the later application. Depending on the solution of this problem, the filing date could be deferred. The decision as to whether or not to change the filing date wherever there were missing parts of the description or a missing drawing would be left to the Contracting Parties and it would depend on their specific patent laws.

1915. Mr. PAL (India) recalled that this provision enabled an applicant to obtain a filing date in a situation where part of the description or a drawing was missing and where the missing part was contained in an earlier application and the priority of the earlier application was claimed. This implied that disclosure before a foreign Patent Office was to be taken as a disclosure before the national Office. The Indian patent system operated on the principle of disclosure before the national Office and it was not permitted under Indian law to consider disclosure before a foreign Patent Office as a disclosure before the national Office. The Delegation of India therefore expressed its reservation on this provision.

1916. Mr. HERALD (Australia), in response to the suggestion by the Delegate of the Russian Federation to delete the expression "whichever is later," stated this expression was necessary to deal with the situation where, for example, an applicant filed a part which, on the face of it, was a description, and there was a deficiency of either the indication to that effect or the indication of the identity which was invited under Article 5(3) and the subsequent compliance with Article 5(4). The issue arose that compliance with the requirements other than the drawing could, in fact, occur after the date on which the missing part of the description or missing drawing was filed. Accordingly, the rectification or the correction under Article 5(6) could, in fact, occur before all the requirements of paragraphs (1) and (2) had been complied with. The Delegation of Australia therefore believed that the reference to "whichever is later" was a correct and necessary phrase in that provision. As regards paragraph (6)(b), it had consistently argued for the retention of that provision. It would not expect this provision to be used very frequently but it did provide a safeguard for an applicant who had filed an application in his home country and, 12 months later, filed an application claiming priority of the earlier application. The Delegation of Australia furthermore supported the comments of the Delegation of Japan concerning the limited nature of that provision, but was of the view that it was a very user-friendly and desirable provision to have.

1917. Mr. KUNIN (United States of America) stated that, for the record, and in view of the fact that there had been a proposal to delete paragraph (6)(b), the Delegation of the United States of America wished to associate itself with the comments made by the Delegate of Australia and strongly supported the retention of that Article.

1918. Mr. BADRAWI (Egypt) was in favor of deleting this paragraph and to leave the matter to the discretion of the Offices concerned.

1919. The PRESIDENT, summarizing the discussion, said that, so far, two delegations had spoken in support of Article 5(6)(b) and two delegations had proposed its deletion. In addition the Delegation of Japan had raised concerns.

1920. Mr. TRAMPOSCH (WIPO), to put this provision in context, said that, during the discussions of the SCP, there had been draft provisions to either allow or require Contracting Parties to make a check for new matter when missing parts were submitted. If there was no new matter, they would accord the earlier filing date and, if there was new matter, the later filing date. There had been an extended discussion on this and a significant number of delegations had felt that any kind of requirement to check for new matter at the time of filing was overly burdensome. The procedure included in Article 5(6)(b) of the Basic Proposal was adopted instead, to allow, in some cases at least, the applicant to retain the earlier filing date, if the missing part were contained in the priority application. This provision therefore represented a compromise that had been reached in the discussions of the Standing Committee.

1921. Mr. TRÉPANIÉ (Canada) said that, as a useful safeguard, the Delegation of Canada favored the retention of Article 5(6)(b).

1922. Mr. JUNG (Republic of Korea) stated that his Delegation strongly supported the retention of paragraph (6)(b).

1923. Mr. BOUCOUVALAS (Greece) also stated that his Delegation supported the retention of paragraph (6)(b).

1924. Mr. VIDAURETTA (Argentina) proposed that the provision contained in Article 5(6)(b) should be optional so as to read "a Contracting Party may establish."

1925. Mr. CRAMER (FICPI) said that FICPI wholeheartedly supported paragraph (6)(b) which would really be a great help for applicants, for example, where the translator omitted to translate a paragraph of the application, or made a typographical error, and it was very clear from the context of the priority document what was missing. This would therefore be a great help and user-friendly to the applicant.

1926. Mr. RAJAN (Ireland) said that his Delegation favored the retention of the provision of paragraph (6)(b).

1927. Mr. WEARMOUTH (United Kingdom) said that his Delegation wished to associate itself with the comments made by the Delegation of Australia and, therefore, wished to retain this provision as set out in the Basic Proposal

1928. Ms. LÖYTÖMÄKI (Finland) also supported maintenance of paragraph (6)(b) in the Treaty.

1929. Mrs. HAJDÚ (Hungary) expressed support for paragraph (6)(b).

1930. Mr. CRAMER (EPO) stated that the Delegation of EPO also supported retention of paragraph (6)(b). By way of example, he referred to the case where a fax was received with a page that appeared to be missing or was illegible. If a few days later, a confirmation copy was received and, the applicant wished to maintain the missing page in the application. With the option of subparagraph (b), he may be able to keep the initial filing date of the fax.

1931. Mrs. MODESTO (Portugal) also supported the retention of paragraph (6)(b).

1932. The PRESIDENT noted that a very large majority of delegations had spoken in favor of the retention of Article 5(6)(b) as set out in the Basic Proposal. Given that, and on the understanding that the Delegation of Japan had expressed and the International Bureau had agreed to include in the Notes, he asked if this Article was acceptable.

1933. Mr. HE (China) said that his Delegation was in favor of retaining paragraph (6)(b) without the words "no later than."

1934. The PRESIDENT recalled that the words "no later than" were in square brackets so that they did not form part of the Basic Proposal.

1935. Mr. PAL (India) stated that his Delegation did not wish to stand in the way of the adoption of this provision but it wishes that its reservation in respect thereof be recorded.

1936. The PRESIDENT confirmed that the reservation by the Delegation of India would be noted. Seeing no further comments nor objections, he declared Article 5(6)(b) adopted in substance and referred to the Drafting Committee.

1937. The PRESIDENT invited comments on Article 5(6)(c), again recalling that the words "no later than" were in square brackets and not a part of the Basic Proposal, unless there was a proposal and agreement to include them.

1938. *Seeing no comments nor objections, the PRESIDENT declared Article 5(6)(c) adopted in substance and referred to the Drafting Committee.*

1939. The PRESIDENT invited comments on Rule 2(3).

1940. *Seeing no comments nor objections, the PRESIDENT declared Rule 2(3) adopted in substance and referred to the Drafting Committee.*

1941. The PRESIDENT invited comments on Rule 2(4). He reminded the Committee that there was one small drafting change proposed by the International Bureau at the beginning, namely to change the reference to "subject to Rule 4" to "subject to Rule 4(3)."

1942. *Seeing no comments nor objections, the PRESIDENT declared Rule 2(4) adopted in substance and referred to the Drafting Committee.*

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1943. The PRESIDENT invited the International Bureau to introduce Article 5(7) and Rule 2(5).

1944. Mr. BAECHTOLD (WIPO) introduced Article 5(7) emphasizing that it was a very user-friendly provision which allowed an applicant to replace the mentioned elements by a reference to an earlier application. With regard to Rule 2(5), he suggested a drafting change to clarify the text and align it with the other language versions of this provision by inserting, after the word "application", the words ": the reference shall also indicate", so that the relevant part of the provision would read "the description and any drawings are replaced by the reference to the previously filed application; the reference shall also indicate the number of that application,..." Referring to Article 5(7)(b), he said that it addressed the case that the requirements contained in Article 5(7)(a) and Rule 2(5) had not been complied with and stipulated that the application could be considered as not having been filed. He also suggested to add the following additional sentence at the end of subparagraph (b) in order to bring the text in line with Article 5(4)(b): "Where the application is regarded as not having been filed, the Office shall notify the applicant accordingly, indicating the reasons therefor."

1945. The PRESIDENT noted that a proposal by the Delegation of Israel contained in document PT/DC/15 regarding Article 5(7) and a proposal by the Delegation of Japan in document PT/DC/10 concerning both Article 5(7) and Rule 2(5) had been made.

1946. Mr. IWASAKI (Japan) recalled that, while Article 5(1) provided for the indispensable three elements for establishing the filing date of an application, the reference procedure in Article 5(7) provided for an exception to this principle by enabling offices to grant a filing date even when not all three elements had been received by the Office. He observed that this procedure should be carried out rigidly and elaborately, and said that the proposal put forward by his Delegation in document PT/DC/10 would add new restrictions to Article 5(7)(a) and Rule 2(5)(b) with a view to reduce the unnecessary burden for the Office of having to trace individual applications. The proposal consisted of the following four elements:

1947. First, to allow references only to an earlier application filed by the same applicant. In this regard, he recalled that the earlier discussion in the SCP had been based on the assumption that references to the application of someone else would occur only in very rare cases. He expressed concern that such rare cases might nevertheless happen and said that the practicability of the PLT should not depend upon the number of cases that were likely to occur.

1948. Second, that reference should be made only to a single application. In this regard he pointed out that, if reference would be made to several applications, not only the Office but also third parties had to follow a very complicated mixture in the application which consisted of the copy of the earlier application, its translation and their certified copies.

1949. Third, that the reference should not be made to amendments filed after the application referred, because otherwise the Office would bear the responsibility for certifying a copy of the amendment. Such an application would be too complicated to follow, not only for the Office but for third parties as well. The reference should, therefore, be made to the initial application when the filing date is granted.

1950. Fourth, that reference should be made within 12 months from the filing of the previous application referred, because otherwise, the Office had to shoulder the responsibility for keeping all applications and documents for an indefinite period of time for the sake of an eventual reference.

1951. He also said that, in modification of the proposal in document PT/DC/10 to add a new subparagraph (b) in Rule 2(5), the words "not less than" should be deleted in order to set a maximum time limit.

1952. The PRESIDENT invited comments on Article 5(7)(a) or (b) and the proposals by the Delegations of Israel and Japan.

1953. Mr. HERALD (Australia) said that he preferred the original text of Article 5(7). He explained that a similar provision had existed in Australian law for some 15 years, which had been very little used because of the strict time limits which had to be complied with. He said that it was only used when an applicant decided to file at the very end of the priority period. He emphasized that Article 5(7) nevertheless was a very user-friendly provision and should be retained.

1954. With regard to the suggestions made by the Delegations of Japan and Israel to limit the application to a previously filed application filed by the same applicant or his predecessor in right, he stated that this would in fact increase the burden on offices. With regard to the suggestion by the Delegation of Japan to limit the reference to a single previously filed application, he pointed out that this was an issue of substantive examination and therefore preferred not to include such restrictions in Article 5(7).

1955. Mr. PAL (India) advocated for deletion of Article 5(7)(a) on the grounds that the Indian patent system was based on the principle of disclosure before the national Office which did not allow accepting a disclosure made before a foreign Patent Office as disclosure before the national Office.

1956. Mr. VIDAURETTA (Argentina) said that his Delegation agreed with the observations made by the Delegation of Australia, in the sense of the technical shortcomings to which this standard could give rise. His Delegation considered that the standard altered the fundamental nature of the right of priority established in the Paris Convention. The right of priority was designed to backdate the filing date to the date of the original application for the purposes of the prior art search, but did not aim to replace the disclosure of the invention that would be obtained if the complete documentation were filed. For that reason, his Delegation shared the view expressed by the Delegation of India to delete Article 5(6).

1957. Mrs. BOLAND (United States of America) supported the text as currently drafted, and could not support the limitations proposed by the Delegations of Japan and Israel. She also referred to the recently adopted PCT Rules 4.17(iii) and 51*bis*.1 paragraph (a)(ii) and (iii) which address priority, but do not contain any such limitations. With regard to the proposal of limiting Article 5(7) to a single previously filed application, she pointed out that it was common practice to rely on multiple applications.

1958. Mr. JUNG (Republic of Korea) generally supported the proposal made by the Delegation of Japan, pointing out that it might not reduce the benefits for applicants, but the burden on offices.

1959. Mr. BADRAWI (Egypt) supported the proposal made by the Delegation of India to delete paragraph (7) entirely, because an application would be published and should, therefore, not simply refer to another application, but contain the entire description.

1960. Mr. JENNY (EPI) supported the text as currently drafted and emphasized its user-friendliness. He said that it was particularly beneficial for small applicants who had to file in the last minute before the expiration of the priority period, and who were not interested in applying in a great number of countries, and therefore did not want to incur the cost of a PCT application.

1961. Mr. HE (China) supported the proposal made by the Delegations of India and Argentina to delete paragraph (7) entirely. He said that, as a compromise, he could support the proposal made by the Delegation of Japan to introduce a number of restrictions.

1962. Mrs. LÖYTÖMÄKI (Finland) supported the text as currently drafted.

1963. Mrs. LAGARMILLA (Uruguay) said that her Delegation supported the proposals put forward by Argentina and India, since the proposed Article 5(b) would adversely affect the right of priority, and that the situation on which the Delegation of Australia had commented with regard to the experiences acquired in relation to the expiration of the priority period would be covered by Article 13(2) which had already been adopted.

1964. Mr. TRÉPANIÉ (Canada) supported the text as currently drafted for the reasons given by the Delegation of Australia.

1965. Mrs. MARCADÉ (France) said that, in line with the Delegation of Canada, her Delegation supported the retention of paragraph (7), with the amendment made by the International Bureau, since this provision favored the applicant.

1966. Miss EL KATEB (Tunisia) said that her Delegation supported the Delegations that had spoken in favor of deleting paragraph (7), for the reasons given by the Delegation of Egypt and since this provision had no equivalent in Tunisian law.

1967. Mr. BOUCOUVALAS (Greece) supported the retention of paragraph (7) in the form proposed by the Delegation of Israel, and, in sub-paragraph (b), with the amendment suggested by the International Bureau.

1968. Mrs. HAJDÚ (Hungary) supported the retention of Article 5(7)(a) and (b) with the modifications suggested by the International Bureau.

1969. Mr. CAVAZOS TREVIÑO (Mexico) said that, although the provision of Article 5(7) was certainly designed to benefit the applicant, allowing him or her to use other applications that he or she had not filed previously would establish a procedure which any developing country Office would find difficult to handle. His Delegation therefore subscribed to the view expressed by other Delegations in the sense of opting for the deletion of Article 5(7). His Delegation could, however, accept that paragraph if the comments made by the Delegation of Japan were incorporated, i.e. that the paragraph should be limited exclusively to an application filed previously with the Office and provided that this was by the same applicant, or his or her legal successor.

1970. Mr. BÜHLER (Switzerland) supported the retention of Article 5(7) with the changes suggested by the International Bureau.

1971. Mr. STOHR (EPO) said that, in practice, there would only be a very limited use made of this provision, since, in the future, the description could be filed in any language, and modern facilities of electronic filing would be available all over the world. He strongly supported its retention with the modifications suggested by the International Bureau.

1972. Mr. WEARMOUTH (United Kingdom) supported the text as currently drafted for the reasons given by the Delegation of Australia. He also supported the amendments suggested by the International Bureau.

1973. Mrs. REINHOLD JØRGENSEN (Denmark) supported the retention of Article 5(7).

1974. Mr. SNETHLAGE (Netherlands) supported the text as currently drafted with the amendments suggested by the International Bureau.

1975. Ms. FRANCISCO (Philippines) stated that the provision did not appear necessary, but if it was kept, she supported the proposal made by the Delegation of Japan.

1976. Mr. HABIBI (Libyan Arab Jamahiriya) support the deletion of Article 5(7) stating that at the time of the filing date, there should be a complete explanation of the invention with all the details necessary, including any drawings or drafts.

1977. Mr. METTERNICH (Germany) supported Article 5(7) as currently drafted, and objected to the proposed restrictions limiting the reference to applications filed by the same applicant or its predecessor for the reasons given by the Delegation of Australia. He added that such a restriction would lead to

unnecessary complications especially in view of the mergers and acquisitions occurring frequently all over the world.

1978. Mr. RAJAN (Ireland) favored the retention of the provision under discussion and indicated that he could, as a compromise, also go along with the amendments proposed by the Delegation of Israel.

1979. Ms. HUIEROVÁ (Czech Republic) supported the provision with the changes suggested by the International Bureau.

1980. Mrs. EL MAHBOUL (Morocco) said that her Delegation favored the original version of Article 5(7).

1981. Mr. UNGLER (Austria) supported the provision as currently drafted with the amendments suggested by the International Bureau.

1982. Mrs. MODESTO (Portugal) supported Article 5(7) as currently drafted with the amendments suggested by the International Bureau.

1983. Mr. SHEHU-AHMED (Nigeria) supported the retention of Article 5(7) with the amendments suggested by the International Bureau.

1984. Mr. PIANO (Slovenia) supported Article 5(7) as currently drafted and with the amendments suggested by the International Bureau.

1985. Mr. STRENC (Romania) supported the retention of Article 5(7) with the amendments suggested by the International Bureau.

1986. Ms. VARGA (The Former Yugoslav Republic of Macedonia) supported the retention of Article 5(7) with the amendments suggested by the International Bureau.

1987. Mr. BODIN (Sweden) supported the retention of Article 5(7) with the amendments suggested by the International Bureau.

1988. Mr. SCHMITT-NILSON (FICPI) supported the retention of Article 5(7) with the amendments suggested by the International Bureau. He stated that, as had been pointed out by the Delegation of Australia, this instrument would be used only in extraordinary situations.

1989. Mr. VAN HORN (AIPLA) supported the retention of Article 5(7) with the amendments suggested by the International Bureau. He stated that the provision provided a safety net for inventors and applicants, which was typically taken advantage of in preserving a priority. He said that for this reason, the limitation to a single application appeared misdirected because in many cases applicants would rely on multiple priority documents. He concurred with the intervention made by the Delegation of Germany, and stated that the limitation to the same applicant or its successor would not take into account many of the practical realities of modern research, operating with collaborative arrangements between different companies and different countries.

1990. Mr. EL FAKI ALI (Sudan) supported the retention of Article 5(7) with the amendments proposed by the Delegation of Japan.

1991. Mr. EDGAR (IPIC) supported the retention of Article 5(7) with the amendments suggested by the International Bureau. He emphasized that, since the provision would normally be used to save priority, most of its value would be lost if normal multiple applications could not be referenced.

1992. The PRESIDENT asked whether there was any objection to adopting the text as currently drafted with the amendments suggested by the International Bureau.

1993. Mr. PAL (India) stated that, while he did not oppose the adoption of the provision, he wished that his reservation be recorded.

1994. Mr. IWASAKI (Japan) said that, in view of the previous controversial discussion, the issue should be left to each Contracting Party. He therefore proposed to state in the Notes and on the records that the concrete procedure for reference was left to Contracting Parties.

1995. Mr. CAVAZOS TREVIÑO (Mexico) proposed that the Committee should allow Delegations that had proposed the deletion or amendment of Article 5(7) to prepare proposed wording for a provision that would envisage the possibility of a reservation as regards this point in the Treaty.

1996. The PRESIDENT declared that the issue would be left open for the moment in order to allow time for further consultations. He then invited the International Bureau to introduce Article 5(8).

1997. Mr. BAECHTOLD (WIPO) introduced Article 5(8) and Rule 2(6).

1998. Mr. HE (China) stated that he still wanted to express his Delegation's reservations with respect to paragraph (7).

1999. Mr. CAVAZOS TREVIÑO (Mexico) said that his Delegation did not oppose the adoption of Article 5(8), but that its approval should be determined by the decision taken on paragraph (7), since the possibilities for consideration included the insertion of a new item (iii) in paragraph (8), which would allow the Contracting Parties to limit the possibility provided for in paragraph (7) exclusively to a single application, provided that this was filed by the same applicant or his or her lawful successor.

2000. The PRESIDENT proposed to adopt paragraph (8) of Article 5 on the understanding that the discussions would be reopened should that be necessary as a result of the discussion on Article 5(7).

2001. Mr. JAFAR (Bangladesh) stated that the Contracting Parties should have complete jurisdiction on deciding whether anyone else had filed a similar application before and impose condition thereto on the recent application.

2002. Mr. TRAMPOSCH (WIPO) explained that the exception provided for in Rule 2(6)(iii) referring to entitlement had been included by the SCP at the request of the Delegation of the United Kingdom in order to take account of a specialized procedure in the United Kingdom. This procedure was applied if there had been a change in entitlement. In such a case, the new owner would need to file a new application but would be entitled to the filing date of the earlier application. He emphasized that the provision referred to that specific case and did not in any way impinge on the jurisdiction of the State with respect to entitlement disputes. He stated that this would be made clear in the Explanatory Notes.

2003. Mr. WALKER (United Kingdom) concurred with the explanations given by Mr. Tramosch.

2004. Mr. HERALD (Australia) said that Australian law provided for a similar procedure.

2005. Mr. RAJAN (Ireland) stated that his country also had provisions similar to those of the United Kingdom.

2006. *The PRESIDENT declared Article 5(8) adopted in substance and referred to the Drafting Committee.*

2007. *The PRESIDENT also declared Rule 2(6) adopted in substance and referred to the Drafting Committee.*

2008. The PRESIDENT asked whether there was any delegation who wished to raise any point concerning Article 5(7).

2009. Mr. CAVAZOS TREVIÑO (Mexico) said that, in consultation with the other Delegations that had made known their concern regarding Article 5(7), it had prepared a proposal to include in Article 8 a new item (iii) which in English could read as follows: "the freedom of any Contracting Party to limit the scope of paragraph (7) to a single previously filed application that has been filed by the same applicant or its successor." The proposal did not prejudice the right of those Delegations that wished to propose that the possibility of expressing a reservation to paragraph (7) should be included in Article 22 of the Treaty.

2010. Mr. TRAMPOSCH (WIPO) suggested that, following the proposal by the Delegation of Israel, the paragraph concerned refer to the applicant or its predecessor in right.

2011. Mr. CAVAZOS TREVIÑO (Mexico) requested that this part be included.

2012. The PRESIDENT stated that the proposal by the Delegation of Mexico would thus read “(iii) the freedom of any Contracting Party to limit the scope of paragraph (7) to a single previously filed application that was filed by the same applicant or its predecessor in right.”

2013. Mrs. BOLAND (United States of America) stated that her Delegation was hesitant to support such an addition to Article 5(8). In her view, the full benefits of the operation of Article 5(7) would be realized only if all Contracting Parties put no restrictions on the application of this provision. The Delegation pointed out that the restrictions permitted by proposed Article 5(8)(iii) could be prejudicial to applicants able to take advantage of reference filing in one country, but prevented from doing so in another country.

2014. Mr. HERALD (Australia) stated that his Delegation also had difficulty with supporting the proposal for a new paragraph (8), item (iii). Although, in the experience of its Office, the great majority of such reference filings fell within the confines of the proposed text, there could be other circumstances. The Delegation said that the concerns raised to the provisions of Article 5(7) and (8) seemed to be based on lack of experience of the real operation of such provisions. Accordingly, the Delegation stated his strong preference to maintain the text of Article 5(7) and (8) as appeared in the Basic Proposal.

2015. Mr. BÜHLER (Switzerland) supported the interventions made by the Delegations of Australia and the United States of America, and stated that his Delegation preferred the text of Article 5(7) and (8) as introduced by the International Bureau.

2016. Mr. WEARMOUTH (United Kingdom) stated that the Delegation agreed with the views expressed by the Delegations of Australia, the United States of America and Switzerland, and supported the text as in the Basic Proposal.

2017. Mr. DAVIES (Canada) said that the reference filing system would be used for the last minute filing of applications claiming priority under the Paris Convention. Therefore, an applicant who claimed more than one priority under the Paris Convention should not be prevented from using such a reference filing system. The Delegation stated that, from a practical point of view, it could not support the proposal for paragraph (8)(iii).

2018. Mr. BADRAWI (Egypt) said that this proposal was intended to help reach a consensus in order to solve the outstanding problem. The Delegation stressed the importance of maintaining constructive spirit.

2019. Mrs. LÖYTÖMÄKI (Finland) stated that her Delegation was in favor of keeping the text as suggested by the International Bureau.

2020. Mrs. MARCADÉ (France) said that her Delegation was also in favor of retaining the text as it stood.

2021. Mr. IWASAKI (Japan) supported the proposal by the Delegation of Mexico. Recalling the explanation given by the Delegation of Australia concerning his country's experience on this issue, he noted that the usual case, was that of a single application filed by the same applicant or the predecessor. He also noted that the exception proposed by Mexico was discretionary, so that burden on the Office to check whether the applicant was the same or not was at the option of the Contracting Party. He also noted that there was a big difference between an application with more than one priority claim under the Paris Convention and the incorporation by reference of the description and drawings of more than one earlier application.

2022. Mr. JAFAR (Bangladesh) stated that his Delegation was in favor of the deletion of Article 5(7)(a).

2023. Mr. HE (China) said that, although his Delegation wished to delete, or, in accordance with the proposal made by the Delegation of Japan, to make certain restrictions on, paragraph (7), his Delegation could support the proposal by the Delegation of Mexico as a compromise.

2024. Mrs. LAGARMILLA (Uruguay) said that her Delegation supported the proposal to delete Article 5(7). However, in the interests of achieving a consensus it could support the proposal put forward by Mexico, since in some respects this limited the problem raised in relation to invoking the right of priority.

2025. Mrs. MÁRQUEZ (Venezuela) said that the proposal put forward by Mexico provided a factor that reduced the distance between the different points of view on the subject. Her Delegation therefore supported the Mexican proposal and subscribed to the comments made by the Delegation of Egypt.

2026. Mr. JONG (Democratic People's Republic of Korea) said that his Delegation supported the proposal by the Delegation of Mexico.

2027. Mr. BOUCOUVALAS (Greece) supported the proposal made by the Delegation of Mexico.

2028. Mrs. MALDONADO HINCAPIE (Colombia) said that her Delegation supported the proposal by Mexico to include a new item (iii) in Article 5(8), since this was a solution that could help to clarify the matter.

2029. Ms. FRANCISCO (Philippines) said that the proposal of the Delegation of Mexico was a good compromise between the delegations who wanted to retain Article 5(7) and those delegations who wanted this deleted, and therefore, strongly endorsed that proposal.

2030. Mr. MORENO PERALTA (Panama) said that his Delegation supported the proposal by Mexico since it considered the proposal to be well balanced.

2031. Mr. HERNÁNDEZ VIGAUD (Cuba) said that his Delegation supported the proposal by Mexico since it considered the proposal to be an acceptable compromise solution.

2032. Mr. BARTELS (Germany) said that, although his Delegation recognized the spirit of compromise laid in the proposal, it was not in the spirit of harmonization of the patent law. He explained that, there could be very rare cases where a successor had problems to prove his entitlement, and therefore, Article 5(7) would not be applicable. In these reasons, the Delegation stated that he could not support the proposal by the Delegation of Mexico and supported the texts of Article 5(7) and (8) as set out in the Basic Proposal.

2033. The PRESIDENT noted that the Committee should endeavor to find a compromise.

2034. Mr. STOHR (EPO) recalled that this Treaty was intended to reduce formalities, to strengthen legal certainty and to provide for harmonized procedures all over the world. Although acknowledging the character of a compromise that had been proposed by the Delegation of Mexico, the Delegation said that this compromise did not achieve those objectives. He noted that the procedure proposed would put additional burdens on offices and could produce legal uncertainty in cases such as mergers. The Delegation therefore stated that it could not support this proposal and wished to maintain Article 5(7) and (8) as suggested by the International Bureau.

2035. Mr. EL FAKI ALI (Sudan) said that, in the view of his Delegation, new paragraph (8), item (iii), as proposed by the Delegation of Mexico, seemed to be a consensus proposal that brought together the various points of view of the delegations. Since it took into account the various opinions, namely of those that wished to maintain paragraph (7) and those that wished to delete it, this would give the Contracting Parties to act as they wished. The Delegation of Sudan therefore supported the proposal by the Delegation of Mexico.

2036. Mrs. BOLAND (United States of America), referring to a comment by the Delegation of the EPO, stated that her Delegation did not characterize the proposed paragraph (8), item (iii) as a compromise. If the new item were adopted, it would degrade the effectiveness of the regime that Contracting Parties would set up if they did not take advantage of item (iii).

2037. Mrs. BERENDSON (Peru) said that her Delegation added its voice to the support given by numerous Delegations to the proposal by Mexico, since the proposal was well balanced, sought a consensus, and made the current wording of subparagraph (a) of Article 7 less inflexible.

2038. Ms. RAA GRETT (Norway) said that her Delegation wished to keep the text as introduced by the International Bureau.

2039. Mr. KAZANG (Turkey) stated that his Delegation also supported the retention of Article 5, paragraph (7), as introduced by the International Bureau.

2040. The PRESIDENT, summarizing the discussion, noted that a number of delegations had said that some way should be found to arrive at a position by consensus. In terms of the proposal by the Delegation of Mexico as it currently read, there was still a clear division of opinion. He wondered whether, as a compromise, the part of the proposal that related to filing by the same applicant or his predecessor in title could be kept and the part that related to a single previously filed application should be deleted. In the earlier discussion, there had actually been only a few delegations that wanted to limit reference filing to a single application and there had been comments on the practical limitations that this would impose on applicants. Many more delegations wanted, or could accept, a limitation to the same applicant. It had been said that, in practice, this would normally be the same applicant, although there might be other situations. Also, no Contracting Party would be required to apply this limitation. In the interest of finding a compromise, he wondered whether that might be acceptable. Thus, the proposal would be to add to paragraph (8), a new item (iii) that read: "the freedom of any Contracting Party to limit the scope of paragraph (7) to an application that had been filed by the same applicant or his predecessor in right". He asked the participants whether that would be an acceptable compromise.

2041. Mr. HERALD (Australia) stated that the position of his Delegation, in terms of this issue, was very much in favor of keeping the text without new item (iii). But as a possible compromise, he suggested, rather than including it in the Treaty, it be put as an extra requirement under Rule 2(5).

2042. The PRESIDENT invited comments on the suggestion of the Delegation of Australia. The proposal in its entirety would be the adoption of Article 5(7) as it appeared in document PT/DC/3 with the changes indicated initially by the International Bureau. In addition, a new provision, corresponding to the item proposed by the Delegation of Mexico, would be inserted into the Rules. It could be left to the Drafting Committee to sort out exactly where that would go. The substance of that new provision would be: "the freedom of any Contracting Party to limit the scope of paragraph (7) to an application that had been filed by the same applicant or his predecessor in right would be left open for a Contracting Party".

2043. Mrs. BOLAND (United States of America), stated that her Delegation considered the discussion to be progressing in a positive direction. However, she wished to ask Mr. Thomas of the International Bureau to explain how entitlement to claim priority of earlier applications coming from various applicants or inventors, and the need to provide the proper information to support such priority claims, were dealt with under the PCT. This might, in her view, provide information necessary to ensure that the trend of the PLT was not going in a direction that was contrary to what had recently been adopted in the PCT.

2044. Mr. THOMAS (WIPO) replied that the PCT Assembly had recently considered some Rule changes which dealt with such matters. In fact, it had always been possible, under the PCT, for designated offices to ask for documents or evidence concerning various kinds of national phase matters. There was a general provision in PCT Article 27 relating to some of these matters, but Article 27 specially mentioned the Regulations as containing some requirements—they were contained in Rule 51*bis*—PCT Rule 51*bis* contained a listing on a number of matters on which it was quite clear that a national Office could require certain information for the purposes of the national phase. The matters dealt with in Rule 51*bis*.1(a) were documents relating to the identity of the inventor, to the applicant's entitlement to apply for or to be granted a patent, proof of the applicant's entitlement to claim priority where the applicant was not the same applicant as in the priority application or where the applicant's name had changed, and the declaration of inventorship which had always been understood to be the particular requirement of the law of the United States of America. Further changes introduced recently in concerned evidence concerning non-prejudicial disclosures and exceptions to lack of novelty but were not of a substantive nature. There had been some changes in the precise nature of the requirements as they were defined but, basically, none of these matters was entirely new in Rule 51*bis* when it was overhauled by the PCT Assembly. Thus, those same requirements had always been present. However, one major change had been made: Rule 51*bis* dealt with requirements which national designated Offices, might impose on applicants at the time when the application entered the national phase. The change introduced was that new possibilities were added for applicants to satisfy these requirements, namely by making, with respect to various matters, for example, the identity of the inventor, a declaration which would be included in the PCT request form. The applicant could thus anticipate the national phase requirements by making a declaration in the PCT request form. If the declaration as to one of those matters was not included in the request form at the time of filing the international application, it could be added until a later date with a view to making sure that the mention of the declaration could be included in what was called the published pamphlet. That was to say the means of publishing the application which include bibliographic data, the application and the international search report for the most part. The next significant change

that had been made was the new provisions added to Rule 51*bis* which restricted what the Office could require in the event that an applicant made a declaration in the PCT request form. Those declarations had to be in standardized wording and the PCT Administrative Instructions set out the standardized wording that must be used. If an applicant made a declaration in standardized wording in the PCT request form during the international phase, a national Office could only require any further documents or evidence under Rule 51*bis* if there was a reasonable doubt as to the veracity of the declaration. In that respect, the PCT Assembly had picked up a concept which ran through a number of provisions in the PLT, namely that further evidence might be required only if there was reasonable doubt as to the veracity of what was stated. Similarly, just to complete an outline of the changes made, the existing provisions for designated offices to be able to require a translation of the international application or translation of the priority document were also subject to restrictions, namely that a certified copy of a translation could only be required where the designated Office had reasonable doubt as to the accuracy of the translation, and a translation of the priority document could be required where the validity of the priority claim was relevant to the determination of whether the invention concerned was patentable. By virtue of the incorporation in the PLT of PCT formal requirements, it followed that applicants would have the opportunity, when filing national applications in PLT Member Countries, of using those same standardized wordings of declarations as to the above-mentioned matters. Thus, those same declarations would be applicable in the case of a normal national phase application in a PLT Contracting Party.

2045. The PRESIDENT asked the Committee whether, as a compromise, it would be acceptable to adopt Article 5(7) in the form in which it appeared in the Basic Proposal, with the changes suggested by the International Bureau, together with a new Rule that would give Contracting Parties the freedom, if they wished, to limit the scope of paragraph (7) "to an application that has been filed by the same applicant or his predecessor in right".

2046. Mr. RAJAN (Ireland) noted that Article 4 of the Paris Convention referred to "successor in title." He suggested, therefore, to conform with that usage, the wording "predecessor in right" should be replaced by "predecessor in title".

2047. The PRESIDENT suggested that this terminology and the drafting in general, should be left to the Drafting Committee.

2048. Mr. JUNG (Republic of Korea), with reference to an earlier intervention by the Delegation of Japan, asked whether reference could be made to an earlier application as amended on a particular date. He also asked what was meant by "the same applicant", where there was more than one applicant, for example, was it sufficient that there was one applicant in common?

2049. The PRESIDENT, in response to the intervention of the Delegation of the Republic of Korea, said that, on the second point, it seemed to him that the issue of who would be the same applicant would be a matter left to national law under this provision. With respect to the first point regarding applications as amended, which had also been raised by the Delegation of Japan, he noted that there had not been much reaction to that. He therefore, invited views on this point.

2050. Mr. HERALD (Australia) stated that what mattered was that it was clear from the reference what particular form of the application was intended. Normally, it would be the application as filed. If it was the application as subsequently amended, this should be clear from the reference.

2051. Mrs. BOLAND (United States of America) said that her Delegation agreed with the Delegation of Australia on this matter.

2052. The PRESIDENT concluded that the majority view was that there should not be any such restriction. Accordingly, a Contracting Party would have the freedom to limit the scope of paragraph (7) to an application that had been filed by the same applicant or his predecessor in title but would not be entitled to limit the scope to the application originally filed. *Seeing no objection to the adoption of Article 5(7) as set out in the Basic Proposal with the modifications initially introduced by the International Bureau with the new item proposed by Mexico added into the Rules, he declared Article 5(7) and the new Rule adopted in substance and referred to the Drafting Committee.* For Rule 2(5) in document PT/DC/4, the International Bureau had indicated one small drafting change which did not constitute a change in substance. *Seeing no comments nor objections on Rule 2(5), the President declared it adopted in substance and referred to the Drafting Committee.*

Agreed Statement

2053. Since informal discussions were still continuing on Article 5(1), to attempt to find some compromise solution, the President suggested to set the discussion of that issue aside to allow for the consultations to continue and proposed to return to the list of items set aside earlier. There were the proposals for agreed statements by the Delegations of Switzerland and Japan in relation to Article 1(i) and (xiv), to be found respectively in documents PT/DC/23 and PT/DC/11. The President invited comments on the informal consultations that had taken place on these matters.

2054. Mr. HERALD (Australia) reported that discussions had been based on the stated proposal in document PT/DC/23. His Delegation proposed to insert, in the second line, after the word "tribunal", the following short phrase: "constituted legally independent of the Office" so the intention was that the term "Office" in Article 1(viii) of the Treaty did not cover such tribunals.

2055. Mr. RAJAN (Ireland) stated that his delegation could not support the Agreed Statement, as proposed. For example, in the European Patent Office, there were a Board of Appeal and an Enlarged Board of Appeal. Under the EPC, the European Patent Organisation has two organs: the Administrative Council and the European Patent Office. The Board of Appeal and the Enlarged Board of Appeal of the EPO are part of the Office and not legally independent of it. The Office in Ireland was in a similar situation. He therefore suggested that the term "tribunals" be qualified by the term "quasi-judicial."

2056. Mr. IWASAKI (Japan) thanked the Delegation of Australia for its proposal and expressed his satisfaction with the expression "constituted legally independent". The review unit under the administrative appeal law of Japan was indeed legally independent. In other words, that law was not specific to patents but applied to all government administrative actions in general. The Delegation of Japan therefore strongly supported the agreed statement based on the statement presented by the Delegation of Switzerland and amended by the Delegation of Australia. Finally, it wished to withdraw its initial proposal for an agreed statement after the adoption of this statement.

2057. Mr. BÜHLER (Switzerland) said that his Delegation also expressed its gratitude to the Delegation of Australia for its proposal which the Delegation of Switzerland supported. He asked the Delegation of Ireland to repeat its suggestion for clarification.

2058. Mr. RAJAN (Ireland) repeated his suggestion to insert, before the term "tribunals" the words "quasi-judicial". He observed that there would be then no need for the phrase "constituted legally independent of the Office". The problem actually was that such bodies were not necessarily independent of the Office but that they could carry out quasi-judicial functions when they exercised the responsibility of reviewing administrative decisions of the Office. When they exercised the functions of a court to a certain extent, they were still part of the Office, but were not necessarily independent of the Office. The terminology "independent of the Office" therefore did not solve the problem.

2059. Mrs. AALTO-SETÄLÄ (Finland) said that her Delegation fully shared the concerns expressed by the Delegation of Ireland and wished to support the wording proposed by that Delegation.

2060. Mr. JUNG (Republic of Korea) said that his Delegation fully supported the wording proposed by the Delegation of Australia.

2061. Ms. FRANCISCO (Philippines) wished to thank the Delegation of Australia for preparing this revised agreed statement and for clarifying, during the informal consultation, that the words "constituted legally independent of the Office" would not require that the Contracting Parties institute or change their legal structure. In the Philippines, the quasi-judicial bureau that had this administrative function was also within its Office. While the Delegation agreed with the proposal of the Delegation of Australia, it also supported the proposal made by the Delegation of Ireland. However, the Delegation wished to suggest that the statement be further amended to include the wording: "in particular the judicial and quasi-judicial bodies in charge of appeals."

2062. Mr. BADRAWI (Egypt) reiterated his Delegation's understanding that the word "Office" could never mean the judiciary or courts or tribunals. In Egypt, if the applicant did not accept a decision by the Patent Office, he could bring it before a board competent to hear his complaint. That board was constituted of judicial and non-judicial elements experienced in these matters. In cases of complaints, both the Office and the complainant were called upon to appear before the board. If the Office or the

complainant was not in agreement with the board's decision, either of them had the right to appeal before the legal system. Therefore, even a body, such as this board, that heard complaints would not be able to intervene. The Delegation of Egypt therefore believed that the proposal by the Delegation of Switzerland on this matter was very suitable and that the term "Office" could in no way mean a tribunal or court of the judiciary system.

2063. Mr. BOUCOUVALAS (Greece), referring to the agreed statement presented in document PT/DC/23, stated that his Delegation was in favor of the proposal as presented therein. However, as a compromise, it could support the proposal by the Delegation of the Philippines to insert, before the word "tribunals" the words "quasi-judicial and judicial."

2064. Mr. MOUKOURI (Congo) said that his Delegation shared the point of view expressed by Ireland and that there could be no possible confusion in the definition of the Office with judicial and extrajudicial bodies. Thus, in the Bangui Agreement an appeals commission existed, which opposed the applicants making a complaint and the administrative body.

2065. Mrs. BOLAND (United States of America) observed that her Delegation had participated in the informal discussions on documents PT/DC/23 and PT/DC/11. It agreed with the change proposed by the Delegation of Australia in the former document. It could however not accept or support the change, proposed by the Delegations of Ireland and the Philippines, of the term "tribunals" to "quasi-judicial" and/or to "judicial". The Delegation of the United States of America was concerned that Contracting Parties could use the Agreed Statement to avoid obligations under the Treaty. Accordingly, and it did not wish that Statement to go beyond what it had already agreed to.

2066. Mrs. REJNHOLD JØRGENSEN (Denmark) explained that, in Denmark, the Office included the board of appeal. Whilst that her Delegation welcomed the different proposals, it felt the proposal by the Delegation of Japan to be the clearest and the one that expressed what was needed in the most precise way.

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2067. Mr. BEIER (FICPI) said that the issue of whether or not the procedures handled by appeal bodies fell under the PLT was very important. The impression of that Delegation was that the majority of delegations were of the opinion that such procedures fell under the Treaty. However, it should be made certain that this applied to all countries.

2068. Mr. KHAFAGUI (WASME) said that the definition of the Office did not encompass that of the tribunal. He specified that the error which consisted in stating that the Office acted as a judge was the result of the failure to observe the principle of Montesquieu of the separation of powers, by virtue of which the judge did not intervene in the acts of the executive authority but verified the application of the law by the authority. He said that a patent office was an authority which did not carry out a jurisdictional, or even a quasi-jurisdictional, function, but was an administrative body which carried out its function under the supervision of the judicial authority. Similarly, recourse to a commission, which was not an appeals body, was a hierarchical administrative, and not a quasi-jurisdictional, appeal.

2069. Mr. VIDAURETTA (Argentina) said that his Delegation had supported the proposals put forward by the Delegations of Japan and Switzerland. He regretted that the Delegation of Japan had withdrawn its proposal, since he considered the proposal to be correct in conceptual and legal terms. In view of this situation, his Delegation reiterated its support for the proposal by the Delegation of Switzerland.

2070. Mrs. BOLAND (United States of America) said that her Delegation understood that the Treaty applied to all procedures within the USPTO. The Delegation had expectations that the same was true for other offices of other Contracting Parties. Therefore, the Delegation was concerned with regard to the statements in documents PT/DC/23 and PT/DC/11. The fact that Rule 12(5)(a)(v) and Rule 13(3)(i) provided exceptions for quasi-judicial bodies, such as boards of appeal, appeared to indicate that the rest of the Treaty must apply to those boards. She observed that there may be a basic misunderstanding about the scope of this Treaty, and the Delegation was looking forward to clarifying that matter.

2071. Mr. HERALD (Australia) noted that there seemed to be a variety of administrative structures within different countries that deal with the issues of tribunals for hearing certain matters. In many countries, the tribunals were administratively located outside the organization. In other countries and, as the Delegation understood, in particular in Japan and the Philippines, there was an administrative review body that was operating under different legislation but was administratively located within the Office. This was the cause of some confusion in terms of how to express the provisions. Having considered the various interventions, the Delegation thought that the text that was originally proposed was the best compromise.

2072. Mr. STOHR (EPO) explained that the Boards of Appeal of the EPO were certainly quasi-judicial bodies. According to Article 23 of the Convention, the boards shall not be bound by any instructions and shall comply only with the provisions of the EPC. Although these boards were special departments of the EPO, there was no problem with the separation of powers. As far as the applicability of the provisions of this Treaty to the procedures before the Boards of Appeal was concerned, the Delegation had always been of the view that, subject to the exceptions just referred to by the Delegation of the United States of America, those provisions applied to the Boards of Appeal of the EPO.

2073. Mr. MORENO PERALTA (Panama) said that his Delegation supported the proposal by Switzerland, since it would allow a clear and explicit distinction to be made between the procedures used in the national patent office and those used by judicial bodies.

2074. Ms. WEN (China) said that the concept of a quasi-judicial body varied from country to country. This could be an arbitration body of some type or a body within an office responsible for dealing with specific problems. In China, there was a body within the Office that dealt with administrative patent problems. The Delegation was of the opinion that it was wise to make the kind of distinction suggested by the Delegation of Australia. In other words, it should be made clear that the procedures would cover a body situated within an office, but nonetheless independent and able to deal with issues other than those dealt with by the Office as such.

2075. Mr. RAJAN (Ireland) pointed out earlier that, under the TRIPS Agreement, there must be opportunity for review of administrative decisions. In some jurisdiction, such decisions were reviewed before a court. In some other jurisdictions, they were reviewed before a tribunal. In the case of Ireland, the review took place before a tribunal located within the Office. The difficulty was that the tribunal was not constituted legally independent from the Office. This did not mean that the tribunal was dealing with administrative matters. This tribunal could even refer matters to the European Court of Justice in relation to certain aspects of Community law. It had all the character of a judicial body, but that body was located within the Office, and that was the difficulty the Delegation had in accepting the compromise proposal.

2076. Mr. PESSANHA CANNABRAVA (Brazil) said that his Delegation supported the proposal of the Delegation of Switzerland with the addition of the expression "quasi-judicial". Furthermore, the Delegation said that it understood that the definition of this term should be left to national legislation.

2077. Mr. TRAMPOSCH (WIPO) said that, having listened to the interventions of the Delegations of Ireland and Australia, he wondered whether the word "constituted" in the proposal of the Delegation of Australia was necessary, and whether it would be sufficient to speak of tribunals which were legally independent from the Office. This would leave it completely open whether the tribunal was administratively located in the Office or external to the Office.

2078. The PRESIDENT asked for comment on the suggestion to amend the of the Delegation of Switzerland contained in document PT/DC/23, and to add, after the word "tribunals" the words "legally independent of the Office."

2079. Mr. RAJAN (Ireland) said that he could agree with the term "legally independent," but "legally independent of the Office" seemed to be some more problematic, because it was not quite certain what was meant by "legally independent of the Office." The Boards of Appeal of the European Patent Office, for example, were legally independent but a part of the Office. It could not be otherwise, since the EPC was setting up a EPO consisting of the Administrative Council and the European Patent Office, but not any other body. The Boards of Appeal and the Enlarged Boards of Appeal were part of the Patent Office.

2080. Ms. AALTO SETÄLÄ (Finland) said that her Delegation did not fully understand the term “legally independent of the Office.”

2081. Mr. HERALD (Australia) stated that the intention of the term in question was to allow for an appeal tribunal to be located administratively within the Office. The Delegation considered that a review body inside the organization that was governed entirely by patent legislation, and not general administrative law, should be required to comply with the requirements of the Treaty.

2082. Mr. BADRAWI (Egypt) expressed support for the proposal of the Delegation of Switzerland.

2083. Mr. VIDAURETTA (Argentina) said that his Delegation interpreted the concern expressed by the Delegation of Ireland in the sense that quasi-judicial tribunals existed which depended, in fundamental, administrative and budgetary terms, on a patent office, but which were independent and had the capacity to make their own decisions. He suggested considering wording that expressed the view that the definition in question did not cover the tribunals of a patent office, where those tribunals had independent jurisdiction, in other words those tribunals and offices had the power to take decisions independently of the Office, even when they were dependent on it in administrative or budgetary terms.

2084. Mr. KAUDYROV (Kazakhstan) said that a possible solution could be to emphasize the fact that the proposal by the Delegation of Switzerland was directed to excluding general courts or tribunals. It could be said, in the second line of the Swiss proposal, that it did not include general courts or courts of general jurisdiction.

2085. Mr. RAJAN (Ireland) suggested inserting, after the word “tribunals” the words “legally constituted to exercise quasi-judicial functions.”

2086. Mrs. BOLAND (United States of America) referred to the discussion revolving around documents PT/DC/11 and 23 and expressed concern that, whatever language was ultimately agreed upon, the Agreed Statement might be subject to different interpretations in different Contracting Parties. This would be to the detriment of the users of patent systems throughout the world. In order to find a solution to this problem, it would be helpful to gain a better understanding of the kind of exclusions that delegations were looking for.

2087. Mr. RAJAN (Ireland) explained that in his country the Patent Office was legally competent to deal with matters like the revocation of granted patents on grounds of lack of novelty, or with the grant of compulsory licenses. It could also review the final administrative decisions taken within the Office. As long as the provisions of the Treaty did not affect the working of that tribunal, there did not appear to be a problem. However, in many jurisdictions these matters were dealt within a court, and the provisions of the Treaty did not extend to courts. In the view of the delegate, as in the case to a court, a tribunal that exercised a quasi-judicial function should not be subject of provisions of the Treaty.

2088. The PRESIDENT proposed that discussion on that issue be suspended to give further time for informal consultations.

Article 4: National Security

2089. The PRESIDENT opened discussion on Article 4 and Article 1(xviii) and invited the Delegations of the Russian Federation and of Sudan to introduce their proposals found in documents PT/DC/14,16 and 18, respectively.

2090. Mr. BOGDANOV (Russian Federation) said that, in the opinion of his Delegation, it was not possible to apply some concepts such as legislation or national security of the Treaty in the same manner in respect of all Contracting Parties, namely, States and intergovernmental organizations. The proposal intended to apply issues of national security only to Contracting Parties that were States. Regarding the proposal on Article 1, the Regulations referred to the territory of a Contracting Party and, therefore, a definition appeared to be appropriate. Concerning the proposed addition on instruments of ratification, intergovernmental organization could not undertake this procedure. Therefore, it was proposed that an instrument of ratification should be construed as including instruments of acceptance or approval. As regards the definitions of the law of a Contracting Party, where the Contracting Parties was a State, it was understood as meaning the law of that State. Where a Contracting Party was an intergovernmental organization, it was the legal enactment of that intergovernmental organization.

2091. Mr. EL FAKI ALI (Sudan) said that his Delegation had noted that Article 4 in the Arabic language version differed from the English language version. The equivalent in English to the Article text would be "it deems necessary." The Arabic text faithfully reflected the preference of the Delegation, because national security was part of the sovereignty of a State. To rule out any ambiguity in the English text, the Delegation suggested to delete the word "deemed" and replace it by the words "it deems," as presented in document PT/DC/18.

2092. Mr. TRAMPOSCH (WIPO) said that the change suggested by the Delegation of the Russian Federation may also be achieved by referring to any Contracting Party that is a State.

2093. The PRESIDENT declared that, if this approach would be followed then, combining the proposals of the Delegations of the Russian Federation and Sudan, Article 4 would read "Nothing in this Treaty and the Regulations shall limit the freedom of any Contracting Party that is a State to take any action it deems necessary for the preservation of its national security."

2094. Mr. BARTELS (Germany) observed that if Article 4 were amended in the sense that it would relate only to States, it would not take account of intergovernmental organizations who could take care of national security interest of their Member States. This could be the case, for example, if the European Union were to become competent for such matters on behalf of its Member States.

2095. Mr. THOMAS (WIPO) explained that the emphasis of the provision under consideration was on the body that could take action, and not on the issue of what a question of national security really was. In other words, it was not necessarily a question of States giving up their sovereignty to decide matters of national security, but States having decided among themselves what were questions of national security, and asking an intergovernmental organization to take appropriate actions.

2096. Mr. BADRAWI (Egypt) expressed support for the proposal of the Delegation of Sudan.

2097. Mr. KAUDYROV (Kazakhstan) suggested deleting the word "national" in the term "national security." In that way, the provision would apply either to a State or to an intergovernmental organization.

2098. The PRESIDENT noted that it might be useful to compare Article 4 with Article 73(b) of the TRIPS Agreement, because the latter was an Agreement to which an intergovernmental organization was a member. In the context of the TRIPS Agreement, the word national was not used. Merging the text of the TRIPS Agreement with the proposal of the Delegation of Sudan, the text would read "Nothing in this Treaty and the Regulations shall limit the freedom of any Contracting Party to take any action it deems necessary for the preservation of its essential security interest." The President invited comments on this draft.

2099. Mr. SNETHLAGE (Netherlands) said that his Delegation could support the proposals of the President.

2100. Mrs. MARCADÉ (France) expressed satisfaction, in line with the Delegation of the Netherlands, at the proposal put forward by the President who answered all questions and resolved all problems.

2101. *The PRESIDENT declared Article 4 adopted in substance and referred to the Drafting Committee.*

Article 1: Abbreviated Expressions

2102. The PRESIDENT opened discussion on the proposal of the Delegation of the Russian Federation contained in PT/DC/14.

2103. Mrs. BELKAID (Morocco) said that her Delegation supported the definitions suggested by the Delegation of the Russian Federation, in particular the first definition relating to the territory of a Contracting Party.

2104. Mr. BARTELS (Germany) asked for what purpose the definition of territory of a Contracting Party was needed. It appeared to be used only in Article 7(1)(ii) where reference was made to the territory prescribed by the Contracting Party.

2105. Mr. BOGDANOV (Russian Federation) said that the term territory of the Contracting Party was actually used in the Regulations and, in particular, in Rule 9(3)(iii).

2106. Mr. NTARIBO ASHU (Cameroon) said that it supported Article 1(xviii). Furthermore, the Delegation suggested that the definition would read "Contracting Party means any State or intergovernmental organization that is party to this Treaty."

2107. Mr. CAVAZOS TREVIÑO (Mexico) requested clarification regarding the proposal put forward by the Russian Federation, contained in document PT/DC/14, and asked what the essence of the instruments of "acceptance" or "approval" was, since according to the proposal they would be assimilated to instruments of ratification.

2108. Mr. BAVYKIN (Russian Federation) said that that it had made its proposal in order to draw attention to the fact that, unlike a State, an international organization could not ratify international treaties. That being so, it was intended to include a term, that would be construed as including powers that could be exercised by a State to ratify a treaty, and the powers exercised by an international organization to accept, approve or become a party to a treaty.

2109. Mr. CAVAZOS TREVIÑO (Mexico) requested that in the Explanatory Notes an indication was given that the act of "accepting" or "approving" the Treaty referred to the Contracting Parties that were intergovernmental organizations. In that connection, his Delegation supported the proposal of the Russian Federation on the matter, contained in document PT/DC/14.

2110. Mr. TRAMPOSCH (WIPO) agreed that the statement made by the Delegation of the Russian Federation could be included, but said that he wished to seek further clarification from the Office of the Legal Counsel of WIPO referring, in particular, to Article 14 of the Vienna Convention on the Law of Treaties.

2111. Mrs. BELKAID (Morocco) said that her Delegation could support the statement made by the Delegation of the Russian Federation relating to ratification under Article 14 of the Vienna Convention, which placed ratification, acceptance or approval on an equal footing.

2112. Mr. MATENJE (Malawi) stated that the word "territory" in Rule 9(3)(iii) seemed to refer to the territory of a Contracting Party and was, therefore, self-explanatory. In his view, there was no need for a definition in the Treaty since there was only one reference to the word "territory" in the Regulations and none in the Treaty itself. If at all, the term could be defined in the Regulations.

2113. Mr. TRAMPOSCH (WIPO) stated that the International Bureau would check whether the term was used in only one place, and, if that was the case, would include the definition where the term was used in the text.

2114. Mr. NIYONKURU (Burundi) emphasized the risk of ending up with a nomenclature in the definitions of 50 or 80 terms and recalled the remarks of the International Bureau in relation to its request to define "authority" in Article 7, designed to limit the definitions.

2115. Mr. TRAMPOSCH (WIPO) agreed that, if the term was used in one place only in the Regulations, then any definition should go into the text, rather than into the definitions.

2116. Mr. STOHR (EPO) questioned the necessity of defining the term "territory", pointing out that Contracting Parties should apply the concept of territory which was relevant for them. Referring to the example of the EPC, he stated that "territory" meant the territory where European patents applied. This was not necessarily the territory of the Contracting States to the EPC but also included territories for which these countries had responsibility. He recommended that the concept of "territory" not to be harmonized. He also noted that the European Union and other International Organizations that might become party to this treaty, were likely to use different concepts of territory.

2117. Mr. JENNY (EPI) observed that the definition of "instrument of ratification" appeared to have a bearing on Article 19(4), and might, therefore, better be dealt with in Main Committee II.

2118. The PRESIDENT agreed to leave the definition of "instrument of ratification" to Main Committee II and invited the Delegation of the Russian Federation to respond to the comments regarding the appropriateness of the definition of "territory of a Contracting Party."

2119. Mr. BAVYKIN (Russian Federation) stated that the proposal could be amended in order to take account of the concerns expressed by the Delegation of the European Patent Office.

2120. The PRESIDENT recalled that the recommendation of the EPO had been not to include a definition of "territory of a Contracting Party" and to leave it to each Contracting Party to determine its meaning for its own purposes.

2121. Mr. STOHR (EPO) confirmed the President's statement. In his view, it was difficult to have a common understanding of the term "territory of a Contracting Party". Therefore, it should not be attempted to define this term in the framework of the Treaty. He emphasized that not all intergovernmental organizations that were authorized to join the Treaty appeared to have a common concept of that term. A definition simply stating that "territory of a Contracting Party" was the territory defined by the relevant law of that Contracting Party would not seem to improve the Treaty.

2122. Mr. BAVYKIN (Russian Federation) stated that, if the proposed definition caused such difficulties, he would not insist on it being included.

2123. *The PRESIDENT declared the definitions of "Contracting Party" and "Law of a Contracting Party" adopted and referred to the Drafting Committee, and the proposal for the definition of "instrument of ratification" referred to Main Committee II.*

Rule 4: Availability of Earlier Application Under Article 6(5) and Rule 2(4) or of Previously Filed Application Under Rule 2(5)(b)

2124. The PRESIDENT then opened the discussion on the issue of priority documents and Rule 4(4). He noted that there were four written proposals: a proposal for an agreed statement made by the Delegation of the United Kingdom in document PT/DC/12; and proposals in relation to Rule 4(4) by the Delegations of Israel (document PT/DC/15), Portugal (document PT/DC/20), and the Russian Federation (document PT/DC/24). He first invited the International Bureau to introduce Rule 4(4).

2125. Mr. LEWIS (WIPO) introduced Rule 4(4) noting that it was part of an international trend to reduce the burden on applicants with respect to the cost of translations. He noted that a translation of a priority document could be made at any time. Its objective was to limit the need for translations to such cases where the translation was needed for a determination of whether or not the invention concerned is patentable. He also suggested that the expression "*a une incidence pour*" be replaced by "*est pertinent à*" in the French text and that this be considered by the Drafting Committee.

2126. The PRESIDENT noted that the Delegation of Israel was not present to introduce its proposal on Rule 4(4) contained in document PT/DC/15.

2127. The PRESIDENT invited the Delegation of Portugal to introduce its proposal in document PT/DC/20.

2128. Mrs. MODESTO (Portugal) stated that a translation should be required whenever it appeared to be necessary, not only with regard to the determination of whether a particular invention was patentable. She therefore proposed deleting the phrase "and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable."

2129. The PRESIDENT then invited the Delegation of the Russian Federation to introduce its proposal in document PT/DC/24.

2130. Mr. BOGDANOV (Russian Federation) stated that the present wording would shift the balance of interest to the detriment of third parties that might need to check whether a particular priority claim was justified. He referred to the two examples, given in document PT/DC/24, of situations in which third parties might need to consult a priority document. First where a third party opposed a priority claim. Second, when there was prior use. He said that, in both cases, a third party would not be able to check the contents of the first application if it had not been published. He would then have to rely on the

Office's verification of the priority claim during substantive examination. However, an office could not call for a translation of the first application. He stated that, to address this problem, the two alternative proposals were made in document PT/DC/24. The first was to delete paragraph (4). The second was to amend it in such a way as to enable third parties to become acquainted with the contents of the earlier application, without unduly burdening the applicant.

2131. The PRESIDENT invited comments on Rule 4(4) and the proposals made by the Delegations of Israel, Portugal, or the Russian Federation.

2132. Mr. HERALD (Australia) observed that the great majority of translations routinely required by his Office were, in practice, not used. He stated that it was necessary to find a balance between imposing a cost on all applicants to provide translations and on offices to store the translations, versus imposing a cost on third parties that had a serious interest in the application or patent. He expressed his firm belief that, taking the patent system as a whole, the Basic Proposal moved the balance in a way that would significantly reduce the overall cost of the system. He also noted that the PCT Assembly had, at its last session in March 2000, adopted a new Rule 51*bis*.1(e) which was, in substance, the same as Rule 4(4). He emphasized that, unless countries entered a transitional reservation under PCT Rule 51*bis*.1(e), they were obliged to comply with that provision, at least in so far as the national phase of international applications was concerned.

2133. Mr. SNETHLAGE (Netherlands) stated that his Delegation supported the proposal made by the Delegation of Portugal if the wording of Rule 4(4) meant that the Office could never ask for a translation. He explained that, in the Netherlands, the validity of a priority claim would not be examined by the Office but by a judge..

2134. Mr. THOMAS (WIPO) explained that PCT Rule 51*bis*.1(e), which had recently been adopted by unanimity, provided that a translation of the priority document could not be required in the national phase unless the validity of the priority claim was relevant to the question of patentability. He also noted that a corresponding limitation had been imposed on the ability of the international preliminary examining authorities to request a translation of the priority document during the international phase.

2135. Mr. CONGREGADO LOSCERTALES (Spain) said that as regards Rule 4(4) his Delegation agreed with the Delegation of Portugal that Offices should be able to require the translation of a priority document without any restriction, and that it therefore supported the Portuguese proposal contained in document PT/DC/20. As to the consistency of Rule 4(4) of the Basic Proposal for the Regulations with the PCT, he said that Spain had reserved judgement regarding the corresponding provision contained in the PCT.

2136. Mr. BARTELS (Germany) stated that his Delegation was in favour of Rule 4(4) as contained in the Basic Proposal and could not support the proposals to amend that provision.

2137. Mr. CAVAZOS TREVIÑO (Mexico) expressed concern at the comments made by the Delegation of Australia to the effect that most of the translations of priority documents were of no use since they were immediately archived. He said that the administrative practice of the Mexican Patent Office, which received approximately 14,000 applications per year, showed that the translation of those documents was fundamental for the appropriate and efficient performance of the duties entrusted to the Office. His Delegation therefore considered the concern expressed by Israel, Portugal and the Russian Federation to be legitimate, and supported the move to make the text of Rule 4(4) more flexible.

2138. Mr. DRISQUE (Belgium) asked whether the interpretation of Rule 14(4), given in Explanatory Note 4.05 relating thereto, actually implied that any kind of office – be it a receiving or an examining office – could in such a case no longer systematically require a translation of the previous application, but could nevertheless require such a translation if it considered, in a given case, that the translation was necessary and indeed essential for determining whether the invention contained in a particular application was patentable.

2139. Mr. LEWIS (WIPO) stated that the intention had been to enable an office or other authority, such as a court, to obtain a translation of the priority document necessary for the determination of patentability at whatever stage the patentability of the invention is to put into question. He observed that the current wording might be too narrow in so far as it referred to an invitation by the Office, and suggested that it should rather refer to an invitation by the competent authority.

2140. Mrs. BOLAND (United States of America) supported Rule 4(4) as it appeared in the Basic Proposal for the reasons advanced by the Delegation of Australia. She concurred with the view expressed by that Delegation that the balance of costs should be moved away from all applicants and be placed where it most importantly lay, namely on those third parties that had a serious interest, and who should, therefore, obtain their own translation. She noted that third parties frequently obtained their own translations anyway since they did not want to be bound by a translation filed by the applicant or owner. With respect to the comment made by the Delegation of Mexico, she observed that the restriction in requiring translations did not apply to translations of applications that the Office was in the process of receiving and examining, but that it was limited to the translation of priority documents. She emphasized that the need for such translations was in most instances very narrow and would arise only when there was an intervening reference during the examination process. She also stressed that the Conference should have regard to the decisions on this issue made within the framework of the PCT.

2141. Mr. JUNG (Republic of Korea) supported Rule 4(4) as contained in document PT/DC/3 and opposed the proposals made by the Delegation of the Russian Federation and Portugal. He emphasized that submitting and handling priority documents was a great burden on both applicants and offices, and that requiring translations was just a waste of money in almost all cases. He stated that, if the application was one thousand pages long, the applicant would already have to submit another thousand page priority document. Under the proposal made by the Delegations of the Russian Federation and Portugal, the applicant would have to submit another thousand page translation. He stated that it was now time to change the situation, particularly in view of the fact that the PCT had now provided a good model to follow.

2142. Mr. BOUCOUVALAS (Greece) supported the proposals made by the Delegations of Portugal and Israel in documents PT/DC/20 and PT/DC/15, stating that third parties should be able to examine the veracity of the priority claim and the state of the art with the help of a translation of the priority document.

2143. Mr. BÜHLER (Switzerland) supported the text of paragraph (4) as contained in the Basic Proposal for the reasons advanced by the Delegation of Australia.

2144. Mr. GAL (France) said that his Delegation joined the Delegation of Australia in supporting the Basic Proposal for Rule 4(4).

2145. Mrs. MODESTO (Portugal) pointed out that the situation under the PLT was different from that under the PCT. Whereas the PLT was binding on Contracting Parties, the PCT allowed for transitional periods where a certain amendment was not compatible with national law. As a consequence, the modification proposed by the Delegation of Portugal would reflect the practice under the PCT.

2146. Mr. UNGLER (Austria) stated that he favored the retention of Rule 4(4) as contained in the Basic Proposal in the interest of reducing costs for applicants. He objected to the deletion of the phrase "and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable" because this phrase ensured that offices could require a translation of the priority document only where it truly needed. Referring to the need of applicants to get priority documents without unnecessary delay, he also supported the proposal made by the Delegation of the United Kingdom for an Agreed Statement.

2147. Mr. VIDAURETTA (Argentina) said that his Delegation shared the opinions expressed by the Delegation of Portugal and therefore supported the proposal contained in document PT/DC/20. He added that it also concurred with the arguments put forward previously on this subject by the Delegation of Spain.

2148. Mrs. BELKAID (Morocco) spoke in favor of deleting the following phrase from Rule 4(4): "and the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable", as proposed by the Delegations of Israel and Portugal.

2149. Mr. HE (China) supported the proposal made by the Russian Delegation stating that the priority document was very important, particularly in order to protect the interest of third parties. However, in most cases, it was not necessary to translate it completely. In view of his Delegation, alternative (b) of the proposal made by the Delegation of the Russian Federation provided a good compromise. In addition, he

expressed support for the opinion put forward by the Delegation of the Netherlands, and for the suggestion made by the International Bureau to change "the Office" into "the competent authority."

2150. Mr. MORIYASU (Japan) supported the text as contained in PT/DC/4 for the reasons given by the Delegations of Australia and the United States of America.

2151. Mr. PAL (India) associated himself with the proposal made by the Delegation of Portugal under document PT/DC/20. He also declared that his Delegation maintained its reservation on the earlier text of Rule 4(4).

2152. Miss EL KATEB (Tunisia) said that her Delegation was in favor of the proposal put forward by Portugal, as contained in document PT/DC/20.

2153. Mr. BOGDANOV (Russian Federation) commented on the arguments advanced against the proposal made by his Delegation in document PT/DC/24. He concurred with the view expressed by the Delegation of United States of America that the burden of costs on translations should be borne by interested third parties. Nevertheless, he questioned how such third parties could have access to such documents if they had not been published. He also agreed with the Delegation of the Republic of Korea that translating a long document would be extremely burdensome, but emphasized that the proposal made by his Delegation allowed the applicant to file only a partial translation, or even not to furnish any translation at all, in particular cases. As to conformity with the PCT, he recalled that the provisions adopted in March 2000 had not yet entered into force, and that provisions of the PCT that conflicted with national laws were not applied in his country. He recalled, in this context, the issue of implementing or reflecting reservations under the PCT in the framework of the PLT was still to be resolved.

2154. Mr. STOHR (EPO) supported Rule 4(4) as presented in the Basic Proposal. He observed that this Rule did not dispense from the filing of priority documents. Instead, it limited the requirement for a translation to cases where it was really needed. In his experience, these constituted about 10% of all the filings received. As to the balance between applicant and third parties, he noted that a person who was an applicant one day might be a third party on another day. He agreed that a court should be able to require a translation if the question of the validity of the priority was at issue in infringement or revocation proceedings.

2155. Mrs. LÖYTÖMÄKI (Finland) supported Rule 4(4) as presented in the Basic Proposal.

2156. Mr. RAJAN (Ireland) stated that his Delegation supported the notion that a Contracting Party should not routinely ask for a translation of the priority document. His Delegation therefore lifted the reservation on Rule 4(4) which, as indicated in document PT/DC/5, it had entered previously, and supported Rule 4(4) as presented in the Basic Proposal.

2157. Mr. TRÉPANIÉ (Canada) informed delegates that ten years ago his country had introduced provisions that were quite similar in content to the ones contained in Rule 4(4). In the practice of his Office, copies of priority documents were rarely required, for this reason, and for harmonization with PCT, his Delegation supported Rule 4(4) as presented in the Basic Proposal.

2158. Mr. PIANO (Slovenia) supported Rule 4(4) as presented in the Basic Proposal.

2159. Mr. BADRAWI (Egypt) questioned the statement made by the Delegation of the Republic of Korea that a translation requirement would lead to the filing of thousands of pages. He pointed out that many applications were much shorter than that. He also asked how an office could process an application filed in a language that it did not accept. He said that, while having regard to the interest of the applicant was important, the interest of the Offices should not be forgotten. He therefore supported the proposal made by the Delegation of Portugal because it would help to achieve the goal of creating a balance between offices and applicants.

2160. Mr. BODIN (Sweden) supported Rule 4(4) as presented in the Basic Proposal.

2161. Ms. FRANCISCO (Philippines) supported the proposal made by the Delegation of Portugal. She noted that, where the reference to an earlier filed application replaced the description or any drawing, a Contracting Party would always require a translation of any part of the application that was not in a language accepted by its Office, including an earlier filed application. She expressed concern that, since

Rule 4 related to earlier applications under Article 6(5), Rule 2(4) and Rule 2(5)(b), the Office would be prevented from requiring a translation in that case.

2162. Mr. SADOU (Algeria) said that his Delegation also supported the proposal as put forward by Portugal.

2163. Mr. HAQUE (Bangladesh) supported the proposal made by the Delegation of Portugal in document PT/DC/20 for the reasons given by the Delegation of Egypt.

2164. Mr. PESSANHA CANNABRAVA (Brazil) said that his Delegation could support Rule 4(4) as presented in the Basic Proposal. However, it could also accept the proposal made by the Delegation of the Russian Federation.

2165. Mr. STRENC (Romania) supported Rule 4(4) as presented in the Basic Proposal. He stated it achieved the best compromise between the availability of priority documents on the one hand, and the necessity of reducing the cost of translations on the other.

2166. Mr. HERNÁNDEZ VIGAUD (Cuba) said that as regards Rule 4(4) his Delegation joined with those that had supported the proposal by the Delegation of Portugal, contained in document PT/DC/20.

2167. Mr. SANGALE (Equatorial Guinea) said that his Delegation supported the text of the Basic Proposal for Rule 4(4) with the amendment suggested by the Delegation of Portugal. It did not, however, support replacing the term "Office" with the words "competent authority", as proposed by the Delegation of China in that paragraph.

2168. Mrs. HAJDÚ (Hungary) said that his Delegation supported the text of Rule 4(4) as it appeared in the Basic Proposal.

2169. Mr. GRIGORIEV (EAPO) expressed support for the proposal of the Delegation of the Russian Federation, as supported by the Delegation of China.

2170. Mr. HIEN (Burkina Faso) asked at what point it could be said that the validity of the priority claim was not relevant to the determination of whether the invention concerned was patentable.

2171. Mr. TRAMPOSCH (WIPO) explained that the primary function of the priority right was to defend the applicant against any intervening acts that may have occurred between the date of the priority filing and the date of the subsequent filing. If there had been no intervening acts, for instance if there had been no publication or disclosure, and no other conflicting application had been filed during that time, then there would be no need for invoking a priority right.

2172. Mr. HIEN (Burkina Faso) wondered whether it was not possible to say that the validity of the priority claim was always relevant, especially to the determination of whether or not the invention concerned was patentable.

2173. Mr. TRAMPOSCH (WIPO) said that, only when prior art was dated between the date of the priority claim and the filing date of the subsequent application, would it make a difference as to whether or not the priority claim was valid.

2174. Mr. KAZANG (Turkey) expressed support for retention of the Basic Proposal. He stated that his Delegation shared the view of the Delegation of Australia.

2175. Mr. OMOROV (Kyrgyzstan) said that his Delegation supported alternative (b) of the proposal of the Delegation of the Russian Federation.

2176. Mrs. RAA GRETTE (Norway) expressed the support of her Delegation for the Basic Proposal.

2177. Mr. HIEN (Burkina Faso) said that in light of the explanation given by the International Bureau, his Delegation could support the proposal put forward by Israel and Portugal.

2178. Mrs. MÁRQUEZ (Venezuela) said that her Delegation considered that the proposal put forward by the Russian Federation in Version (b), contained in document PT/DC/24, was well balanced since it

allowed only those parts of the priority document considered necessary for determining patentability to be verified. This would reduce procedural costs. Consequently, her Delegation favored the proposal made by the Russian Federation, in accordance with Version (b) of Rule 4(4), as contained in document PT/DC/24.

2179. Ms. FRANCISCO (Philippines) said that her Delegation wished to clarify the reasons for which it had supported the proposal by the Delegation of Portugal. The PLT allowed replacement of the description, which is one of the elements for granting a filing date, with a reference to an earlier filed application. The Delegation was concerned that, if that description was in another language or in a language that was not accepted by its Office, the Office would not be permitted to require the translation of the description of that earlier filed application.

2180. Mr. LEWIS (WIPO) explained that the limitation on requiring translations under paragraph (4) was expressly restricted to translations of the earlier application referred to in paragraph (1). Paragraph (1) dealt only with the situation of a copy of an earlier application under Article 6(5), that is where that earlier application was the basis for a priority claim. Accordingly, paragraph (4) was expressly restricted to the translation of priority documents. It did not relate to the situations where the description was incorporated by reference. In fact, there was an expressed provision for translations in those cases.

2181. Mr. VAN HORN (AIPLA) said that his Delegation supported Rule 4(4) as contained in the Basic Proposal. It provided a very useful cost saving opportunity for applicants. It provided also for the needs of the Office where the validity of the priority claim was in question, and it was a principle that had been adopted in the PCT. There was no good or apparent reason why the Treaty should take a step backwards.

2182. Mr. ROUTMAN (ABA) expressed the support of his Delegation for Rule 4(4) in its original form. Rule 4(4) as contained in the Basic Proposal gave Contracting Parties the ability to request and obtain a translation in those few cases where it was needed. The Rule as proposed would save everyone money. Finally, and as was pointed out by the Delegation of AIPLA, it did not truly burden third party opponents. Such opponents prefer to obtain an independent translation, rather than rely on the translation provided by the applicant. Therefore, there were no increased costs to third parties. The routine translation of priority documents did not serve anyone.

2183. The PRESIDENT concluded that discussion would be suspended on Rule 4(4) in order to allow further time for reflection and informal consultations.

Article 7: Representation

Rule 7: Details Concerning Representation Under Article 7

2184. The PRESIDENT invited the International Bureau to present its suggestions on Article 7 and Rule 7 contained in Paper No. 1.

2185. Mr. TRAMPOSCH (WIPO) introduced informal Paper No. 1 dated May 19, 2000, entitled "Article 7 and Rule 7, Suggestion by the International Bureau." Concerning Article 7(2), the International Bureau withdrew the suggestion in item (iii).

2186. Mrs. BOLAND (United States of America) said that, on a conceptual level, her Delegation supported the restructuring of Article 7(2), namely setting apart the maintenance fees in a separate subparagraph and to make clear that maintenance fees were treated differently than the other items in paragraph 2(a). The Delegation also supported the new item (i), because that item articulated more clearly the issues that had caused concern for some delegations before. However, the Delegation was aware that the suggestion was an attempt to forge a compromise of some of the more controversial issues in the Basic Proposal. In light of the uncertainty surrounding the resolution of Rule 4(4), the United States of America wished to propose the inclusion of translations in this new draft of Article 7(2)(a). Rule 4(4) was important to the objective of reducing cost and simplifying patent systems throughout the world. If there was any uncertainty with respect to the adoption of that Rule, the Delegation was of the view that the potential savings should be recouped by including translations in the redraft of Article 7(2)(a). Furthermore, in light of the previous discussion on some perceived or actual disparity and treatment among applicants throughout the world due to different definitions of the term "applicant" in various Contracting Parties, the Delegation of the United States of America wished to propose, in the spirit of compromise, to add, in the third line of the chapeau of paragraph (2)(a), the words "the assignee

of an application.” The Delegation felt that with this addition, playing field was totally level for all applicants and assignees throughout the world, and that all would be able to take equal advantage of the operation of that provision.

2187. Mr. BARTELS (Germany) recalled that his Delegation had presented a proposal with regard to the provisions under discussion, and indicated that he might withdraw that proposal if he received further clarification regarding a number of issues. He noted that, whereas Explanatory Note 7.07 expressly indicated that the applicant could be required to provide an address for correspondence and/or legal services in the country even in cases where mandatory representation was included, Explanatory Note 7.13 did not contain an indication to that effect with regard to item (v) in Paper No. 1. He therefore proposed that Explanatory Note 7.13 clarify that an office could also require an address for legal service in the country in the situation envisaged under item (v). He also supported the additional wording proposed by the Delegation of the United States of America as a significant clarification that would increase legal security. Noting that the item excluding representation for the filing of a translation had not been included in Paper No. 1, he expressed a preference for its re-inclusion in the draft PLT. He expressed a preference for the deletion of item (iii) in Paper No. 1 as had been suggested by the International Bureau. Finally, he questioned the necessity of distinguishing between the payment of fees on the one hand, and the payment of maintenance fees on the other, and proposed to redraft subparagraph (b) as follows “a fee may be paid by any person” with a consequential deletion of item (ii).

2188. Mr. TRAMPOSCH (WIPO) agreed to repeat the statement from Explanatory Note 7.07 in Note 7.13.

2189. Mr. HERALD (Australia) welcomed the proposal made by the Delegation of the United States of America to insert a reference to the assignee of an application as a considerable concession in the spirit of compromise. He reiterated his support for including as many exceptions as possible in Article 7(2). While expressing some sympathy for item (iii), withdrawn by the International Bureau, he supported the suggested draft of Article 7(2) as contained in Paper No. 3, but favored the retention of an exclusion for the filing of translations. He did not accept the suggestion made by some delegations that an agent was necessary to file translations because of the difficulty of the task. Applicants could, if necessary, engage a professional translator, and should not be required to additionally employ the agent as a translator. He stated that applicants who might, if Rule 4(4) were not adopted, be required to file unnecessary translations at considerable cost, should not be burdened by the additional cost of having to file those translations through agents. With regard to the proposal made by the Delegation of Germany regarding fees, he expressed a preference for the text suggested by the International Bureau in Paper No. 1.

2190. Mr. MORIYASU (Japan) opposed the inclusion of item (ii) for reasons concerning the operation of the Japanese Patent Office. He explained that, if the fee could be paid by the applicant himself while the application had been filed by a representative, the Office would have to establish the conformity between both procedures, which, in the case of the Japanese Patent Office that received 400,000 applications each year and processed them in an automated system, was impossible without a huge additional investment in human resources and revision of the electronic system. If it were forced to do so, such an investment would increase the cost for users which, in turn, would be contrary to the goal of increasing user-friendliness. He added that, from a legal point of view, individual procedures should be carried through by a single person and should not be divided. Furthermore, his Delegation objected to the proposal to insert an exception for the filing of a translation.

2191. Ms. FRANCISCO (Philippines) stated that, while she recognized the need for development and growth of the profession in her country, she nevertheless wanted to give applicants the freedom to decide whether or not they wanted to deal with the Office directly, even though that could be more burdensome for her Office, and might, in the end, prove to be difficult and more expensive for the applicants themselves. She asked whether items (i) to (v) listed the only situations where an applicant could represent himself before the Office, and whether, if he had appointed a representative, an applicant was prevented from representing himself with respect to items (i) to (v).

2192. Mr. TRAMPOSCH (WIPO) replied that applicants, owners or other interested persons could, even if they were represented by a local representative, represent themselves for the purposes of the procedures listed in the provision.

2193. Ms. FRANCISCO (Philippines) asked whether that list was exclusive.

2194. Mr. TRAMPOSCH (WIPO) explained that the list prescribed the exceptions to mandatory representation under which a Contracting Party would be required to permit an applicant, owner or other interested person to represent themselves. He noted that the Regulations provided for two additional procedures under item (v), under which other procedures could be added by the Assembly. He emphasized that Contracting Parties would not be obliged to provide for any exception beyond those listed.

2195. Ms. FRANCISCO (Philippines) stated that the compromise formulation in Paper No. 1 was in principle, acceptable. Her Delegation also had no objection to including the mere filing of a translation. Referring to the proposal made by the Delegation of the United States of America to insert the words "assignee of an application", she observed that this would seem to be already covered by the clause "other interested person."

2196. Mr. GAL (France) said that his Delegation could, in a spirit of compromise, accept the document as presented by the International Bureau but said nevertheless that it regretted the wording used in the Basic Proposal. Since French legislation was very liberal towards the applicant, his Delegation regretted the deletion of the reference to the submission of a translation, something which could be done by the applicant himself. He added moreover that his Delegation supported the amendment that had been put forward by the Delegation of the United States of America.

2197. Mr. WALKER (United Kingdom) supported the restructuring of Article 7(2) as it appeared in Paper No. 1 as well as the inclusion of items (i), (ii), (iv) and (v) in subparagraph (a), and maintenance fees in subparagraph (b). He also welcomed the proposal made by the Delegation of the United States of America to level the playing field by including the reference to the assignee of an application in the chapeau to paragraph (a). He supported the intervention by the Delegation of Australia that it was not necessary for a translation to be filed by a representative to guarantee its quality. He also agreed with the Delegation of Australia's statement that applicants who might, if Rule 4(4) were not adopted, be required to file unnecessary translations at considerable cost, should not be burdened by the additional cost of having to file those translations through agents. His Delegation, therefore, sought its reinstatement in paragraph (2)(a).

2198. Mrs. LÖYTÖMÄKI (Finland) welcomed the suggestion contained in paper No. 1 as presented by the International Bureau and supported that suggestion as modified by the Delegation of the United States of America. She stated, in addition, that her Delegation would prefer re-instatement of the item on the filing of translations.

2199. Mr. CONGREGADO LOSCERTALES (Spain) said that his country had expressed a reservation as regards the text of Article 7(2) contained in the Basic Proposal, especially in relation to the exception for the submission of translations. If that exception did not appear in the new proposal for Article 7(2), as contained in Paper No. 1 and prepared by the International Bureau, Spain could support that solution and thus withdraw its reservation.

2200. Mr. CRAMER (EPO) supported the statements made by the Delegations of Australia and the United Kingdom and expressed a preference for reinstating an item regarding the filing of a translation. His Delegation also welcomed the additional wording proposed by the Delegation of the United States of America.

2201. Mr. SNETHLAGE (Netherlands) stated that he was in favor of a system that gave choice and responsibility to the applicant, and therefore welcomed the new proposal in Paper No. 1. He also supported the proposal by the Delegation of the United States of America. With regard to the relation between paragraph (2)(a)(ii) and paragraph (2)(b), he agreed with the Delegation of Germany that such distinction did not seem necessary. With regard to the filing of a translation, he stated that his Delegation had not yet heard convincing arguments for not excluding it from mandatory representation. It therefore suggested its re-instatement.

2202. Mr. RAJAN (Ireland) welcomed the proposal made by the Delegation of the United States of America to include a reference to "the assignee of the application." His Delegation also had a preference for including the filing of a translation in the list of items in paragraph (2)(a). With regard to item (i), he queried whether the term "application" in that item referred to a communication that complied with the requirements of Article 6.

2203. Mr. TRAMPOSCH (WIPO) explained that the intent of this item was to cover the initial filing of all papers in respect of the filing of an application on the filing date. It was not intended to include the filing of additional papers filed for the purposes of making the application complete for the processing of the application.

2204. Mr. RAJAN (Ireland) proposed to amend item (i) of Article 7(2) to read: "the filing of any communications in respect of an application, before the application is accorded a filing date."

2205. Mr. TRÉPANIÉ (Canada) supported the retention of Article 7(2) as contained in the Basic Proposals, without the text in square brackets. His Delegation favoured a very limited number of exceptions to mandatory representation. It was willing to accept Article 7(2)(a) as suggested in Paper No. 1, without item (ii) concerning the payment of fees. He expressed his Delegation's appreciation to the Delegation of the United States of America for its proposal to amend the introductory words of Article 7(2)(a).

2206. Mr. BOGDANOV (Russian Federation) sought clarification on the exact meaning of the amendment to the introductory words of paragraph 2(a) proposed by the Delegation of the United States. He further doubted the need to include item (v) contained in paper No. 1 and proposed its deletion.

2207. Mrs. BOLAND (United States of America) explained that, having regard to the definition of "applicant" in Article 1, there may be some situations where questions would arise as to whether a corporate assignee would be able to conduct the procedures listed in Article 7(2) directly with the USPTO. In earlier discussions, it had been stated that there was a disparity between United States corporate applicants filing abroad and foreign corporate applicants filing in the United States. In order to address that disparity, it would be appropriate to include the proposed phrase in the introductory words of paragraph (2)(a) of Article 7 to permit foreign corporate applicants or assignees to conduct those procedures directly with the USPTO.

2208. Mr. BODIN (Sweden) supported the suggestions of the International Bureau in Paper No. 1. He thanked the Delegation of the United States of America for their proposal. He furthermore supported the suggestion of the Delegation of the Philippines to include the mere filing of a translation in the list of exceptions in paragraph (2)(a).

2209. Mr. BOUCOUVALAS (Greece) stated that, in the spirit of compromise, his Delegation would support the suggestions of the International Bureau in Paper No. 1 with the deletion of item (iii).

2210. Mr. DRISQUE (Belgium) said that his Delegation supported the compromise proposal put forward by the International Bureau as regards Article 7(2), and said that it greatly appreciated the amendment to the preamble proposed by the Delegation of the United States of America. By contrast, the Delegation of Belgium regretted the deletion of the exception relating to the submission of a translation.

2211. Ms. LACHOWICZ (Poland) stated that, in general terms, it was in favor of the suggestion of the International Bureau presented in Paper No. 1. However her Delegation shared the concerns expressed by the Delegations of Japan and Canada in respect to item (ii) concerning the mere payment of fees. As regards translations, her Delegation could accept its addition to the proposed list of exceptions.

2212. Mr. EL FAKI ALI (Sudan) stated that his Delegation supported fully the suggestions of the International Bureau in Paper No. 1. His Delegation would also like to associate itself with the Delegation of the United Kingdom with respect to the inclusion of translation in the list under paragraph (2)(a).

2213. Mr. BOGDANOV (Russian Federation) requested further clarification of the proposal made by the Delegation of the United States of America.

2214. The PRESIDENT explained that, under the proposal, the last clause of the chapeau would read: "except that the assignee of an application, an applicant, owner or other interested person may represent himself before the Office for the following procedures".

2215. Ms. VARGA (The Former Yugoslav Republic of Macedonia) stated that her Delegation supported the suggestions of the International Bureau in Paper No. 1 with the exception of item (ii) concerning the payment of all fees. It was in favor of including the payment of the maintenance fees only.

2216. Mr. TOURÉ (Burkina Faso) said that his Delegation also supported the amendment proposed by the International Bureau, as contained, *inter alia*, in Paper No.1.

2217. Mr. STARLING LEONARDS (ASIPI) stated that his association wished to note that the freedom to require a local Representation was a right under Article 2(3) of the Paris Convention and 2(2) and 3(2) of the TRIPS Agreement. These provisions were intended to prevent the imbalanced impact in trade of intellectual property services, that the prohibition to require local representation could cause. He observed that, according to WIPO statistics, 93% of all the PCT applications derived from the trilateral Offices, namely the Japanese Patent Office, the USPTO and the European Patent Office. The remaining Offices participated in the PCT system mainly as designated or elected Offices. Therefore, trade concessions in intellectual property services should be negotiated before the WTO, where concessions could be obtained by all the parties involved in a bilateral or multilateral basis and not granted only laterally. Countries that were mainly receiving countries for patent applications had a very small group of representatives. To make this group even smaller would greatly diminish the number of people willing and capable of working with the patent system. In these countries, the elimination of most or a large number of professionals working within the patent system would result, not only in a less expensive patent system, but also in a less effective one. This was because the community involved in the patent system, which was already small, would further diminish. It would also eliminate the trade aspects of a significant hard currency investment in countries that had historically suffered with balance of payment problem. Finally, it would increase the costs of the national Patent Offices. His association was in favor of reducing costs associates with international patent system. It believed, however, that this could not be achieved by combating the geographical distribution of the benefits brought by the patent system. There were other means for controlling the costs of the intellectual property system. Therefore his association proposed that countries continue to be free to determine when a local representative should be required, according to what was established already in the TRIPS Agreement, with the consequent deletion of Article 7(2).

2218. Mr. HERNÁNDEZ VIGAUD (Cuba) requested clarification regarding the meaning of Article 7(2)(b)(ii), as contained in Paper No.1 and prepared by the International Bureau. He did not understand what was meant by "the mere payment of a fee," since it was unclear which fee this referred to, who decided the fee, whether this related to the single fee for the whole of the procedure, or whether it was a set fee. As to the preamble to Article 7(2) contained in Paper No.1, he observed that the words "act himself" did not appear to have any meaning. If this meant that the person concerned could act on his or her own behalf, without a representative, this should be expressed in a clearer manner.

2219. Mr. TRAMPOSCH (WIPO) explained that the intention of the word "mere" in item (ii) was to separate the cases where a fee accompanies another act, from the simple payment of a fee not accompanied by another act. The former could require a representative. He also explained that the reference to a person representing himself did, in fact mean acting for himself, that is, acting as his own representative before the Office in respect to actions concerned.

2220. Mrs. RAA GRETTE (Norway) stated that her Delegation welcomed the new suggestions in Paper No. 1. However, it would prefer the inclusion of an item in respect of the filing of a translation. This was in accordance with her country's practice and her Delegation did not agree that this had an influence on the quality of the translation. Her Delegation also wished to support the amendments made by the Delegation of the United States of America.

2221. Mr. JUNG (Republic of Korea) stated that his Delegation supported the suggestions made by the International Bureau in Paper No. 1. It also supported the proposal made by the Delegation of the United States of America. However, it opposed the inclusion of the filing of translation.

2222. Mr. OMOROV (Kyrgyzstan) stated that his Delegation supported the suggestions by the International Bureau in Paper No. 1, except for item (v). It also supported the proposal by the Delegation of the United States of America.

2223. Mr. SIMKHADA (Nepal) stated that his Delegation fully supported the suggestion of the International Bureau contained in Paper No. 1.

2224. Mr. PESSANHA CANNABRAVA (Brazil) stated that his Delegation recognized the relevant role that representatives played at the national level to facilitate the procedures between the user and the Office. It

noted that there has been some meaningful improvements in the text suggested by the International Bureau which it could support.

2225. Mr. SANGALE RONDO (Equatorial Guinea) said that his Delegation supported the Basic Proposal for Article 7(2) as well as the amendments made by the International Bureau to the content thereof. It also supported the proposal by the Philippines to include a reference to the translations in that paragraph and to insert the reference to the payment of fees.

2226. Mrs. MÁRQUEZ (Venezuela) supported the suggested wording for Article 7(2) contained in Paper No.1, as well as the concern expressed by the Delegation of Cuba and the suggestion of the Delegation of the Philippines to include also the translations.

2227. Mr. SADOU (Algeria) said that his Delegation also supported the compromise proposal put forward by the International Bureau. He added that his Delegation appreciated and supported the amendment proposed by the United States of America but regretted that the paragraph concerning the submission of a translation had been deleted.

2228. The PRESIDENT stated that, given the time, he proposed to take interventions from Cuba, Egypt and Panama and then to close the session. He informed the representatives of AIPLA, IPIC and FICPI, who had asked for the floor, that he would give to the non-governmental organizations the opportunity to intervene when the Committee resumed its discussions on Article 7 and Rule 7.

2229. Mr. HERNÁNDEZ VIGAUD (Cuba) said that despite the fact that his Delegation had proposed deleting Article 7(2), it could now accept that paragraph in the form proposed by the International Bureau in Paper No.1, provided that the Drafting Committee adjusted certain terms in the text, in accordance with the explanations given by the International Bureau.

2230. Mr. BADRAWI (Egypt) stated that his Delegation supported the text as presented by the International Bureau. He proposed that the words "if necessary" be added after the words "A Contracting Party may require". His Delegation also wished to include the filing of a translation.

2231. Mr. MORENO PERALTA (Panama) said that, although his Delegation had previously proposed the complete deletion of Article 7(2), it could now accept the text in the form proposed by the International Bureau in Paper No.1. His Delegation opposed, however, the inclusion of translations in Article 7(2).

2232. The PRESIDENT stated that Main Committee II would reconvene the next day at 10:00 a.m. As soon as that was finished, Main Committee I would reconvene, with the possibility of a meeting on Saturday May 27.

2233. Mr. BAECHTOLD (WIPO) announced that the African Group was meeting in Room B the next day at 9:00 a.m.

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2234. The PRESIDENT opened the meeting and announced that the publication of the new version of the IPLEX CD-ROM in English and French, containing texts of national laws and multilateral and bilateral treaties in the field of intellectual property was expected this month.

2235. The PRESIDENT of the Drafting Committee announced that the Committee would meet informally in order to discuss working arrangements for that Committee.

Agreed Statement

2236. The PRESIDENT opened discussion on the agreed statement on the availability of priority documents as proposed by the Delegation of the United Kingdom and reproduced in document PT/DC/12.

2237. Mr. WEARMOUTH (United Kingdom) introduced the proposal of his Delegation for an Agreed Statement, contained in document PT/DC/12. The proposed Statement addressed two issues, namely the speedy supply of copies of priority documents for priority purposes, and the continued availability of applications used to establish priority. The first paragraph of the statement dealt with the swift supply of copies by the Offices. The delegate drew attention to the fact that the statement addressed offices and not Contracting Parties. Moreover, although it was based on the needs of applicants in the first case, there was no apparent reason why third parties, in due course, should not have requests for copies dealt with expeditiously. As regards the second paragraph of the statement his Delegation wished to propose that the word "system" be added after "digital library" and the term "centralized library" be replaced by "system", the thrust of that proposal was not to confine the Statement, to a centralized library but to leave the possibility for a linked system of libraries.

2238. Mr. SMITH (WIPO) said that the network approach to the access to priority documents was consistent with the program which was undertaken at the International Bureau with regard, in particular, to the establishment of the intellectual property digital libraries, that is libraries in electronic forms of various intellectual property related information. One of these libraries would contain priority documents. Such digital libraries could be made available to offices which could not, or did not wish to, create their own digital libraries.

2239. Mrs. BOLAND (United States of America) expressed appreciation for the efforts and the persistence displayed by the Delegation of the United Kingdom on this issue. The Delegation felt that the issue was very important and expressed support for the concept of the Agreed Statement. She expressed hope that a payment of a fee could be charged for a request for copies of documents.

2240. Mr. BOGDANOV (Russian Federation) thanked the Delegation of the United Kingdom for submitting the proposal for an agreed statement. While his Delegation supported that proposal, it noted that there remained the problem of the right of access to unpublished priority documents. The digital library in itself did not resolve that problem, because it had to be determined who had the right to obtain copies from digital libraries.

2241. Mr. THOMAS (WIPO) explained that the PCT system provided access to priority documents which were the basis for priority claims in any published international application. If a PCT application was published, there was access to the priority document for that application, even if the earlier application which constitute the priority document was not published under the national law of the country concerned. Part of the benefit of the system suggested by the Delegation of the United Kingdom would be that offices could exchange priority documents among themselves for the benefit of applicants. Under the PCT system, any priority document which the International Bureau received on behalf of the applicant through such a digital library network would become publicly available from the publication date of the application claiming priority, rather than at the publication date of the earlier application constituting the priority document.

2242. Mr. BOGDANOV (Russian Federation) reiterated that the problem related to the access to unpublished priority documents.

2243. The PRESIDENT asked the Delegation of the United Kingdom whether it could clarify its proposal with respect to the use of the word "publication."

2244. Mr. WALKER (United Kingdom) said that the reference to the publication of a priority document should be understood as including the case where, as soon as an application claiming priority was published, the priority document stayed on the file but was made open to public inspection. However, copies of priority documents would not be made available if the application which claimed priority from that document had not been published.

2245. Mr. TRAMPOSCH (WIPO) suggested some drafting amendments, so that the first paragraph would read as follows: "When adopting Articles 6(5) and 13(3) and Rules 4 and 14, the Diplomatic Conference understood that each office would undertake to make available to the applicant and to third parties upon request copies of applications filed with its Office which serve as a basis of a priority claim for a patent or a published application as soon as it is reasonably possible."

2246. Mr. WALKER (United Kingdom) said that the proposal would appear to restrict the applicant from receiving copies of his own priority document until his patent or his patent application had been published. However, such copies should be available to the applicant before publication.

2247. The PRESIDENT suggested that the proposal be amended to make it clear that it was not the publication of the priority document that was the criterion, but the publication of the later application that claimed priority of the earlier application was claimed.

2248. Mr. HERALD (Australia) explained that his Office received applications which were never published in Australia, but formed the basis of a priority claim in another country. The question was whether the Statement imposed an obligation to publish the application, if a related application was published in a foreign country. It was necessary to decide whether the Agreed Statement was limited to applications published by the Office, or whether it concerned applications published by any office in respect of applications claiming priority filed in another office.

2249. Mr. TRÉPANIÉ (Canada) said that his Delegation understood the concept of publication to include countries which did not actually publish applications, but had a concept of open to public inspection.

2250. Mr. HERALD (Australia) said that, if publication had to be made because a priority document was being published in another office, a range of issues would have to be considered at least in the context of the practice in Australia. In particular, the question was how could an office know that a document filed with it was referred to in an application published by another office.

2251. Mr. WALKER (United Kingdom) said that his Delegation could agree to replacing the words "make best efforts" in place of "undertake." The statement was not intended to place an obligation on anyone. It was to encourage offices to make priority documents available to people who had a legitimate expectation to receive them as soon as reasonably possible. When the Statement was drafted, it was intended that the publication would be in the country where the priority document was held. For example, in the case of the United Kingdom, it would be publication by the Office of the United Kingdom and it would be that Office which made available the published publication. As a second point, in the United Kingdom, applications were currently destroyed after seven years if they had not been published by the United Kingdom Patent Office. Although these applications may serve applications elsewhere, after seven years the United Kingdom Patent Office would not be able to supply copies. Here, the digital library would come into effect. These applications could be stored on the digital library and access would be available, not because they were applications in the United Kingdom, but because they were priority documents in relation to an application filed and published elsewhere.

2252. Mr. BEIER (FICPI) suggested that the length of the time following the filing date of a first filed application during which the Office should keep the file available should be for the whole maximum lifetime of all potential patents in the same patent family, plus some further time in order to take account of potential litigation after expiry of the patent.

2253. Mr. EDGAR (IPIC) referred to the Position Paper distributed by FICPI. He suggested that the burden for keeping priority documents be put on the applicant claiming priority. If an applicant claiming priority was not required to file the certified copy of the priority document, he should notify the Office with which the priority document was filed. It was accepted that the applicant may be required to pay a fee for the storage of that document in a digital library, or in paper form, for a period of, for example, 25 years. Concerning an earlier comment by the Delegation of the Russian Federation the Representative said that the access to priority documents before they were published was not really an issue. Therefore, trying to find a way to access priority documents within the first 18 months should not complicate the matter.

2254. Mr. JENNY (EPI) noted that microorganisms or biological material had to be available for 30 years. A similar time limit could be provided for the storage of priority documents. Concerning the suggestion for a storage fee, it must be taken into account that the public had the main interest for the availability of priority documents. Therefore, it was difficult to require a fee from the patent applicant, because it was his competitors who had interest in priority documents.

2255. The PRESIDENT commented that the discussion seemed to indicate that a possible compromise could consist in limiting the text of the agreed statement to a declaration of intent to make best efforts.

2256. Mr. BOGDANOV (Russian Federation) said that, in principle, the proposal of the President would appear to have resolved the problem. However, the question remained what the legal basis for an office making available a copy of a priority document would be if that document had not been published, because the application was withdrawn prior to publication.

2257. Mr. RAJAN (Ireland) sought clarification concerning the reference to applicant. He noted that the applicant was entitled to receive a copy of his application at any time, whether it was before or after publication.

2258. Mr. HERALD (Australia) said that his Delegation had the same concerns as expressed by the Delegation of the Russian Federation. He suggested that it might not be appropriate for the Diplomatic Conference to try to resolve the problem. However, it could make a broad statement of intent and pursue the matter in future meetings of the SCP.

2259. Mr. TRAMPOSCH (WIPO) said that it might be appropriate to include a reference to the applicable law in the Statement.

2260. Mr. WALKER (United Kingdom) noted that if an application was filed in the United Kingdom, it was an application and not a priority document. Therefore, that application would only be available to the public when it was published. However, an unpublished application could serve as a priority document for an application made elsewhere. When used this way, that application became a priority document. The swift availability of priority documents was the issue. His Delegation was willing to consider simplifying the statement by restricting it to the matter of applicants obtaining copies of their own applications to serve as a basis for priority elsewhere, rather than trying to address the availability of priority documents to third parties.

2261. Mr. THOMAS (WIPO) explained that, in the context of the PCT, the kind of system that was envisaged was as follows. When an applicant filed an international application claiming the priority of an earlier UK application, the applicant is required to obtain a copy of that earlier application and send it to the International Bureau. The possibility shall exist for the applicant to give permission to the International Bureau to access the priority document from a digital library. The International Bureau would then be able to send, or make available, copies of the priority document to all designated Offices. Once the international application was published, copies of the earlier UK application should be made available to any third party upon request. It was unnecessary to restrict access to applicants. The idea of the digital library was to ensure that priority documents could be accessed, through electronic systems, to offices and third parties who needed them, as well as to applicants.

2262. The PRESIDENT noted that, even if there was a desire to find some way of ensuring that priority documents were accessible to third parties, the legal mechanisms to achieve this were difficult. It seemed that it was even difficult to work out a statement of principle. He suggested to adopt, as an Agreed Statement, the second paragraph proposed by the Delegation of the United Kingdom. The records could reflect that there was a desire to find a solution to the matter raised in the first paragraph. This was something that could be taken up by the SCP.

2263. Mr. TRÉPANIÉ (Canada) expressed support for the suggestion of the President.

2264. Mr. WALKER (United Kingdom) said that his Delegation was prepared to agree with the President's suggestion to restrict its statement to the second paragraph.

2265. Ms. FRANCISCO (Philippines) said that her Delegation could agree to the adoption of the second paragraph. It supported the sense of the UK proposal. In order to make a digital library meaningful for the small Offices and the nationals of developing countries, the Delegation proposed to add a recommendation that, following the establishment of a centralized digital library, WIPO should provide translation of any priority document in one of the six languages of the Treaty at the request of the Office of a developing country without the payment of any fee.

2266. Mr. BADRAWI (Egypt) expressed support for the suggestion of the Delegation of the Philippines.

2267. The PRESIDENT proposed the adoption of the substance of the second paragraph as proposed by the Delegation of the United Kingdom.

2268. *The PRESIDENT declared the text of the Agreed Statement, as he proposed, adopted in substance and referred to the Drafting Committee.*

Article 5: Filing Date

Article 6: Application

2269. The PRESIDENT opened discussion on Article 5(1). He referred to a proposal by the GRULAC contained in document PT/DC/30, two parts. The first part was the addition of a subparagraph (c), which would give Contracting Parties the option of requiring both the identity of the applicant and information allowing the applicant to be contacted. The second part concerned fees. Part of the proposal had been the subject of extensive informal consultations, and as a result of those consultations, there was the following revised proposal: In Article 6(4), the first part of the proposal would be to add the following sentence to the paragraph on fees: "A Contracting Party may apply the provisions of the PCT relating to payment of application fees." He noted that Article 14(3)(a) of the PCT provided that if fees in respect of filing were not paid within the prescribed time limit, the international application shall be considered withdrawn. The consequence of not paying within the prescribed time limit which, under the PCT Regulation was one month from the filing date, was that the application was withdrawn but that the filing date was maintained. Article 16bis(2) of the PCT provided for a late payment fee. If the proposed change were made in Article 6(4), it would also be appropriate to make some additional changes in respect of Rule 6. The existing part of Rule 6 would be made subject to paragraph (3) and a new paragraph (3) would be added to Rule 6 which would read as follows: "where any fees required to be paid under Article 6(4) in respect of the filing of the application are not paid, the Contracting Party may under Article 6(7) and (8) apply time-limits for payment, including late payment, which are the same as those applicable under the PCT in relation to the basic fee component of the International fee." In addition, it would be indicated in the Explanatory Notes that, where the application fee was not paid, a Contracting Party was free to impose a surcharge, in addition to the usual fee, for providing copies for that application, for example, for the purposes of a priority claim.

2270. Mrs. BERENDSON (Peru), speaking on behalf of the Group of Latin American and Caribbean Countries, said that the Group was prepared to accept the alternative text for the proposal by the International Bureau, since it captured the essence of the GRULAC proposal to incorporate the language used in the PCT in relation to fees.

2271. Mr. VIDAURETTA (Argentina) requested that his Delegation's position with regard to the issue of fees, which, notwithstanding the consensus agreement reached, continued to be that stated in document PT/DC/30, be included in the Conference records.

2272. Mr. HERALD (Australia) expressed support for the proposal as summarized by the President.

2273. Mr. CAVAZOS TREVIÑO (Mexico) expressed his Delegation's approval of the proposal made by the International Bureau, which it fully accepted. However, it wished that the proposal could serve as a compromise, including at least Article 5(1)(c), as contained in document PT/DC/30.

2274. *The PRESIDENT declared Article 6(4) and Rule 6, with the amendments proposed, adopted in substance and referred to the Drafting Committee.*

2275. The PRESIDENT opened discussion on Article 5(1)(c), as proposed in document PT/DC/30.

2276. *In the absence of objection, the PRESIDENT declared Article 5(1)(c) adopted in substance and referred to the Drafting Committee.*

2277. Mrs. BERENDSON (Peru), speaking on behalf of GRULAC, expressed the Group's thanks to the many Delegations that had supported the GRULAC proposal, as well as its appreciation for the spirit of compromise shown by all the other Delegations that had initially had certain concerns but had accepted the compromise text. That text was balanced and took account of the interests of all the Delegations present.

2278. The PRESIDENT opened the discussion on Article 5(1)(a) and (b). He recalled that the International Bureau had proposed, in the chapeau of 5(1)(a) and before the words "subject to paragraphs (2) to (8)", the introduction of the words "except as otherwise prescribed in the Regulations". Moreover, in the

fourth line the International Bureau had proposed changing the words from "on paper or by other means permitted by the Office" to "on paper or as otherwise permitted by the Office for the purpose of according a filing date". The words "no later than" appeared in between brackets which meant that they are not part of the Basic Proposal. Finally there was a proposal to add into Rule 21 a new item, the drafting of which will be precised later and, concerning the adoption of the revised Article 5(1) referring to the Regulations, there was the understanding that any regulations in this context would require unanimity.

2279. Mr. BARTELS (Germany) said that his Delegation considered that paragraph (1)(a) should not provide for exceptions to be permitted by the Regulations. If Article 5(1)(a) were nevertheless adopted with the proposed provision for an exception in the Regulations any amendment to such Regulations should require unanimity.

2280. Mr. BADRAWI (Egypt) suggested that the word "implicit" be deleted in item (i). He also proposed that item (iii) be amended to read: "a part which includes a full description of the invention".

2281. Mr. TRAMPOSCH (WIPO) explained, with respect to item (iii), that a full and proper description was required for the grant of an application. The purpose of that item was to relieve the Office of the burden of reading the description on the filing date.

2282. Mr. BADRAWI (Egypt) asserted that an application could be considered an application, unless it is accompanied by a full description of the invention. He referred to Article 29 of the TRIPS Agreement in support.

2283. Miss EL KATEB (Tunisia) said that her Delegation fully supported the position of the Delegation of Egypt.

2284. Mr. RAJAN (Ireland) noted that the part referred to in paragraph (1)(a)(iii) may, for the purpose of filing date, be in a language not accepted by the Office. Accordingly, there was no point requiring a full description for that purpose.

2285. Mr. EL FAKI ALI (Sudan) thanked the International Bureau for its explanation, but stated that his Delegation would prefer that a full description be provided for.

2286. Mr. HERNÁNDEZ VIGAUD (Cuba) said that his Delegation did not agree with the inclusion in the preamble to Article 5(1)(a) of the initial phrase: "Except as otherwise prescribed in the Regulations," proposed by the International Bureau, for reasons similar to those expressed by the Delegation of Germany. He considered that this Article was possibly the most important in the Treaty and should not therefore be subject to prescriptions in the Regulations, even when those prescriptions were governed by the requirement of unanimity. He was also concerned with the relationship that the inclusion of those words would have with the application of Article 14(4) of the Treaty.

2287. Mr. TRAMPOSCH (WIPO) explained that the suggestion by the International Bureau to include the phrase "except as otherwise prescribed in the Regulations" was a direct result of the discussions, at the last meeting of the PCT Assembly, with respect to the filing date for applications that are filed electronically. The Assembly noted that Article 11 of the PCT would not permit the use of a particular technology that was being considered for the electronic filing standard under the PCT. This was partly because it would require the filing date to be granted before the full application in fact was received by the Office in a readable form. Although it was no longer proposed to adopt that particular technology, it seemed prudent that, taking the cue from the discussions in the PCT Assembly, the Contracting Parties should not be bound in the future to reject technologies simply because of the specific wording of Article 5(1)(a). For that reason it was suggested to make that Article subject to prescriptions in the Regulations that could be adopted by a unanimous vote of the Assembly, sometime in the future, without having to modify the Treaty.

2288. Mr. THOMAS (WIPO) confirmed that the technology referred to by Mr. Tramosch did pose problems, for a number of reasons, for many delegations to the PCT Assembly in terms of the filing date requirements in Article 11 of the PCT. He also pointed out that precise wording in Articles of the PCT had sometimes been found to limit Contracting States in what they can do. Therefore, in ensuring that, by unanimous vote, the provision on filing date requirements could be modified without having to convene to a Diplomatic Conference was very positive.

2289. Mr. TOURÉ (Burkina Faso) drew the Committee's attention to the problem linked to the filing date. He added that his Delegation was in complete agreement with Egypt and pointed out that a combined reading of paragraphs (1)(a)(iii), (2)(a) and (2)(b) allowed a filing date to be accorded to an application, the precise subject matter of which was not even known. In that regard, he said that item (iii) should be reworded so that, if that the part filed was not a drawing, it was a description sufficiently complete to allow the Office, in particular offices in developing countries, to ascertain the subject matter of the invention prior to according a filing date thereto.

2290. Mr. THOMAS (WIPO) explained that the corresponding requirement for according of a filing date in the PCT also required that the application contain a part which on the face of it appears to be a description. This requirement was identical to that under item (iii). He stressed the distinction between the according of a filing date and the grant of a patent. National laws in connection with the granting, and the revocation, of patents universally required that a complete description must be given. He also explained that the PCT has worked very satisfactorily, by distinguishing the granting of a filing date on the one hand from the question which is left to national Offices in the context of the PCT, of the grant and enforcement of a patent. The fact that the filing date requirement really relates to a part that on the face of it appears to be a description, did not affect the fundamental principle of patent laws in most countries which is that the invention must be completely described.

2291. Mr. BADRAWI (Egypt) recalled that the PCT was drafted in 1970 and the TRIPS Agreement in 1994. He asked whether the requirement of an implicit description under item (iii) would contravene TRIPS.

2292. Mr. THOMAS (WIPO) said that there was no suggestion that the filing date requirements relating to the description under the PLT would be in violation of the TRIPS Agreement. The TRIPS Agreement referred to a complete description, but that should be understood in the context of granting and enforcing a patent, and not in the context of simply issuing a filing date. A filing date was not a guarantee of a grant of a patent or a guarantee of enforceable rights.

2293. Mr. TRAMPOSCH (WIPO) agreed that it was clear that the TRIPS Agreement required a full disclosure. However, in the opinion of the International Bureau there was no need to include this requirement in the filing date requirements under Article 5(1)(a)(iii).

2294. The PRESIDENT read out the text of Article 29.1 of the TRIPS Agreement. He noted that this text did not say at what time that requirement for a full description must be imposed. Therefore, in the view of the President, there was no linkage with the issue of the filing date, as long as those requirements were applied at some point. The Treaty was no impediment at all to members complying with this requirement at a later point after filing date.

2295. Ms. LÖYTÖMÄKI (Finland) said that her Delegation definitely did not want to have the responsibility to check whether the full description of the invention was included in the application for the purposes of the filing date. Therefore, the delegate supported the Basic Proposal on item (iii).

2296. Mr. BADRAWI (Egypt) said that the legal interpretation of Article 29.1 was that WTO member countries should require that the applicant should give a clear indication in clear style that would enable the carrying out of the invention in the best mode known to the inventor at the filing date. In his view, this meant that he should do that at the date of the application or at the priority date of the application.

2297. Mr. PESSANHA CANNABRAVA (Brazil) expressed support for paragraph (1)(a) of the Basic Proposal with the modifications as proposed by the International Bureau.

2298. Mr. GAL (France) said that his Delegation wished, in line with the Delegations of Brazil and Finland, to offer its full support for the Basic Proposal as amended.

2299. Mr. TOURÉ (Burkina Faso) reiterated his concern relating to the difficulties experienced by offices in determining whether an invention was being claimed, especially when the description was not drafted in a language commonly used by the Office. He therefore proposed "may be accepted as" instead of "on the face of it appears to be," as alternative wording for Article 5(1)(iii), which would therefore allow the Office to determine whether a document actually constituted a description and to accord a filing date thereto.

2300. Mr. HERALD (Australia) said that, with regard to Article 5(1)(a)(i), it considered it an extremely important issue that the indication could be express or implicit. If the term "implicit" was deleted from item (i), the Delegation would propose deletion of item (i) and (ii). Concerning item (iii), his Delegation saw no reason to depart from the language used in the Paris Convention. Having regard to proposed requirement for a full description, his Delegation considered this to be in the nature of requirements that the invention be novel and also have an inventive step and all the other requirements of substantive law. However, the PLT was a formality treaty and the Delegation could not see any basis to go further.

2301. Mr. VIDAURETTA (Argentina) said that his Delegation supported the wording of the Basic Proposal for the text of Article 5(1)(a)(iii). It was important to take into account that when reference was made to a filing date in Article 5, an attempt was made to determine the minimum elements which an application must have in order to be accorded the filing date. Those elements were not the same as the ones that would be used to grant a patent, since that was the subject of the subsequent procedure.

2302. Mrs. BOLAND (United States of America) said that her Delegation wished to make a point of order in conjunction with Rule 23 of the proceedings and it asked that any further amendments to the text that be presented in writing in accordance with Rule 29(3) of the Rules of Procedure. The Delegation asked for a ruling on this point of order, and to continue discussions on the Basic Proposal as amended by those amendments that had already been accepted.

2303. The PRESIDENT referred to Rule 23 of the Rules of Procedure. He ruled that any delegation wishing to make any further proposal on Article 5(1) should submit it in writing to the International Bureau by 10 p.m. that evening.

2304. Mr. BADRAWI (Egypt) asked for clarification on the ruling of the President. He recalled that a proposal to amend Article 5(1) introduced orally by his Delegation during the course of the deliberations on that Article. Therefore, he wished to know whether a new rule would be applied to that proposal and what the new procedure would be.

2305. The PRESIDENT explained that, according to Rule 29(3) of the Rules of Procedure, proposals for amendment shall, as a rule, be submitted in writing and handed to the Secretariat of the body concerned. The Secretariat shall distribute copies to the delegations and the observer organizations. As a general rule, a proposal for amendment cannot be taken into consideration and discussed or put to the vote in a meeting unless copies of it have been distributed not later than three hours before taking it into consideration. The presiding Officer may, however, permit the taking into consideration and discussion of a proposal for amendment even if no copies of it have not been distributed or have been distributed less than three hours before it is taken into consideration. Until the point of order made by the Delegation of the United States of America, the President had permitted, with the agreement of the Committee, to take into consideration oral proposals. However, there was a request in relation to Article 5(1) to apply a strict approach. The ruling that he had made related only to Article 5(1).

2306. Mr. BADRAWI (Egypt) suggested, since the Committee was now close to a decision, that a decision be taken on the oral proposals by this Delegation and that written proposals could be discussed at a later point in time.

2307. The PRESIDENT stated that, on the basis of the discussion that had taken place, the only solution that could possibly be accepted at the moment would be adoption of the text with the amendments proposed by the International Bureau. He asked the Delegation of the United States of America if he could satisfy the point of order just long enough to inquire whether there would be a willingness of all parties to adopt the proposal of the International Bureau on paragraph (1)(a) and (b).

2308. Mrs. MÁRQUEZ (Venezuela) observed that Rule 29(3) of the Conference Regulations indicated the powers that the President of the Conference had in principle, but then added that the President might allow consideration and discussion of a proposal and so on. Thus far, the President of Committee I had exercised this authority with great flexibility, and had thereby facilitated the discussions.

2309. The PRESIDENT replied that subparagraph (c) has already been adopted so that it was already part of the text.

2310. Mr. BADRAWI (Egypt) said that his Delegation agreed to Article 5(1) but also wished to take into consideration the proposal by the Delegation of Burkina Faso.

2311. Mr. ZOUA (Cameroon) suggested that the proposal of the Delegation of Burkina Faso be reconsidered at a later time. He was not sure that he understood the effect of Article 5(1). As it had been explained, the filing date did not translate automatically into the grant of a patent. His understanding was that if the filing date was subjected to a further requirement, it would result in great prejudice to an inventor claiming a filing date.

2312. The PRESIDENT proposed adoption of Article 5(1)(a) and (b), with the exception of item (iii).

2313. Mr. BOUHNİK (Algeria) said that he wished to submit a compromise proposal, and asked whether he should do so in writing and if his proposal could be considered prior to the adoption of subparagraph (b).

2314. The PRESIDENT replied that, as was usual if adoption of a provision involved a change in another provision, that other provision needed to be re-examined by the Committee. He asked the delegations, including that of Burkina Faso, to hand in their comments in writing, so that the submissions could be distributed and discussed on the following day together with item (iii). *Seeing no objection to the adoption of Article 5(1)(a) and (b), with the exception of item (iii), on the understanding that it could be re-examined if the decision on item (iii) required a change, he declared Article 5(1)(a) and (b) so adopted in substance and referred to the Drafting Committee.* In relation to Article 5(1)(iii), he said that Rule 29 of the Rules of Procedure would be strictly applied and only those proposals received in writing and distributed would be taken into consideration. Further discussion on that item was therefore deferred.

Article 21: Application of the Treaty to Existing Applications and Patents

2315. The PRESIDENT invited the International Bureau to introduce Article 21.

2316. Mr. BAECHTOLD (WIPO) explained that Article 21 provided for the application of the Treaty to existing applications and patents. The general rule, as contained in paragraph (1)(a), was that the Treaty would apply to applications which were pending and to patents which were in force, on or after the date on which the Treaty became binding on the Contracting Party concerned. This general rule did not apply to Article 5 and Article 6(1) and (2) which contained the formal and contents requirements with reference to applications. Article 21(1)(b), which was in square brackets and, therefore, not part of the Basic Proposal, required a Contracting Party to provide the re-instatement of rights according to Article 12 even where the failure to comply with a time limit occurred prior to the date on which the Treaty became binding on the concerned Contracting Party. This would in practice limit this provision to the time limits contained in the Regulations under Article 12. If the Committee felt that paragraph (1)(b) should be included, the International Bureau intended to propose a modification to ensure that the correct time limits in Article 12 were covered. Paragraph (2) ensured that if, for example, a Contracting Party had already set a time limit before the Treaty came into force, and the time limit was still running at the time when the Treaty came into force, that Contracting Party would not be obliged to change that time limit.

2317. The PRESIDENT invited comments on paragraph (1)(a) of Article 21.

2318. Mrs. BOLAND (United States of America) noted that, in paragraph 18 of document PT/DC/8, her Delegation had proposed to insert the phrase "and related Regulations" after the words "Article 6(1) and 6(2)" in paragraph (1)(a).

2319. Mr. TRAMPOSCH (WIPO) indicated that the International Bureau agreed with the proposal by the Delegation of the United States of America.

2320. The PRESIDENT read out the text of the proposed amendment.

2321. Mr. CAVAZOS TREVIÑO (Mexico) asked the International Bureau about the principle of that provision and wished to know whether the principle formed part of the PCT, or whether it was a new principle being incorporated in the PLT.

2322. Mr. TRAMPOSCH (WIPO) replied that, in the case of the PCT an international application that designated a Contracting State could not exist before the PCT entered into force in respect of that State. There would thus be no similar circumstances to be covered by the PLT. He confirmed that drafting Article 21, the requirements under the TRIPS Agreement had been taken into consideration.

2323. Mr. CAVAZOS TREVIÑO (Mexico) thanked the International Bureau for the explanation provided and asked what kind of focus had been given to the issue of retroactivity in other WIPO treaties.

2324. The PRESIDENT noted that, Article 18(1) of the Berne Convention, provided, as a general principle, that the Convention applied to all works which at the moment of its coming into force had not yet fallen into the public domain in the country of origin through the expiry of the term of protection. In other words, the Berne Convention applied to all works which were not in the public domain even if they were pre-existing. In the TRIPS Agreement, there was Article 70 "Protection of Existing Subject Matter" and Article 70.2 in particular provided that the Agreement gave rise to obligations in respect of all subject matter existing at the date of application of the Agreement for the Member in question and which was protected in that Member.

2325. Mr. CAVAZOS TREVIÑO (Mexico) asked the International Bureau whether it was to be understood that Article 70 of the TRIPS Agreement did not generate retroactive obligations, while Article 21(1), as proposed in document PT/DC/3, would have a different focus since it would in fact create such obligations.

2326. Mr. TRAMPOSCH (WIPO) explained that Article 21(1)(a) and (2) had been intentionally drafted to prevent retroactivity. They contained two safeguards in this respect. The first safeguard was to exclude Article 5 and Article 6(1) and (2) which, if they were included, would have effect on the content of the application and the requirements for the filing date. Secondly, in paragraph (2), this precluded any retroactive effect with respect to any procedure which was already in progress when the Treaty entered into force for the Contracting Party.

2327. Mr. CAVAZOS TREVIÑO (Mexico) thanked the International Bureau for the explanation provided and asked whether Article 12 would not be subject to the principle of retroactivity.

2328. Mr. BADRAWI (Egypt) stated that his understanding was that procedural laws could not be applied with retroactive effect. He noted that the Treaty was a procedural treaty. Only positive law provisions could have retroactive effect. Any reference or indication of a possibility of retroactive effect in paragraph (1) should therefore be applied only to pending patents and applications.

2329. The PRESIDENT noted that since the intention, as the International Bureau had indicated, was not to create a retroactive effect, the text of Article 21 would need to be looked at carefully in that respect.

2330. In view of the time, the PRESIDENT indicated that further consideration of Article 21 should be deferred.

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2331. The PRESIDENT noted that the discussion of the prior day ended with the question whether Article 21(1) had retroactive effect, to which the International Bureau gave assurances that it did not.

2332. Mr. BADRAWI (Egypt) proposed that the words "and to patents which are in force" be deleted from paragraph (1)(a) since it had a retroactive effect relating to patents in force. He stated that since the PLT was a procedural treaty, i.e., a law of procedure, there could not be a procedure having retroactive effect.

2333. The PRESIDENT read out the proposal of the Delegation of Egypt.

2334. Mr. BADRAWI (Egypt) restated that the Treaty could be applied to patents which are in force. He suggested that the Committee adopt that idea and send the text to the Drafting Committee for revision.

2335. Mr. EL FAKI ALI (Sudan) supported the proposal of the Delegation of Egypt.

2336. Mr. CAVAZOS TREVIÑO (Mexico) said that he was concerned with the wording of Article 21(1)(a), since the paragraph in question would have to refer to Article 12 so that this Article did not apply to patents which were in force, as otherwise a problem of retroactivity would exist in relation to Article 12, despite the fact that Article 21(b) would be deleted.

2337. Mr. TRAMPOSCH (WIPO) stated, with reference to the intervention, that Article 12 would not have retroactive effect under Article 21(1)(a). He explained that, unless paragraph (1)(b) were adopted, Article 12 and the related Rules would apply only to procedures that commenced on or after the date of entry into force. He noted that the inclusion of paragraph (1)(b) confirmed that it was the understanding of the SCP, as well as that of the International Bureau, that Article 12 would not have retroactive effect without that paragraph. He noted that, a clarification could be put in the Explanatory Notes. He noted that, without the language "to patents which are in force," each office would have to maintain two completely different sets of procedures for the entire term of a patent. As a result the benefits of the PLT both to users and offices would be delayed. He noted also that Article 21 did not relate to the validity of the patent nor to any substantive requirements concerning the validity or the revocation of the patent, but only to the procedures in the Office.

2338. Mr. BADRAWI (Egypt) stated that, in addition to his earlier comments, there was also a problem with the beginning of Article 21 in that it referred to existing applications as well as patents. He proposed that the Article be referred to the Drafting Committee for adjustment such that the Treaty would have no effect whatsoever on patents which are in force or applications that had already been filed.

2339. Mr. KHAFAGUI (WASME) expressed support for the proposal made by Egypt regarding the need to amend the article as a whole, or even to delete it completely, in as much as the principle of non-retroactivity of legal texts was not respected in the current case.

2340. Mr. BÜHLER (Switzerland) supported the explanation given by the International Bureau. He stated that the Swiss Office did not want two sets of Rules in force for a period of 20 years. He strongly supported the retention of the words "to patents which are in force."

2341. Mr. CAVAZOS TREVIÑO (Mexico) asked the International Bureau what would happen with the principle contained in Article 10, which prohibited the revocation of a patent for the failure to comply with the requirements contained in Article 6(1) and (2), if the phrase "patents which are in force" were retained in Article 21(1). He asked whether the owner of a patent could invoke Article 10 in order to establish that the patent could not be revoked for formal reasons, since if this were accepted the standard would be applied retroactively.

2342. Mr. TRAMPOSCH (WIPO) explained that Article 10 would not have retroactive effect to patents that are in force on the date of the entry into force of the Treaty. This was because Article 10 referred only to procedures under certain Articles of the PLT. He noted that any patent that is in force when the Treaty entered into force would have been granted on the basis of procedures under the previous law and not under the procedures governed by the Treaty. He also observed that Article 21(2) provided that the Treaty would not apply to any procedure in the Office that would commence prior to the entry into force of the Treaty. He suggested that an explanation be put in the Explanatory Notes.

2343. The PRESIDENT noted that Article 21(1)(a) and Article 21(2) should be considered together. He observed that Article 21(2) was intended to exclude any retroactive effect because it allowed Contracting Parties to not apply the provisions to any procedures that had commenced before the date the Treaty binds the Contracting Party. He offered the example of a patent with a maintenance fee due on a particular date and the possibility of relief under Article 12 for missing the time limit for paying the maintenance fee. He noted that if a maintenance fee time limit was missed, before the Treaty has effect, Article 21(1)(a) and Article 21(2) would not require any change to what may have happened; however, if, after the PLT is binding on a Contracting Party, a time limit for payment of a maintenance fee is missed, the provisions requiring relief under Article 12 would take effect.

2344. Mr. SNETHLAGE (Netherlands) stated that, in the light of the text of the Delegation of Switzerland and the explanation of the International Bureau, it supported the text set out in the Basic Proposal.

2345. The PRESIDENT again invited the delegations to comment on Article 21(1)(a) and Article 21(2) together. He proposed that paragraph (1)(b), which was anyway in square brackets, be considered later.

2346. Mrs. BOLAND (United States of America) supported the explanations of the International Bureau and the President with regard to the operation of Article 21(1)(a) and Article 21(2) and the retention of those paragraphs. She stated that the Delegation of the United States of America associated itself with the position taken by the Delegations of Switzerland and the Netherlands.

2347. Mr. SPANN (Australia) expressed satisfaction with the explanation given by the International Bureau and the President. He supported the Basic Proposal in relation to Article 21(1)(a) and Article 21(2).

2348. Mr. WEARMOUTH (United Kingdom) supported the text of the Basic Proposal in relation to Article 21(1)(a) and Article 21(2).

2349. Mr. RAJAN (Ireland) supported the retention of Article 21 in the PLT. He stated that the provisions of Article 21 were similar to Article 70 of the TRIPS Agreement, "Protection of Existing Subject Matter." He noted, in particular, that Article 70.1 of TRIPS which states, "This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question," corresponded with Article 21(2) of the PLT. He also noted that Article 70.2 of TRIPS which states, "Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question," corresponded with Article 21(1) of the PLT.

2350. Mr. TRÉPANIÉ (Canada) supported the original text of Article 21(1)(a) and Article 21(2) as presented in the Basic Proposal.

2351. Mr. GAL (France) said that his Delegation subscribed completely to the comments made by the Delegation of Switzerland, and reiterated by numerous Delegations, in favor of retaining paragraphs (1)(a) and (2).

2352. Ms. LÖYTÖMÄKI (Finland) supported Article 21(1)(a) and Article 21(2) as contained in the Basic Proposal and endorsed the comments of the Delegation of Switzerland.

2353. Mrs. OLEMBO (Kenya) supported the text of Article 21(1)(a) and Article 21(2) as set out in the Basic Proposal because the same provision exists in his national law. She noted that the provisions were also in conformity with Article 70 of the TRIPS Agreement.

2354. Mr. BADRAWI (Egypt) proposed that the explanation of the International Bureau as to the non-retroactive effect of the Article in question be put in the text of the Article so as to clear any doubts in the mind of any delegations.

2355. The PRESIDENT noted that the delegations that had spoken thus far were in agreement as to the intended effect of Article 21. He suggested that one place to put the explanation would be in the Explanatory Notes.

2356. Mr. BADRAWI (Egypt) reiterated that in order to reassure all of the non-retroactive effect of Article 21 and to avoid any misgivings or doubt, the non-retroactive effect should be explicitly mentioned in the text of Article 21 itself.

2357. Mr. TRAMPOSCH (WIPO) suggested that it would be appropriate and sufficient to add an explanation to the Explanatory Notes which will be published along with the PLT. He observed that the Notes were used to explain both what the Treaty does and what it does not do. He noted that the Treaty itself did not include provisions on what it does not do. If this were done once, it would also have to be done in many other places.

2358. Mr. HE (China) supported the original text of Article 21(1)(a) and (2) in the Basic Proposal.

2359. Mr. EL FAKI ALI (Sudan) asked the International Bureau to provide an example of "patents which is in force."

2360. Mr. LEWIS (WIPO) referred to the example mentioned by the President. Article 12 was intended to make things much easier for the patent owners where maintenance fees were not paid on time. In accordance with Article 21(1)(a) and (2), an owner of a patent who failed to pay a maintenance fee after the entry into force of the Treaty in his country would have the benefit of Article 12. If the failure to pay the maintenance fee occurred before the Treaty entered into force, no such benefit would be available. There was therefore no retroactivity in respect of an act which occurred before the date of entry into force. In addition, an office could have one system which it could apply to all patents from the entry into force in respect to those acts which occurred after the entry into force. Without Article 21(1)(a), owners of existing patents would be denied the advantages of the Treaty, such as relief under Article 12. In addition, an office would be obliged to operate two different systems, one in respect of new patents and one in respect of existing patents.

2361. Mr. EL FAKI ALI (Sudan) supported the retention of the original text and noted the clarity of the explanation of the International Bureau.

2362. Mr. DRISQUE (Belgium) said that, following the explanations given by the International Bureau relating to the absence of any retroactivity, his Delegation was in favor of retaining Article 21(1)(a) and (2).

2363. Mr. UNGLER (Austria) endorsed the explanation given by the International Bureau and Switzerland and supported Article 21 as it appeared in the Basic Proposal.

2364. Mr. MATENJE (Malawi) supported the text of the Basic Proposal and the suggestion made by the International Bureau to include in the Explanatory Notes a clear explanation that the provision were not have retroactive effect to existing patents.

2365. Mrs. HAYDÚ (Hungary) supported the text of Article 21 as contained in the Basic Proposal.

2366. Mr. CRAMER (EPO) supported the Basic Proposal. He stated that, as a general principal, when there is a change in the law that is more favorable to applicants they should be able to take immediate advantage of the new law.

2367. Mr. BADRAWI (Egypt) stated that the clarification given by the International Bureau, and the suggestion to add a paragraph in the Explanatory Notes which would clearly state that there would be no retroactive effect, was a very constructive initiative which could be accepted.

2368. *The PRESIDENT, noting that there were no objections to the adoption of Article 21(1)(a) and Article 21(2), declared them adopted in substance and referred to the Drafting Committee.*

2369. He noted that the text of paragraph (1)(b) was presented in square brackets and therefore did not form part of the Basic Proposal. He asked whether any of the delegations wished to speak to the matter or to raise any other issued in relation to Article 21.

2370. Mr. BARTELS (Germany) stated that his Delegation favored the retention of Article 21(1)(b). However, his Delegation felt that the amendment proposed by the International Bureau was confusing as to whether the exceptions provided for in Article 12(2) were applicable.

2371. Mrs. BOLAND (United States of America) supported the intervention by the Delegation of Germany. She noted that the loss of rights in respect of patents and applications could be devastating in certain particular situations. Relief under Article 12 was valuable and had been long sought after by patent applicants and owners throughout the world. The applicability of that relief in the limited circumstances of Article 21(1)(b) would be very valuable.

2372. Mr. VIVAS EUGUI (Venezuela), speaking on behalf of GRULAC, said that the provision of Article 21(1)(b) was binding and that its nature was essentially retroactive. Such a provision could give rise to constitutional problems in various countries, for which reason GRULAC requested that Article 21(1)(b) be deleted.

2373. Mr. PAL (India) stated that Article 21(b) gave retroactive effect to the Treaty and was therefore not acceptable. He noted that Articles 70.1 and 70.3 of the TRIPS Agreement provided that the Agreement did not give rise to obligations in respect of matters which occurred before the date of

application of the Agreement or to restore the protection to subject matter which had fallen into the public domain before the date of application of the Agreement; In addition, Article 70.2 of the TRIPS Agreement referred to existing subject matter. When a failure to comply with a time limit had occurred, there was no "existing" subject matter since it had already entered into the public domain. He stated that that Article 12 of the PLT would restore rights which had fallen into public domain. His Delegation therefore opposed the inclusion of Article 21(b).

2374. Mr. IWASAKI (Japan) opposed the insertion of Article 21(1)(b), in view of the need to preserve legal certainty in the patent systems of each Contracting Party, especially from the viewpoint of third parties. Where an application or patent fell into the public domain before the Treaty was binding on a Contracting Party pursuant to Article 20, a patent application in a Contracting State there should not be the possibility of reinstatement. In his opinion, this was in conformity with Article 70.3 of the TRIPS Agreement. Once a decision had been made by an office with regard to the non-compliance with a time limit, that Office should proceed with the processing of the application in question based on that decision. He noted that to do otherwise would render such official decisions legally uncertain.

2375. Mr. GOLDBERG (Israel) observed that if Article 21(1)(b) was read together with Rule 13(3)(ii), which provides that a Contracting Party does not have a duty to apply Article 12 in a case where renewal fees are not paid. This appeared to leave Article 21(1)(b) with little significance.

2376. The PRESIDENT noted that Rule 13(3)(iii) of the Basic Proposal had not been adopted.

2377. Mr. GOLDBERG (Israel) stated that his Delegation supported the deletion of Article 21(1)(b).

2378. Mr. BADRAWI (Egypt) supported the deletion of Article 21(1)(b) for the reasons set forth by GRULAC and the Delegation of India.

2379. Mrs. EL MAHBOUL (Morocco) supported the deletion of paragraph (b) so that those provisions complied with Article 53 of the Vienna Convention on the Law of Treaties, which stated that any treaty was void if, at the time of its conclusion, it conflicted with a peremptory norm of general international law.

2380. Mr. KARUNARATNE (Sri Lanka) concurred with the comments of all other delegations who spoke against Article 21(1)(b) and supported its deletion.

2381. Mr. TRÉPANIÉ (Canada) stated that he supported the deletion of Article 21(1)(b). He noted that the provision could be used to revive lapsed patents or dead applications in the public domain, which could lead to legal complications and confusion for third parties.

2382. Miss EL KATEB (Tunisia) said that her Delegation did not support the insertion of Article 21(1)(b) for the reasons outlined by the Delegation of Japan.

2383. Mr. GAL (France) said that his Delegation was in favor of Article 21(1)(b). He suggested, however, that in light of the provisions of Article 70(3) of the TRIPS Agreement the possibility for Contracting Parties to apply this provision should be made optional, by using the following wording: "a Contracting Party may apply Article 12."

2384. The PRESIDENT noted that if Article 21(1)(b) were to be made optional, there would be no need for the provision since there was nothing in the Treaty that would preclude the Contracting Party from providing relief if it so wished.

2385. Mr. PRAMUDYO (Indonesia) supported the deletion of Article 21(1)(b).

2386. Mr. RAJAN (Ireland) supported the deletion of Article 21(1)(b), since it would apply where the failure to comply with the time limit occurred prior to the date on which Contracting Parties are bound by the PLT.

2387. Mr. EL FAKI ALI (Sudan) supported the position taken by GRULAC, India, Japan and other delegations which called for the deletion of Article 21(1)(b) for the reasons already given, in particular the problems that it might raise and the prejudice that it would impose on certain parties.

2388. Mr. BOUHNİK (Algeria) supported the deletion of the phrase in square brackets from this Article.

2389. The PRESIDENT noted that there was very strong opposition to the inclusion of Article 21(1)(b) by many delegations, and only a very small number of delegations who would support its inclusion. He concluded that there was insufficient support for the inclusion of Article 21(b), and asked if there was any objection to proceeding on the basis that Article 21(1)(b) would not be included in the PLT.

2390. Mrs. BOLAND (United States of America) explained that there were only a limited number of circumstances in which the relief provided under Article 21(1)(b) would apply in view of the time limits under Article 12 prescribed in Rule 13(2)(i) and (ii), and the standard of due care or unintentional delay.

2391. *The PRESIDENT, noting that there were no further comments regarding Article 21(1)(b), declared that this provision was not adopted.*

2392. The PRESIDENT noted that the Committee had yet to deal with Rule 7(1), Rule 21 and Article 22(1).

2393. Mr. GOLDBERG (Israel) noted that the deletion of Article 21(1)(b) required a consequential amendment to Article 21(1).

2394. The PRESIDENT stated that the consequential amendment of Article 21(1) was a drafting issue that was referred to the Drafting Committee.

2395. Mrs. BOLAND (United States of America) noted that Article 21, when compared in structure to the rest of the final and administrative clauses, did not have a clause that applied the provisions of the Treaty and the Regulations to applications filed, and patents granted, on or after the date on which the Treaty binds a given Contracting Party. She stated that the principle was somewhat obvious and should be included in the treaty. She proposed that the either the International Bureau or the Drafting Committee address the issue.

2396. The PRESIDENT stated that the best course of action would be to refer the issue to the Drafting Committee to see whether any changes might be made in the text to ensure that the applicability of the principle is clear.

2397. Mr. HE (China) supported the inclusion of Article 21(1)(b) for the reasons stated by the Delegation of the United States of America. He noted that it was only under very few circumstances that this Article would be applied, but, nevertheless it would be helpful to the applicant under special circumstances. However, his Delegation would not oppose the adoption of Article 21 without this provision.

2398. The PRESIDENT stated that the comments of the Delegation of China would be entered into the record. With regard to the Agreed Statement proposed by the Delegation of Switzerland concerning the definitions of the term "Office" in Article 1(i) and of the words "procedure before the Office" in Article 1(xiv), he had been informed that the informal consultations were still continuing. He invited the Delegation of Australia to make an announcement.

2399. Mr. HERALD (Australia) stated that interested delegations had still not achieved consensus of the wording in informal discussions. He suggested that, rather than have the matter discussed at that stage, those informal discussions should continue.

2400. The PRESIDENT noted that there were several other matter still to be considered by the Committee: Article 5(1)(a)(iii) when the written proposal received by the International Bureau was circulated; translations and priority dates under Rule 4(4); unanimity under Rule 21; reservations under Article 22(1); mandatory representations under Article 7(2) and Rule 7(1); electronic filing under Rule 8(1)(a) and (d). He noted that there may other miscellaneous matters that may be still outstanding. He proposed that the Committee consider the provisions on mandatory representation under Article 7(2) and Rule 7(1). Most recently we have been basing our discussions on Paper No. 1.

Article 1: Abbreviated Expressions
Agreed Statement

2401. The PRESIDENT stated that he had been informed that progress had been made in the informal discussion on the Agreed Statement proposed by the Delegation of Switzerland in Document PT/DC/23. He proposed discussion of Article 7(2) be deferred until after consideration of the Agreed Statement and the definition of "procedure before the Office" in Article 1(xiv).

2402. Mr. HERALD (Australia) stated that the delegations which had expressed interest in the Agreed Statement proposed by the Delegation of Switzerland wish to propose the following language: "When adopting Article 1(viii) to (xiv) of this Treaty, it was understood that the words 'procedure before the Office' would not cover judicial procedures under the applicable law." This statement took account of the variety of legal systems between offices. In particular, in many countries, there was a distinct division between the "Courts" and the "Office." In others the distinction was less clear in that judicial bodies were formally part of the Office. The words "judicial procedures" were intended to include the procedures of internal bodies where those bodies were covered by the general administrative law but not where they were covered by the general judicial law.

2403. Mr. BÜHLER (Switzerland) supported the amended Statement, and withdrew its proposed statement, as set forth in Document PT/DC/23, subject to adoption of the amended statement.

2404. Mr. IWASAKI (Japan) stated that his Delegation supported the proposal presented by the Delegation of Australia and withdrew its proposed Statement set forth in Document PT/DC/11.

2405. Ms. LÖYTÖMÄKI (Finland) stated that her Delegation supported the Agreed Statement proposed by the Delegation of Australia.

2406. Mr. RAJAN (Ireland) stated that his Delegation supported the Agreed Statement proposed by the Delegation of Australia.

2407. Mr. HE (China) stated that his Delegation supported the Agreed Statement proposed by the Delegation of Australia.

2408. *The PRESIDENT, noting that there were no objections to the adoption of the definition of "procedure before the Office" in Article 1(xiv) and the Agreed Statement as reported by the Delegation of Australia, declared these adopted in substance and referred to the Drafting Committee.*

Article 7: Representation
Rule 7: Details Concerning Representation Under Article 7

2409. The PRESIDENT referred to the suggestions of the International Bureau, set forth in Paper No. 1, in regard to Article 7(2) and Rule 7(1). He recalled that when that Paper was previously discussed by the Committee, the International Bureau had withdrawn suggested Article 7(2)(a), item (iii), that the Delegation of the United States of America proposed that the chapeau of Article 7(2)(a) be amended to read, in part, "... except that the assignee of an application, an applicant, owner or other interested person may..."; that a number of delegations had expressed support for the suggestion of the International Bureau concerning Article 7(2) and Rule 7(1); that it was understood that amendment of the Regulations under Article 7(2)(a)(iv), namely Rule 7(1), would be made on the basis of unanimity. He noted that the most contentious issue had been whether to add translations to the list in Article 7(2)(a) in that many were in favor, but a number had spoken strongly against. He invited the delegations, and especially those which had not yet spoken on the issue, to comment on Article 7(2) and Rule 7(1).

2410. Mr. CAVAZOS TREVIÑO (Mexico) expressed the support of his Delegation for the proposal made by the International Bureau, since he considered that the proposal was a compromise which would allow an agreement to be reached on the matter.

2411. Mrs. MODESTO (Portugal) supported the suggestion of the International Bureau set forth in Paper No. 1 concerning the Article 7(2)(a) and (b), and withdrew the reservation of her Delegation to Article 7(2).

2412. Mr. GOLDBERG (Israel) suggested that a distinction should be made between two types of procedures. Those procedures which did not require any discretion on the part of an office, for example the automatic grant of an extension, should be able to be performed without a representative.

2413. Mr. RAJAN (Ireland) proposed that in Article 7(2)(a)(i) be amended to read, "the filing of an application before the application is accorded a filing date."

2414. The PRESIDENT suggested that the drafting suggestion of the Delegation of Ireland might be an issue for the Drafting Committee to consider.

2415. Mr. HE (China) stated that his Delegation was of the view that the suggestions of the International Bureau in Paper N° 1 were an improvement on the Basic Proposal. However, it was of the view that it would be preferable if the chapeau of Article 7(2)(a), were to state the principle that the "... applicant, owner or other interested person may represent himself," that is the reverse of what was stated in the existing text. He noted that the square brackets in Article 7(2) in the Basic Proposal were removed in Article 7(2) in Paper No. 1. That removal reduced the instances where representation can be required. Consequently, in the view of his Delegation, the suggestions in Paper No. 1 did not reflect the consensus of the Committee in the matter he expressed the view that mandatory representation, with some limitations, could be in the interest of developing countries. He also stated that the PLT should not include provisions which would oblige the Contracting Parties to pass legislation that is contrary to the Article 2(3) of the Paris Convention. He requested that, should his views not prevail, the reservations of the Delegation of China should be put on record.

2416. Mrs. EL MAHBOUL (Morocco) asked for clarification regarding the second part of Article 7(2)(a), the French version of which stated that "*étant entendu que le déposant, le titulaire ou une autre personne intéressée peut se présenter devant l'office aux fins des procédures suivantes*" ("except that the applicant, owner or other interested person may act himself before the Office for the following procedures"). She asked whether a Contracting Party could request a representative, with the exception of the points cited subsequently, or whether there was a representative exception for the points cited above.

2417. Mr. TRAMPOSCH (WIPO) stated that the basic principle of Article 7(2)(a) in Paper No. 1 was that a Contracting Party could require that an applicant or an owner or another person appoint a representative. In this connection, it should be noted that Article 7(1)(a) allowed a Contracting Party to define the qualifications that a representative must meet. In addition, Article 7(2)(a) contained a number of exceptions to the Rule that a Contracting Party may require a representative. The effect of Article 7(2)(a) was that a Contracting Party could require an applicant to appoint a representative for any procedure before the Office, except for the procedures enumerated in items (i) to (v).

2418. Mr. MERRYLEES (ABAPI) expressed the view that the suggestions in Paper No. 1 since it would lead to a substantial increase of the costs of the Offices to the disadvantage of national companies and inventors. He also expressed doubt whether the mere diversion of service from the developing countries to those served by the "trilateral Offices" would in fact reduce any cost. He supported the position of ASERPI that any trade concessions should be discussed under WTO Rules. He expressed the view that the suggestions in Article 7 did not comply with Article 2(3) of the Paris Convention. He also proposed that item (iv) be subject to unanimity and that the filing of a translation should not be included in the list of exceptions in view of the convenience of having the translations reviewed by local agents.

2419. Mr. OCHI (APAA) opposed the reinsertion of an exception for the "filing of a translation" in Article 7(2), because it would limit the freedom of Contracting Parties to set the rules for a smooth prosecution of the application for the benefit of applicants and third parties.

2420. Mr. STARLING LEONARDOS (ASIP) welcomed the suggested redraft of Article 7(2), and in particular the elimination of the exception for the filing of a translation. With reference to the statement made by the Delegation of China he noted that Article 2(3) of the Paris Convention guarantees the right of Contracting Parties to require local representation. He added that Article 2(3) of the Paris Convention was also binding on Members of the WTO by virtue of Article 2 of the TRIPS Agreement. He asked whether countries would be prepared to revoke their existing rights under TRIPS, and to give up the possibility of requesting a trade consideration or concession from other WTO members, for the opening of the market of intellectual property services.

2421. Mr. SCHMITT-NILSON (FICPI) reiterated the view of his organization that Article 7(2), except its chapeau, should not be included in the Treaty. He stated that some items in the suggested text would increase the imbalance between countries which had a substantial patent activity, and those which had not. Furthermore, it would overly complicate the work of offices. He stated that his organization, in order to further compromise, would not resist Article 7(2)(a) items (i), (ii) and (v) or Article 7 (2)(b). While appreciating the redraft suggested by the International Bureau in Paper No. 1 and the proposal by the Delegation of the United States of America to insert the words "the assignee of an application", he expressed concern with regard to proposals to include an exception for the filing of a translation. Translations could be of greatly different legal relevance. Whereas mistakes in translations of priority documents could often easily be corrected, the translation of an application for the filing of a new patent application in a foreign country formed the basis for all prosecution of the application and the validity of the patent. He expressed the opinion that a translator who had never been trained by a patent attorney for a considerable period of time, and who was not supervised by a patent attorney, would make a substantial number of serious mistakes in his or her translations. He therefore proposed, either to completely omit this item from Article 7(2), to restrict it to the filing of a translation of a priority document, or to move it to the list in Rule 7(1). He also expressed concern that the wording of the chapeau of Article 7(2) might not cover acts performed by a representative based in the country of the applicant. This would make an undue distinction between corporations acting themselves directly in a foreign country, and private inventors wishing to use a representative in their own country to act in another country. He therefore suggested to redraft the second half of the chapeau of Article 7(2) to read: "except that the assignee of an application, an applicant, owner or other interested person may act before the Office, without appointing a representative that can be a representative under the applicable law, for the following procedures." With regard to item (iv), he stated that it might be used to extend the list of exceptions under Rule 7(2). He stressed that amendments to the exceptions contained in Rule 7(2) should be subject to unanimity under Rule 21.

2422. Miss EL KATEB (Tunisia) said that the appointment of a representative was made compulsory by national legislation, based on the Paris Convention, and that her Delegation therefore supported the deletion of the exceptions listed in Article 7(2). She further noted that the incorporation of exceptions in Article 7(2) would hamper the development of powers within the profession of patent attorney, while restricting the guarantee of security for the applicant, the sound operation of the Office and the quality of the translations.

2423. Mrs. BOLAND (United States of America) recalled that, at previous discussions, there had been a substantial support for the inclusion of an exception for the filing of a translation in Article 7(2). She pointed out that the Treaty was intended to benefit applicants by reducing their costs and the complexity in filing applications in order to enable applicants anywhere in the world to avoid heavy burdens when seeking global protection. With respect to the filing of translations, she said that it would create a substantial extra cost for an applicant if he were obliged to have his submission reviewed by a local representative. These translations were typically made by professional translators whose business was to provide a high quality accurate translation. It would be a form of malpractice for them to do otherwise. She emphasized that, it was a question of freedom of choice: freedom of the applicant to choose how and under what circumstances the he would like to proceed. Consequently, she strongly urged the inclusion of an exception for the filing of a translation in Article 7(2). Her Delegation supported the amendment to Article 7(2)(a)(i) proposed by the Delegation of Ireland.

2424. Mrs. EL MAHBOUL (Morocco) said that her Delegation could not adopt Article 5(2)(1) in this form for the reasons outlined by the Delegations of China and Tunisia, in particular Article 2(3) of the Paris Convention relating to the appointment of a representative. If this provision were therefore adopted, her Delegation would express a reservation on the matter.

2425. Mr. CAVAZOS TREVIÑO (Mexico) asked whether the item from Article 7(2) could be included in Rule 21, relating to any other procedure prescribed in the Regulations, so that it could only be amended unanimously. If so, he proposed that this should be done.

2426. Mr. GOLDBERG (Israel) supported the intervention made by the Delegation of the United States of America.

2427. Mr. MITCHELL (IPC) supported the views expressed by FICPI. He added that, in his experience, and contrary to what had been said earlier by other delegations, applicants would prepare their own

rough translations and send them directly into foreign countries, without anybody being in a position to control them.

2428. Mr. BOUHNİK (Algeria) also expressed a reservation on behalf of his Delegation as to the exceptions listed in Article 7(2). These constituted the essential basis for the profession of attorney in Algeria.

2429. Mr. SNETHLAGE (Netherlands) supported the intervention made by the Delegation of the United States of America, advocating the insertion of an exception for the filing of a translation into the list of Article 7(2).

2430. Mr. TRAMPOSCH (WIPO) explained that, with reference to interventions referring Article 2(3) of the Paris Convention, that Article constituted an exception to the national treatment requirement. It had been included to enable Contracting Parties to require an agent for a foreign national, even if they did not require an agent for their own nationals.

2431. Mr. EL FAKI ALI (Sudan) supported the views expressed by the Delegations of the United States of America, the United Kingdom and the Netherlands. He emphasized that, in his view, the list of exceptions should be as long as possible, so that the exceptions become the rule, and mandatory representation the exception.

2432. Mr. STARLING LEONARDOS (ASIPI) referred to the explanation given by Mr. Tramposch, that Article 2(3) of the Paris Convention constituted an exception to the national treatment requirement. He noted that Article 7(2) would be applicable even to countries that required local representation from their own nationals. He stated that Article 7(2) would be much more flexible if it was restricted to making national treatment mandatory for countries, whose nationals were not obliged to have a representative.

2433. Mr. PAL (India) supported the deletion of item (v) from Article 7(2), and the inclusion of Rule 7(1) under Rule 21 in respect of unanimity.

2434. Mr. TAKAMI (JPAA) opposed the insertion of an exception for the filing of a translation into the list of Article 7(2). In his view, a translator could not bear the responsibility of ensuring the quality of a translation because he was not a patent attorney. He emphasized that the quality of translations should be maintained in order to realize a user-friendly service by the representative. He noted that an applicant could not speedily obtain a patent if the procedure was delayed because of the poor quality of a translation. He also emphasized that the translation of an application was a subject to publication, and that, therefore, maintaining the quality of translations was also in the interest of third parties.

2435. Mr. OMOROV (Kyrgyzstan) supported the redraft suggested by the International Bureau, with the exception of item (v), and opposed the reinsertion of an exception for the filing of a translation in the list of Article 7(2).

2436. Mrs. OLEMBO (Kenya) supported the redraft suggested by the International Bureau in Paper No. 1 with Article 7(2)(i), (ii) and (v), but objected to the inclusion of items (iii) and (iv). She also opposed the insertion of an exception for the filing of a translation.

2437. Mr. PRAMUDYO (Indonesia) informed delegates that his country's national laws clearly stipulated the requirement of mandatory representation. He stated that Article 7(2) would restrict the freedom of Contracting Parties to require a local representative for any patent application submitted by foreigners and proposed its deletion. If the provision were to finally be adopted, he asked to have his reservation recorded in the Explanatory Notes.

2438. Mr. MORENO PERALTA (Panama) said that his Delegation supported the suggestion contained in Paper No.1, prepared by the International Bureau. It also supported the proposal made by Mexico, and seconded by India, to include in Rule 21 the requirement of unanimity with respect to Article 7(2)(iv). His Delegation preferred the items included in Article 7(2) to be minimal and was opposed to the inclusion of translations in that Article.

2439. Mr. KHAFAGUI (WASME) said that the question of translations was a very difficult and delicate one, and that the cost of translations was very high. He therefore reiterated his suggestion to produce all documents in French or English, and proposed that the representative should be personally responsible for

the accuracy of the translation and not the patent applicant himself, by adding the phrase “for all procedures” to Article 7(2) of the Treaty.

2440. Mr. MATENJE (Malawi) supported proposal made by the Delegation of the United States of America and the redraft suggested by the International Bureau in Paper No. 1. For the time being, he refrained from expressing any opinion on whether an exception for the filing of a translation should be included in Article 7(2).

2441. Mr. CONGREGADO LOSCERTALES (Spain) reiterated his Delegation’s position in that it considered the proposal made by the International Bureau to be a good compromise solution, which it therefore supported.

2442. The PRESIDENT asked whether delegates could accept the following two part package as a compromise. The first part was as follows: to retain Article 7(2) and Rule 7(1) as set out in Paper No. 1 with the addition of the words “the assignee of an application” in the chapeau as proposed by the Delegation of the United States of America; to delete item (iii) of Article 7(2)(a); to leave the drafting of item (i) to the Drafting Committee; and to include Rule 7(1) into Rule 21 so that changes to that Rule would require unanimity. The second part was that Rule 4(4) would be adopted as presented in the Basic Proposal.

2443. Mr. HERALD (Australia) stated that his Delegation could accept the compromise package proposed by the President.

2444. Mr. BOGDANOV (Russian Federation) objected to including an exception for the filing of a translation in the list of Article 7(2). He also stated that the word “assignee”, which had been proposed by the Delegation of the United States of America, could be understood as “successor in title” or “representative”, and was, therefore, ambiguous. He suggested that the Drafting Committee consider an alternative wording. He also stated that he supported Rule 4(4) as contained in the Basic Proposal.

2445. The PRESIDENT noted that the word “assignee” and its translations would be referred to the Drafting Committee.

2446. Mr. JUNG (Republic of Korea) stated that this Delegation supported the suggested compromise package.

2447. Mr. TRÉPANIÉ (Canada) stated that his Delegation was opposed to the Article 7(2)(a)(ii), concerning the payment of fees other than maintenance fees, but that it would not block the adoption of the package as suggested by the President for Article 7(2), and Rule 4(4).

2448. Mr. MORIYASU (Japan) stated that, even though the request for examination, could legally be considered as a single procedure with a single legal effect, it could practically be divided into two parts: the submission of the form of request for examination, and the payment of fees for the request for examination. He asked whether item (ii) would allow a person to pay a fee without submitting the form.

2449. Mr. TRAMPOSCH (WIPO) said that the details of applying item (ii) was left to each Contracting Party.

2450. Mr. GOLDBERG (Israel) stated that he could not accept the compromise package. On the one hand, the list of exceptions in Article 7(2) was too short. On the other hand, the discretion given to Patent Offices in Rule 4(4) was too narrow. He suggested to amend Rule 4(4) to read: “When the earlier application is not in a language accepted by the Office and there is a genuine need for a translation of the earlier application such as in the case where the validity of a priority claim is relevant to the determination...” He explained that, with this amendment, an office should request the translation of the priority date as late as possible, and only when it really needed it. The validity of the priority claim was only one example for such a need.

2451. Mrs. BOLAND (United States of America) asked whether the proposal for a new subparagraph (b) for Rule 4(4), contained in document PT/DC/37, could still be discussed, and how it would relate to the package proposed as a compromise.

2452. The PRESIDENT invited the Delegation of the United States of America to express its views as to whether it could agree with Rule 4(4) as contained in the Basic Proposal, or whether it wished to continue with its proposal in document PT/DC/37 because, in the latter case, that proposal would have to be included into the discussion of the compromise package.

2453. Mrs. BOLAND (United States of America) stated that she was interested in pursuing its proposal.

2454. The PRESIDENT noted that a new element had been introduced into the process, and invited the Delegation of the United States of America to introduce its proposal.

2455. Mrs. BOLAND (United States of America) stated that the proposal was seeking to avoid the unnecessary submission of duplicate translations, as could occur under the operation of Article 6(5) and Rule 4(4).

2456. The PRESIDENT asked how it would be determined whether a document was an exact copy, and whether the applicant would have to make a declaration to that effect.

2457. Mrs. BOLAND (United States of America) agreed that a simple declaration to that effect could suffice.

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2458. The PRESIDENT invited the Delegation of the United States of America to make additional comments about their proposal submitted in document PT/DC/37.

2459. Mrs. BOLAND (United States of America) said that, in light of the progress that had been made and the fact that a valuable compromise had been proposed, and also the fact that the proposal on Rule 4(4)(b) by the Delegation of the United States of America had come rather late in the process for due consideration in the Conference, she wished to withdraw that proposal, and expressed her full support for the compromise suggested by the President.

2460. Mr. CAVAZOS TREVIÑO (Mexico) said that his Delegation supported the President's proposal, since it considered the proposal to be balanced and to reflect a compromise reached by consensus at the Conference.

2461. Mr. WEARMOUTH (United Kingdom) said that he could support the package suggested by the President.

2462. Mr. CONGREGADO LOSCERTALES (Spain) said that his Delegation also supported the President's compromise proposal.

2463. Mr. MORIYASU (Japan) said that he could accept the package suggested by the President.

2464. Mrs. MODESTO (Portugal) withdrew her proposal regarding Rule 4(4), and supported the compromise suggested by the President.

2465. Mr. HE (China) requested that his reservations concerning Article 7(2) be put on record, but stated that he could endorse the compromise suggested by the President.

2466. Mr. PAL (India) said that he still had reservations on Article 7(2) for the inclusion of item (v) as well as on Rule 4(4), and asked that these reservations be recorded.

2467. Mr. BOGDANOV (Russian Federation) said that, while he did not object to the package suggested by the President, he would nevertheless like to have his reservation on Article 7(2)(a)(v) recorded.

2468. *The PRESIDENT declared Article 7(2), and Rules 4(4) and 7(1) adopted in substance and referred to the Drafting Committee.*

Article 5: Filing Date

2469. The PRESIDENT then opened the discussion on Article 5(1)(a)(iii), and invited the Delegation of Burkina Faso to introduce its written proposal submitted as document PT/DC/35.

2470. Mr. TOURÉ (Burkina Faso) said that his country had acceded to the PCT, was a Member State of the WTO and OAPI, and that the national Constitution protected intellectual property, all of which were references that illustrated Burkina Faso's attachment to the process of harmonizing and simplifying the procedures relating to the granting of patents. He also recalled the provisions of the PCT (Article 11(1)(d) and (2)(a)) and the TRIPS Agreement (Article 29) relating to the allocation of a filing date, and consequently emphasized the concessions made by his Delegation as regards the wording of Article 5(1). He stressed the importance of according a filing date in terms of the right of priority for the applicant, again pointed out that when according a filing date the office should know at least to what the invention related, and said that the abandonment of the requirement to pay a minimum fee for the allocation of a filing date represented a significant concession on the part of his Delegation.

2471. He said that, on the basis of the above, his Delegation was making a compromise proposal, as contained in document PT/DC/35, was fully aware of the importance of Article 5(1) and of the simplification of procedures, and was completely determined to work toward the successful conclusion and implementation of the PLT.

2472. The PRESIDENT invited comments.

2473. Mr. BOUHNİK (Algeria) said that after hearing the proposal made by Burkina Faso to amend Article 5(1)(a)(iii) and conducting the necessary consultations, his Delegation subscribed fully to the compromise solution and would not therefore put forward its own proposal, contrary to what it had stated on the previous day.

2474. Mr. DIONG (Senegal) said that he shared the concern expressed by Burkina Faso regarding the basic wording of Article 5(1)(a) and supported its proposal, while also recalling his Delegation's backing for the aims of the Conference with respect to the simplification of procedures and remaining open to the search for a compromise on that paragraph. In support of the proposal made by Burkina Faso, he emphasized that the consequences of implementing the paragraph should also be taken into account as regards the possible loss of the right of priority in certain sectors with strong potential for research results that could be put into practice in industry in developing countries.

2475. Mr. TRAMPOSCH (WIPO) noted that the proposal made did not seem to soften the language contained in the PCT that had been used in the Basic Proposal (document PT/DC/3) which, like most patent laws in the world, did not contain any sufficiency of disclosure requirement for a filing date, so that the filing date would not be lost if the disclosure was insufficient. He stated that the sufficiency of the disclosure could only be interpreted with a claim, and that, if the disclosure was insufficient for a particular claim, the claim could be narrowed by amendment in order to make the disclosure sufficient. He therefore asked how the sufficiency of disclosure could be interpreted on the filing date, because the claims, and the sufficiency with respect to those claims, would change during examination. He also pointed out that the proposal made contained an additional requirement, i.e. the disclosure be sufficient on the filing date, and was therefore stricter and less user-friendly than the proposal contained in document PT/DC/3, particularly in light of the comment made that applicants in developing countries were particularly vulnerable to the loss of the filing date. In addition, he recalled that the language of the Basic Proposal (document PT/DC/3) was very well-known from a legal point of view since it had been taken from the PCT. Changing this language might create a high level of confusion which could result in legal uncertainty.

2476. Mrs. BOLAND (United States of America) said that she could not support the proposal made by the Delegation of Burkina Faso, but strongly favored the language used in the Basic Proposal (document PT/DC/3).

2477. Mr. EL FAKI ALI (Sudan) said that, while he had agreed with the amendment earlier proposed by the Delegation of Egypt, he said that he could also support the proposal made by the Delegation of Burkina Faso.

2478. Mr. BARTELS (Germany) said that, while he shared the concerns voiced by the Delegation of Burkina Faso, he nevertheless preferred the drafting in the Basic Proposal as it appeared in PT/DC/3. He said that changing the language which had been taken from the PCT would increase legal uncertainty, since lawyers would try to find reasons for such a change. He suggested adding some clarification in the Explanatory Notes.

2479. Mr. TRAMPOSCH (WIPO) agreed that the International Bureau could include the substance of the intervention made by the Delegation of Burkina Faso as a clarification in the Explanatory Notes.

2480. Mr. HE (China) stated that there would not seem to be a substantial difference between the language contained in document PT/DC/3, and the amendment proposed by the Delegation of Burkina Faso, and asked that Delegation for a clarification.

2481. Mr. TOURÉ (Burkina Faso) specified that his proposals were in no way contrary to the spirit of the PCT, since that Treaty allowed a certain amount of information to be sought prior to the filing date being accorded. Given that the description did not necessarily have to be supplied in a language commonly used by the Office, the Delegation of Burkina Faso preferred the phrase "the terms which could be accepted by the Office," which was more dynamic than "on the face of it appears to be a description" and allowed the Office to ask the applicant what the nature of his filing was.

2482. Mrs. PII (Lesotho) supported the text as contained in the Basic Proposal (document PT/DC/3) and said that, under her national legislation as well as under the Harare Protocol, a full description was not necessary for the purposes of according a filing date.

2483. Mrs. OLEMBO (Kenya) supported the text as contained in the Basic Proposal (document PT/DC/3). She noted that the proposal made by the Delegation of Burkina Faso did not seem to differ in substance, but that she was more familiar with the text contained in document PT/DC/3.

2484. Mrs. HAJDÚ (Hungary) supported the text as contained in the Basic Proposal (document PT/DC/3).

2485. Mr. BOGDANOV (Russian Federation) stated that there was no substantive difference between the two proposals, and that most players in the international patent system were accustomed to the wording that had existed for many years in the PCT. He therefore expressed a preference for the wording contained in the Basic Proposal (document PT/DC/3).

2486. Mr. GOLDBERG (Israel) supported the text as contained in the Basic Proposal (document PT/DC/3), and noted that since the proposal made by the Delegation of Burkina Faso left a lot of discretion to the Patent Office, so that, depending on the internal rules of the Office, the Basic Proposal could be stricter than the proposal made by the Delegation of Burkina Faso in some case, while the Basic Proposal might prove to be stricter in others.

2487. Mr. BADRAWI (Egypt) noted that the proposal made by the Delegation of Burkina Faso was very close to the wording contained in the PCT but that it would maintain the balance. He stated that he could accept that proposal as a minimum in order to obtain a compromise solution.

2488. Mr. TRAMPOSCH (WIPO) explained that the wording in the Basic Proposal (document PT/DC/3) did not require an office to accept an incomplete description, but that the filing date had to be accorded without an examination of the description. He said that it was a very basic principle of patent law, which was not contravened under the PCT or under the PLT, that the patent examination had to proceed on the basis of the disclosure in the form it had at the filing date, and that it was not possible to add a complete disclosure after the filing date without changing the filing date. He referred in this context to Article 5(6)(a), stating that the filing date would be the date on which any missing parts were supplied. He said that the usage of the words "a part which on the face of it appears to be a description", did not allow a patent to be granted with a less complete description, but simply to absolve the Office of the obligation to check the completeness of the description when granting a filing date. He added that this was very user-friendly because an applicant would not have to wait until the Office had checked the completeness of a description to receive the filing date.

2489. In response to the intervention of the Delegation of Burkina Faso, he said that Article 5(1)(a) provided for a minimal set of standards so that a filing date could be granted on submission of the documents listed. If one of those elements was missing, the Office could contact the applicant; however,

it would not contact the applicant under Article 5 because the disclosure was insufficient. This would be tested in substantive examination under Article 6. While admitting that, under Article 5(1)(a), a person could get a filing date for submitting something that looked like a disclosure but in fact was not, he emphasized that, in such a rare case, the applicant would have to base his patent on the documents submitted, and would, as a result, not be entitled to anything. It was, therefore, in the interest of applicants to file a sufficient disclosure on the filing date. If, however, under the proposal made by the Delegation of Burkina Faso, an applicant could lose the filing date for filing an insufficient disclosure, this would depart radically both from the draft PLT and from the PCT.

2490. Mr. BADRAWI (Egypt) thanked Mr. Tramposch for his explanations which he found reassuring but wished to know what addition the Notes would contain.

2491. Mr. TRAMPOSCH (WIPO) replied that the intention was to make very clear in the Notes the explanation he had just given as to the working of the system. The point that the Treaty did not in any way impinge on the right of the Offices to require a full and complete disclosure that satisfied their applicable law would be very strongly stressed. That was completely in keeping with both the PCT and the PLT under these provisions and it was also the most important thing under the TRIPS Agreement. Although Article 29 of the TRIPS Agreement mentioned the filing date, it mentioned it only in terms of the best mode requirement. This was not a filing date requirement but a substantive requirement that would be checked during substantive examination. From the point of view of legal certainty and, especially in view of the differing opinions about the language, it was safer to use the PCT language in order to avoid misunderstanding.

2492. Mr. LEE (Republic of Korea) added that Article 29 of the TRIPS Agreement did not concern a matter of procedure but a matter of substance. The description requirement was decided by real substance examiners when they decided whether an application was patentable or not. Therefore in his Delegation's view, Article 29 of the TRIPS Agreement was not a good authority to rely on. According to the wording of the proposal by the Delegation of Burkina Faso, it seemed that the Office might have the authority either to accept or not the description as patentable, and this was totally against the provision of Article 5(1), most of which had already been accepted or adopted by this Conference. The wording proposed by the Delegation of Burkina Faso was therefore not acceptable by his Delegation.

2493. Ms. LÖYTÖMÄKI (Finland) recalled that, throughout the Standing Committee's work, the inclusion in the PLT of the same expressions as appeared in the PCT had been strongly favored whenever appropriate, because it had been felt that this would simplify the work of the users as well as that of the Offices. The Delegation of Finland therefore still favored the Basic Proposal.

2494. Mr. IWASAKI (Japan) said that his Delegation supported the Basic Proposal and thought that language different from that of the PCT should be avoided as it was likely to cause confusion in the interpretation of the Treaty.

2495. Mr. CHIRAMBO (ARIPO) stated that his Delegation also preferred the Basic Proposal as it stood though it could understand the view points of the delegations that had taken the floor. One of the reasons for that was the fact that the proposal made was actually similar to what the Basic Proposal provided. The other reason was because, as the Delegation of Egypt had said, the spirit of the law in both the Basic Proposal and the proposal by the Delegation of Burkina Faso was not very far from the spirit of the PCT. If that was the case, there was all the more reason for using the expressions found in the PCT.

2496. Mr. EL FAKI ALI (Sudan) said that the Delegation of Sudan understood the argumentation of those who wished to retain the same wording as that used in the PCT and that it was preferable not to disrupt the balance of customary procedure. PCT Article 11(2)(a) stated: "If the receiving Office finds that the international application did not fulfill the requirements listed in paragraph (1), it shall... invite the applicant to file the required corrections" and paragraph (2)(b) stated: "If the applicant complies with the invitation, as provided in the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction." Consequently, if these subparagraphs were to be included in the text of the PLT, it would become obvious that the initial Basic Proposal had to be retained.

2497. Mr. HE (China), said that it appeared very clearly that there was no difference in substance between the proposal of the Delegation of Burkina Faso and the Basic Proposal. The PCT had been operating for almost 30 years so that applicants were very familiar with its language. If the form or style were changed, this would create an obstacle for the understanding of the applicants and might lead to

misunderstandings. As to the application of Article 29 of the TRIPS Agreement, the Delegation of China agreed with the Delegation of the Republic of Korea that the TRIPS Agreement was applied to the substantive requirements of the description. Therefore, the Delegation of China preferred the Basic Proposal.

2498. Mr. JONG (Democratic People's Republic of Korea) stated, that, comparing the second line of explanatory Note 5.09 that read "For the purpose of determining whether a filing date should be accorded, the Office only needs to establish whether, in its opinion, the application contains a part that on the face of it appears to constitute a description" with the proposal by the Delegation of Burkina Faso, his Delegation was of the view that the meaning was the same and, therefore, wished to retain the Basic Proposal as it stood.

2499. Mr. MAYSON (Liberia) stated that the retaining of the Basic Proposal for Article 5(1)(a)(iii) would cause no difficulty for a Contracting Party or an applicant because the receipt of a document which appeared to be a description was not conclusive for the granting of a patent. The application was subject to examination. The Delegation therefore supported the retention of item (iii) of the Basic Proposal.

2500. Ms. BANYA (Uganda) said that her Delegation supported the retention of the Basic Proposal, particularly following the explanation from the International Bureau regarding the relationship between the PCT and the text in question. The Delegation appreciated the effort of the Delegation of Burkina Faso in order to clarify the text. In addition, the Delegation of Uganda agreed with the proposal by the Delegation of Germany that there should be an explanation added to the Notes which would place on record the concerns of the Delegation of Burkina Faso. The Delegation of Uganda's understanding was that a filing date was not equal to granting a patent.

2501. Mr. TRAMPOSCH (WIPO) asked the Delegation of Burkina Faso if it would cooperate with the International Bureau in the drafting of the relevant Note to be sure that its concerns were fully covered.

2502. Mr. BADRAWI (Egypt) said that, when his Delegation had agreed to accept paragraph (1)(a)(iii) in line with the PCT, it understood that the description was to be accompanied by certain guarantees, so that the novelty of the application would be clear and that that would be the basis for the according of a filing date, in keeping with PCT Article 11. Therefore, he suggested that a reference to PCT Article 11 be inserted after the sentence that read "a part which on the face of it appears to be a description."

2503. Mr. TOURÉ (Burkina Faso) summarized the various statements that had been made regarding the proposal put forward by his Delegation, either in order to achieve a better understanding of the wording of Article 5(1)(a)(iii), or in support of the Basic Proposal. He welcomed the proposals made by certain delegations, especially Germany and Uganda, designed to achieve a compromise, as well as the efforts of the International Bureau to draft a proposal that met the concern expressed by his Delegation, while taking into account the aspirations of all.

2504. Mr. TRAMPOSCH (WIPO) thanked the Delegation of Burkina Faso and added that the International Bureau was looking forward to working with that Delegation. As to the intervention of the Delegation of Germany that had suggested a clarification in the Notes, Mr. Tramposch asked whether that Delegation also would cooperate with the drafting of the Note.

2505. The PRESIDENT, in view of the discussion that had taken place, proposed adoption of Article 5(1)(a)(iii) as it appeared in document PT/DC/3 and on the understanding that the important issues that had been raised by the Delegation of Burkina Faso would be clarified in the Notes. *Seeing no objection to adoption, he declared Article 5(1)(a)(iii) adopted in substance and referred to the Drafting Committee.* He mentioned that informal discussions on Rule 8(1) were still going on. Turning to Rule 21 in document PT/DC/4, which was the provision concerning unanimity, there was an indication of various rules, the amendment of which would require unanimity, whereas the normal rule, for amendment of Rules was a three-quarters vote. Rule 3(1), 8(1)(a) and 21 itself would require unanimity to be changed. In the course of the discussions, an understanding had been reached that, in Rule 21, the Rules established under Article 5(1) and Rule 7(1) as well as any Rule established under Article 7(2)(a)(iv) should also be included. The precise drafting could be left to the Drafting Committee, but that meant that five items had to be examined under Rule 21: Rule 3(1), any Rules under Article 5(1), Rule 7(1) and any other Rules under Article 7(2)(a)(iv), Rule 8(1)(a), and the present Rule. A general consensus seemed to have been reached. The President, in proposing adoption, would, of course, leave open the possibility of returning to this Rule should the discussion of Rule 8(1) require any change.

2506. Ms. LÖYTÖMÄKI (Finland) asked whether the understanding of the Delegation's proposal on Article 6(3) that the corresponding provision would be added to the Regulations and that the reference to that Rule would appear under Rule 21 was correct.

2507. The PRESIDENT agreed that that understanding had been reached in the context of the additional provision so that that brought to a total of six the number of items to be examined under Rule 21. *He declared adoption of Rule 21 in substance, leaving it to the Drafting Committee to work out the precise language.*

2508. The PRESIDENT then turned to the proposal by the Delegation of the United States of America in document PT/DC/36. He invited the Delegation of the United States of America to introduce that proposal.

2509. Mrs. BOLAND (United States of America) said that the statement on the availability of priority documents proposed by her Delegation arose from the Agreed Statement that had been adopted in response to the proposal by the Delegation of the United Kingdom. For digital libraries to have full value, it was necessary to provide that the priority document in such library had the same legal effect as when a certified copy on paper was provided. Her Delegation therefore wished to include, at least in the records of the conference, a statement to that effect. This was important to the establishment of such digital libraries and would provide benefits to both applicants as well as offices.

2510. The PRESIDENT replied that it seemed that the proposed Statement was implicit in the understanding this Committee had reached on the Agreed Statement concerning priority documents already adopted. He invited comments.

2511. Mr. HERALD (Australia) agreed that the text proposed was understood in the adopted Agreed Statement but that it was preferable that it be made explicit. His Delegation therefore supported the proposal text.

2512. The PRESIDENT clarified that the proposal was to have the statement noted in the Records and not to adopt as an Agreed Statement. He noted that this was also the understanding of the Delegation of Australia.

2513. Mr. WEARMOUTH (United Kingdom) stated that his Delegation agreed that the proposed statement was implicit in the adopted statement.

2514. Mr. BOGDANOV (Russian Federation) asked for clarification as to the legal status of the proposal statement. It was, in his view, too early to adopt an Agreed Statement, or to include an Explanatory Note in respect of the adopted Agreed Statement. The statement was not connected with the principle of establishing digital libraries or their in legal status in any country. The proposal statement had no legal relationship to the Treaty, because the Treaty did not provide for digital libraries.

2515. The PRESIDENT explained that the Explanatory Notes would be published with the Treaty and the Regulations. There would, thus, not be any Explanatory Notes specifically with respect to the adopted Agreed Statement. As he understood the Delegation of the United States of America, the proposed statement would simply be included as an indication of the view of the delegations in the records of the Diplomatic Conference.

2516. Mr. BOGDANOV (Russian Federation) requested confirmation of his understanding that the proposed statement would be presented as the opinion of a specific delegation and not of the International Bureau.

2517. The PRESIDENT clarified that, in the records of the Diplomatic Conference, the statement would be indicated as having been the view of the Delegation of the United States of America as agreed to by the Delegations of Australia and the United Kingdom.

Article 22: Reservations

2518. The PRESIDENT asked whether there were any issues, other than Rule 8(1) and Article 22(1), that delegations wished to raise.

2519. Mr. TRAMPOSCH (WIPO) stated that the International Bureau had been keeping very careful track of the documents. He was of the view that the proposals that had been issued in the documents had been discussed. However, the Committee reconvened the records would be re-checked.

2520. Mr. BOGDANOV (Russian Federation) asked which items were still pending.

2521. The PRESIDENT replied that those were Rule 8(1) and Article 22(1). With regard to Article 22, the President noted that Main Committee II had already adopted paragraphs (2), (3) and (4). Accordingly, only paragraph (1) was left to be considered. He invited the International Bureau to introduce this paragraph.

2522. Mr. TRAMPOSCH (WIPO) wished to make two points with respect to Article 22(1). The relevant delegation could then be asked for a clarification of its position with regard to the existing reservation. The effect if a reservation under Article 22(1), was that a Contracting Party, in joining the Treaty, would become bound to apply all the provisions of the Treaty with the exception of any specific provision under that Article in respect of which it made a reservation by way of a declaration under Article 22(2). Reservations could only be made for provisions that were mentioned in paragraph (1), at the present time, there was only one reservation mentioned in that paragraph (1). He noted that some delegations had asked for reservations or their positions to be included in the records of the Conference. Those reservations were of a very different character, simply being statements of position in the records of the Conference which would not relieve any delegation who joined the Treaty from the obligation to implement its provisions. With respect to the one specific reservation that was contained in Article 22(1), it had been included in the Basic Proposal by the SCP at the request of the Delegation of the United States of America. He suggested that the Delegation might wish to clarify the reason for that reservation.

2523. Mrs. BOLAND (United States of America) replied that, as had been discussed in the Committee of Experts and the SCP, her Delegation was of the opinion that the issue of unity of invention in a given patent application was a matter of substantive law. She explained that it was characterized as such in the law of the United States of America, as well as by decisional law in its courts. For that reason, this position had been made known and, from an early stage of the negotiations for the PLT, which was directed to formal matters, the Delegation of the United States of America had indicated that it would need to maintain a reservation on this matter. It wished to confirm this reservation.

2524. The PRESIDENT invited comments on Article 22(1).

2525. Mr. BADRAWI (Egypt) explained that, in his country, a patent application never contained more than one invention which could encompass a set of inventions concerning one single innovative idea. There was therefore always unity of invention. He sought clarification as to the compatibility of his national law in this respect with the reservation here.

2526. Mr. THOMAS (WIPO) explained that Article 6(1) incorporated requirements relations to form or contents of an application which are provided for in respect of international applications under the PCT. It was generally accepted that unity invention, so far as the PCT was concerned, was a matter of formal contents. PCT Rule 13 set out the criteria for determining whether there was in fact one or more inventions. Supporting Rule 13, there was a very extensive annex in the PCT Administrative Instructions. The effect of Article 6(1) would be that those PCT criteria for deciding the question of whether an application complied with unity of invention requirements would be incorporated by virtue of Article 6(1) into national laws. The purpose of this reservation provision was that certain countries, and the United States of America had clearly indicated that it was such a country, which did not wish to apply the PCT criteria for deciding questions of unity of invention could make a reservation. It would be that the Egyptian authorities would compare the PCT requirements on unity of invention with the national law requirements. If they did not comply with the PCT requirements and Egypt did not want to amend its law in that matter then if and when Egypt was be in a position to accede to the PLT, it could make a reservation as to the application of the PCT unity of invention requirements under Article 22(1) of the PLT. In the event that assistance was needed in looking at the PCT requirements, the International Bureau would naturally be pleased to assist the Egyptian Government, or any other Government, in assessing how its national laws related to the PCT requirements.

2527. Mr. BOGDANOV (Russian Federation) commented that the requirements relating to unity of invention, had not been understood by most delegations, including the Delegation of the United States of

America, as formal requirements. Nothing implied that the requirement of unity of invention as understood under the PCT should be understood in the same way by countries under the PLT. He suggested that Article 6 (1) be amended to state: "Except for the provisions on unity of invention..." or contain some language to the effect that countries were free not to apply the provisions on unity of invention of the PCT. If this were done, there would be no longer any need to provide for any reservations and this would improve the Treaty.

2528. Mr. THOMAS (WIPO) disagreed that this approach would improve the PCT. The unity of invention requirements in most countries corresponded to the PCT criteria and those countries wished to see the unifying effect of the PCT in this area of patent law extended. This would be the result of Article 22(1). Any country which wished to retain its existing unity of invention requirements, even if they did not correspond to the PCT requirements, could make a reservation under Article 22(1) and retain its existing practice.

2529. Mr. BOGDANOV (Russian Federation) said that the legislation of the Russian Federation had a different concept of unity of invention from that under the PCT. Accordingly, if the Russian Federation acceded to the Treaty, it would also have to make a reservation, under Article 22(1), which it would prefer not to do. If Article 6 were more flexible in this respect, then countries would be free to adopt the PCT provisions and the Russian Federation would be able to accede to the Treaty without any reservation, which it would prefer.

2530. The PRESIDENT recalled that this had been discussed in the Standing Committee where there had been quite a strong feeling that, in general, there should not be an exception in Article 6. Instead a general harmonizing effect should be aimed at and, in this particular instance, a reservation could be made. Seeing no support for a change in this respect, he asked whether since Article 22(1) provided flexibility for the Contracting Parties to make a reservation, there was any problem in substance and whether it would be acceptable to go forward with the adoption of Article 22(1) as it appeared in the Basic Proposal.

2531. Mrs. BOLAND (United States of America) stated that her Delegation had no objection to adopting Article 22(1) with the proviso and the acknowledgement that Main Committees I and II had not yet finished with their work and the full outcome of that work might have some bearing on this provision.

2532. The PRESIDENT confirmed that this was understood.

2533. Mr. ZOUA (Cameroon) suggested that, although it had no objection as such, it may be better to defer adoption of Article 22(1) until the next session of the Committee, to give delegations the possibility to reflect once more over this issue of reservations.

2534. The PRESIDENT agreed to defer the issue until the next Monday.

2535. Mr. HERALD (Australia) asked for confirmation that the documents relevant to Rule 8 were documents PT/DC/4, 8, 32 and 37.

2536. The PRESIDENT confirmed that this was so.

Twenty Fifth Session
Monday, May 29, 2000
Afternoon

Rule 8: Filing of Communications Under Article 8(1)

2537. The PRESIDENT reviewed the order of the work to be done by the Committee: Rule 8(1)(a) as set forth in Paper No. 4 and Rule 8(1)(d) as set forth in Paper No. 5; Article 22(1) concerning reservations; and a proposal for an agreed statement put forward by the GRULAC countries contained in Document PT/DC/38.

2538. Mr. IDRIS (WIPO) thanked the President and all delegations present for the excellent atmosphere of informal and formal discussions and negotiations conducive to the success of the Diplomatic

Conference. He noted that Rule 8(1)(a) on electronic filing was important to all countries, to the International Bureau of WIPO, and to the international intellectual property community at large. He stated that he was pleased to report that, following informal consultations which he personally conducted, there seemed to be wide support for the proposed draft which had been distributed in all working languages. He noted that the proposed draft text for Rule 8(1)(a) submitted to all the delegations was self-explanatory. He stated that it was his understanding that the draft proposal on Rule 8(1)(a) did not establish any transitional requirement. He expressed his hope that, with that explanation, the Rule could be formally adopted so that the Committee could move forward with the remainder of the agenda.

2539. The PRESIDENT invited the delegations to comment on Rule 8(1)(a) as it appeared in Paper No. 4.

2540. Ms. BANYA (Uganda) stated that the African Group had, in regard to Rule 8(1) and the filing of communications, consistently supported a 10-year duration, because of the reality that Africa was the least integrated continent in information technology. She said that the African Group agreed with the words of the Director General himself, "globalization should come without marginalization." She stated it was with such concerns in mind and in view of the positive spirit of cooperation, understanding and compromise which had been prevalent throughout the Diplomatic Conference, that the African Group welcomed the proposal in Paper No. 4 regarding Rule 8(1)(a). She expressed the African Group's appreciation for the efforts of the Director General in the informal consultations which made a compromise possible. She noted that the Director General himself stated that the proposal did not constitute a transitional requirement, i.e., that paper filing could continue alongside electronic filing until such time as Members have developed their own electronic systems. She stated, nonetheless, that the process could be hastened only if developing countries, and LDCs in particular, are given the requisite technical assistance, in order to make all Members equal players in the electronic arena. She informed the President that the African Group was therefore preparing a proposal, which would soon be presented to the Committee. She urged the developed countries to play their part by providing the necessary technical assistance. She expressed the hope of the African Group that recognition of the need to assist developing countries would be translated into concrete terms within the framework of the WIPO Program and Budget and in regard to funding Cooperation for Development, namely, to provide the necessary assistance through Human Resource development, capacity building and computerization of offices.

2541. The PRESIDENT noted, in particular, the indication by the African Group that they would shortly distribute a paper concerning technical assistance. He stated that when the paper was received, the issue could be taken up together with the issues raised in document PT/DC/38 by GRULAC.

2542. Mr. VIVAS EUGUI (Venezuela), speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), said that in principle GRULAC would be prepared to accept the proposal put forward by the Director General as a compromise with respect to Rule 8(1)(a), insofar as that proposal was complemented by the technical cooperation necessary to eliminate the obstacles that might hinder the accession of all States to the Treaty. In that regard, GRULAC placed the following agreed statement before the Diplomatic Conference for consideration, with a view to its adoption: "With a view to facilitating the application and implementation of the present Treaty, the Diplomatic Conference requests the International Bureau and Contracting Parties to provide the developing and the least developed countries with additional technical and financial cooperation even before the entry into force of the Treaty. The Diplomatic Conference requests the PLT Assembly, once the Treaty has entered into force, to monitor and evaluate the progress of that cooperation annually." He said that GRULAC was making the proposal in order to complement the efforts that would be made by countries to overcome the difficulties they would have to face in implementing the new Treaty.

2543. Mr. BOGDANOV (Russian Federation) stated that the clarification of the interpretation of the Rule by the Director General testified to the fact that it was not a transitional requirement. He stated that it followed logically that the two doors would remain open to receipt of applications both in electronic form and on paper, which would mean that the interests of applicants would be safeguarded. With that understanding, consensus for adoption of the Rule was possible.

2544. Mr. PAL (India) expressed the appreciation of the Delegation of India for the efforts made by the Director General. He stated that his Delegation was concerned nonetheless about the applicants and inventors of India who would like to file patent applications abroad, but would be prevented from doing so. He stated that the Delegation of India was not in a position to support the proposal.

2545. The PRESIDENT asked whether it would be acceptable to the Delegation of India, if its comments were noted on the record, while not blocking a consensus in favor of the adoption of the provision.

2546. Mr. PAL (India) stated that his Delegation did not want to stand in the way of the adoption of the Treaty, but that its concern should be recorded.

2547. The PRESIDENT stated that the concern expressed by the Delegation of India would be included in the records of the Conference.

2548. Mr. EL FAKI ALI (Sudan) asked whether the English word "technical" in Document PT/DC/38 was translated correctly in the Arabic text. He stated that the Arabic word for the English word "technical" was different from the word which appeared in the Arabic text, which, in fact, was more limiting. He asked the International Bureau to determine which Arabic term would be best translation of the English word "technical."

2549. Mr. IDRIS (WIPO) stated that the Secretariat would do everything possible to take into consideration what had just been said by the Delegation of Sudan. He stated that he partially agreed with the Delegation of Sudan as regards the translation of the English word "technical" into Arabic. He noted that there were two terms that should have been proposed for the Arabic translation and that the question would be studied. He stated that the best-suited term in the general framework of the Treaty would be chosen and gave his personal promise that he would bring his special attention to the question.

2550. Ms. FRANCISCO (Philippines) expressed the appreciation of her country of the efforts that were expended by the Director General to assist the process undertaken during the past two weeks. She stated that the Philippines would not block the consensus that had obviously been worked out and carefully crafted. She indicated, however, that her Delegation would like to flag the urgent need to extend real technical cooperation to developing countries and least developed countries in order that all may, as stated by the colleague from Uganda, benefit from the outcome of the electronic age. She requested that such concern be included in the records of the Conference.

2551. The PRESIDENT stated that the concerns of the Delegation of the Philippines would be entered in the record.

2552. Mr. EL FAKI ALI (Sudan) thanked the Director General for his special and personal interest in the matter brought up the Delegation from Sudan.

2553. Mr. BEAKLINI (Brazil) stated that the Conference should agree on a format for electronic filing and choose software that could use that format.

2554. Mr. TRAMPOSCH (WIPO) stated that Rule 8(2), as proposed by the SCP and adopted by the Diplomatic Conference, referred to the requirements applicable under the PCT in relation to electronic filing. He noted that the intention was that the standards adopted under the PCT would be made available to national Offices for use as their standard under the Patent Law Treaty.

2555. Ms. WEN (China) welcomed the proposal by the Director General in respect of electronic filing. She stated that nonetheless there was a great gap between developed countries and developing countries in terms of technology and finance. She expressed the hope that WIPO would provide technical assistance to developing countries. She stated that her Delegation did not intend to be an obstacle to adoption of Rule 8(1)(a), but requested that her Delegation's concerns be included in the records of the Conference.

2556. Mr. IDRIS (WIPO) stated that there should be no apprehension whether WIPO would remain committed to its technical cooperation program. He noted that it was part and parcel of the WIPO Program and Budget which the Member States had already adopted. He stated that WIPO would further translate the content of Rule 8(1)(a), if adopted, into a meaningful capacity building to developing countries, so that WIPO could really correspond effectively and efficiently to the challenge which had just been asserted by the Delegation of China. He stated that he very much hoped that, with this confirmation, the Committee would be able to move forward with the adoption of Rule 8(1)(a).

2557. Mr. VIVAS EUGUI (Venezuela) requested clarification as to whether the GRULAC proposal on the agreed statement would also be approved in conjunction with the proposal made by the Director General, as requested.

2558. The PRESIDENT stated that the Committee should adopt Rule 8(1)(a) and (b) first and then turn to the GRULAC proposal, the discussion of which will need to take into account the proposal which the African Group was preparing and wished to have considered at the same time.

2559. Mr. BADRAWI (Egypt) stated that the proposal by the African Group should be discussed before adoption of Rule 8(1)(a).

2560. Mr. IDRIS (WIPO) confirmed that the text had been received by the Secretariat and that he had a copy of the text in front of him. He noted that the coordinator of the African Group had suggested that there be a link between the text of GRULAC and the text of the African Group. He stated that if the two groups did wish to link the texts, then they would need time to harmonize them so that any final text could be submitted as quickly as possible for adoption. He asked the coordinator of the African Group to confirm this understanding.

2561. Ms. BANYA (Uganda) agreed with the Director General. She stated that the ideas put forward by GRULAC were similar to those of the African Group. She stated that if the coordinators of the two groups could come up with one proposal, it would accelerate the process. She proposed that the coordinators of the two groups meet and discuss the question.

2562. Mr. BADRAWI (Egypt) expressed his sincere thanks to the Director General and noted that GRULAC had indicated that the proposed agreed statement was closely linked to the adoption of the Rule and that a similar opinion was expressed within the African Group. He also noted that the two groups did not have a merged text at that time. He stated, nonetheless, that the proposal should be discussed before the adoption of Rule 8.

2563. Mr. IDRIS (WIPO) asked the Committee to reflect on his comments at the beginning of the meeting. He noted that it was very important that the delegations continued to build confidence in the Diplomatic Conference, because it was important not only for the success and the adoption of the Treaty, but also for the implementation of the Treaty itself. He indicated that his statement, according to which technical cooperation would continue to developing countries, was made for that very reason. He also noted, as a matter of fact, that he had no option in the matter, since it was part of his mandate, i.e., part of the Program and Budget endorsed by the Assemblies of the Organization. He stated that what the delegations therefore might choose to do would be to propose an agreed statement for adoption by the Conference as a whole and not just by GRULAC or the African Group. He suggested that the excellent atmosphere of the discussions be allowed to continue. He noted that Rule 8(1)(a) had been discussed extensively and that he had given his personal assurances that the technical assistance program within the Cooperation for Development Program of the Organization would continue. He stated that the Program would translate the content of Rule 8 into a meaningful capacity building for developing countries and countries in transition. He suggested that the Committee move on with the adoption of the Rule, after which the developing countries and the other countries might wish to propose a draft for intensifying the technical assistance of the Organization which did not contradict what he had said. He stated that he did not want to hold up adoption of the Rule until after the adoption of an agreed statement. He noted that, although it was certainly possible to delay the adoption of the Rule, it would not be a nice way of doing business.

2564. The PRESIDENT thanked the Director General for his very helpful comments.

2565. Mr. BADRAWI (Egypt) expressed the appreciation of the Delegation of Egypt to the Director General and its full support of his efforts. He supported the adoption of Rule 8(1)(a) as set forth in Paper No. 4.

2566. *The PRESIDENT, noting that there were no objections to the adoption of Rule 8(1)(a) as set forth in Paper No. 4, declared it adopted and referred to the Drafting Committee.*

2567. The PRESIDENT reviewed the sequence of the remaining work of the Committee: Rule 8(1)(d); Article 22(1); and the GRULAC proposal which perhaps would be joined with the proposal of the African Group.

2568. Mr. VIVAS EUGUI (Venezuela) requested that the meeting be suspended for a couple of minutes so that consultations could take place with the African Group in order to establish a common proposal.

2569. The PRESIDENT stated that the Committee could take a break for five minutes and would reconvene at 4.20 p.m. He stated that the delegations should stay in the room.

2570. The PRESIDENT declared that, in the course of informal discussions, agreement was reached on the following text for an agreed statement:

“With a view to facilitating the implementation of Rule 8(1)(a) of this Treaty, the Diplomatic Conference requests the General Assembly of WIPO and the Contracting Parties to provide the developing and least developed countries with additional technical assistance to meet their obligations under this Treaty, even before the entry into force of the Treaty.

“The Diplomatic Conference further urges developed country Members to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favor of developing and least developed countries.

“The Diplomatic Conference requests the WIPO General Assembly, once the Treaty has entered into force, to monitor and evaluate that cooperation at every ordinary session.”

2571. Mr. TRAMPOSCH (WIPO) said that the English version as read out by the President would serve as the working basis. The translators had pointed out a number of discrepancies in other language versions, but it was suggested to refer those issues to the Drafting Committee, in particular as far as conformance with language from the TRIPS Agreement was concerned.

2572. Mr. BOUHNIAK (Algeria) thanked the Director General for his compromise solution and said that his Delegation subscribed fully to the proposal relating to Rule 1. He invited all the other delegations to adopt this rule and the agreed statement. He emphasized that the inconsistencies between the French and Arabic versions had contributed somewhat to incorrect interpretations of the text by certain delegations and given rise to discussions that could have been avoided.

2573. Mr. VIVAS EUGUI (Venezuela) said that his Delegation approved the consensus text read out by the President for Rule 8(1). However, when reading the English text the terms “and financial cooperation” appeared to have been omitted from the second paragraph after the word “technical”, contrary to the agreed text. He requested confirmation that this was a merely an omission detected at the time of reading, and that the words “and financial” would be included in the text of the statement.

2574. Mr. TRAMPOSCH (WIPO) confirmed that that word was missing, but that the text would be referred to the Drafting Committee to be checked in all six languages of the Conference.

2575. Mr. BOGDANOV (Russian Federation) noted that countries with transition economy also required technical assistance to implement the provisions of the Treaty. Moreover, he observed that the specific reference to Rule 8(1)(a) narrowed the sense of the agreed statement. In the view of the Delegation, Rule 8 as a whole required specific measures in order to enable countries to adopt the standards of the Treaty as regards communications. Therefore, there should not be a reference to any Rule, as was the case in document PT/DC/38. However, if there had to be a reference, it should be to Rule 8 in its entirety.

2576. Mr. BANSKY (Slovakia) expressed support for the proposal of the GRULAC and the African Group. The Delegation also supported the statement of the Delegation of the Russian Federation.

2577. The PRESIDENT proposed adoption of the Agreed Statement, including a reference to countries in transition.

2578. Mr. BADRAWI (Egypt) expressed support for the agreed statement.

2579. *The PRESIDENT declared the agreed statement adopted in substance and referred to the Drafting Committee.*

2580. The PRESIDENT opened discussion on Rule 8(1)(d) as reproduced in Paper No. 5.

2581. Mr. PRAMUDYO (Indonesia) said that, in his view, Article 8(1)(d) as presented in Paper No. 5 was derogating from the substance Article 8(1)(a). Subparagraph (d) would allow Patent Offices to require applications to be filed in electronic form even before June 2, 2005. Therefore, the Delegation could not accept the proposal contained in Paper No. 5.

2582. Mr. BARTELS (Germany) stated that subparagraph (d) was meant for special cases only. The Delegation could support this idea, but was wondering whether the wording could be changed to "the Office of a Contracting Party" to make it clear that it referred only to special cases.

2583. Mr. HERALD (Australia) referred to an application which was due to be published in Australia in August and which had a size of 70,000 pages. Furthermore, the Australian Patent Office had already been approached concerning the publication of an application of a volume of 130,000 pages. Because the fee structure applied in Australia included page charges, publication of such an application was financially not feasible and, therefore, the Australian Patent Office was exploring the publication of those applications electronically. In this respect, the Delegation thought that the provision was critically important. Furthermore, the Notes could explain that the provision was intended to deal with the so-called "mega applications."

2584. Mr. RAJAN (Ireland) said that he understood that the provision under discussion pertained to applications with electronically generated specifications. Therefore, it was reasonable to assume that the applicants would prefer filing of such specifications in electronic form rather than on paper. As it was in the interests of both the applicants and the Offices that Rule 8 contained the provision as set out under subparagraph (d), the Delegation fully supported its inclusion.

2585. Mr. BADRAWI (Egypt) suggested replacing, in subparagraph (d), the words "notwithstanding" by the words "without prejudice to."

2586. Mrs. EL MAHBOUL (Morocco) supported the proposal put forward by Egypt and said that she preferred the words "subject to" in order to make the text consistent with that of subparagraph (b).

2587. Mr. TRAMPOSCH (WIPO) referred to the interventions of the Delegations of Morocco and Egypt and said that possible confusion could stem from the fact that subparagraph (d) might be interpreted to mean that, where the description of an application was filed in electronic form, the Office could require every aspect of an application to be in electronic form. However, this did not appear to be the intention of the paragraph.

2588. Mrs. BOLAND (United States of America) referred to paragraph 11 of document PT/DC/8 and said that Rule 8(1)(d) should cover cases for which the applicant already had prepared the application in electronic form. That meant cases for which the receiving and the processing in paper would be absolutely impossible for offices. Subparagraph (d) would provide a certain relief from the constraints of Rule 8(1)(a), and would provide flexibility to receive the text or the sequence listing of voluminous applications in electronic form. This would simplify the processing both for the applicant and the Office in cases in which applicants were completely and entirely prepared to provide the information to the Office in electronic form. It might be that it encompassed the entire application in certain circumstances. In other circumstances, it might be only a sequence listing or a computer listing, or last minute changes to a given application prior to publication.

2589. Mr. GOLDBERG (Israel) proposed to add, after the words "due to its character", the words "or its size."

2590. Mrs. EL MAHBOUL (Morocco) supported the proposal made by Israel and hoped that an explanatory note could be drafted on the subject.

2591. The PRESIDENT suggested, as a way forward, adding the words "or its size" after the words "due to its character." Furthermore, the Notes would include the clarifications that had been set out by the International Bureau.

2592. Mr. BADRAWI (Egypt) said that the words "without prejudice to" would strengthen the provision under consideration. However, he expressed willingness to accept the addition of the words "or its size."

2593. The PRESIDENT declared Rule 8(1)(d) adopted in substance and referred to the Drafting Committee.

Article 22: Reservations

2594. The PRESIDENT opened discussion on Article 22(1). He noted that no delegation asked for the floor on this provision.

2595. The PRESIDENT declared Article 22(1) adopted in substance and referred to the Drafting Committee.

2596. The PRESIDENT declared the work of Main Committee I completed, subject to reviewing the texts produced by the Drafting Committee. He expressed his thanks to all members of Main Committee I and the International Bureau for their hard work over the last weeks. He said that he was impressed by the constructive approach, the patience, the creativity and the general goodwill that everyone had shown in working together to find solutions for the many difficult challenges that the Committee had to content with. The Committee had now reached agreement in substance on the text of the PLT, and it had succeeded in reaching that agreement on the basis of consensus. He believed that this was a major accomplishment of which all should be proud.

2597. Mr. TRAMPOSCH (WIPO) announced the working arrangements for the rest of the week. First, the Drafting Committee would meet and the schedule for the work of that Committee was to be announced by its President. After the work of the Drafting Committee was completed, the changes by the Drafting Committee would need to be adopted by Main Committee I and Main Committee II, and referred to the Plenary for adoption of the Final Treaty. Preferably, Main Committee I, Main Committee II and the Plenary would be convened in that sequence on Thursday morning between 10.00 a.m. and 13.00 p.m. The signing ceremony, assuming that the work that had been done was accepted by the Plenary, was going to take place at 11.00 a.m. on Friday. Immediately following the signing ceremony there would be a reception lunch. In conclusion, Mr. Tramposch wished to echo the appreciation of the President and extended thanks to the persons who were working behind the scenes. Mostly, he wished to pay tribute to all delegations for having spent three weeks in Geneva and away from home, away from family and away from other important responsibilities.

2598. The PRESIDENT suspended Main Committee I until Thursday at 10.00 a.m.

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2599. The PRESIDENT invited the President of the Drafting Committee to report on the work of the Drafting Committee in relation to Main Committee I.

2600. Mr. HERALD (Australia) reported that the Drafting Committee had produced a uniform text in the six official languages of the Treaty. He thanked the members of that Committee for their hard work and their high level of cooperation. He stated that, in undertaking its task, the Committee had been mindful that, as set out in Rule 13(3) of the Rules of Procedure, it should not alter the substance of the text submitted to it.

2601. He referred to five issues of particular importance that had been dealt with by the Drafting Committee. The first issue was the decision of Main Committee I with respect to Article 6(3) that provision should be made in the Regulations permitting a Contracting Party to require a translation, into further languages accepted by the Office, the title, abstract and claims of an application that was in a language of the Office. The Drafting Committee had given effect to this by providing a general power for such a Regulation in Article 6(3), second sentence, together with a new Rule 3(3) under that Article providing for such translation. In addition, Rule 21(iii) required that any change to this new Rule required unanimity.

2602. The second issue was the amendment of the introductory wording to Article 13(2) to take into consideration the provisions of Article 4 of the Paris Convention. In order to ensure that Article 13(2)

covered all possible signatories to this Treaty, including States which were not party to the Paris Convention, it had been decided to refer to Article 15 of the PLT rather than making direct reference to Article 4 of the Paris Convention.

2603. The third issue was in respect of who, in addition to the applicant for the application containing the reference, could be the applicant for the previously filed application under Rule 2(5)(c). Although a predecessor in title was the most likely other applicant, there could be circumstances in which the applicant of the previously filed application was, instead, a successor in title.

2604. The fourth issue concerned the distinction between the documentation that could be required under Rule 17(2) in respect of compulsory licenses, and that could be required in respect of other licenses. Since a compulsory license was not an agreement, Rule 17 had been redrafted, first, to refer to "a license" rather than to a "licensing agreement" and, second, to distinguish between licenses which were freely-concluded agreements and licenses which were not freely-concluded agreements. Consequential amendments of terminology had also been made in Article 14(1)(b)(iii) and Rule 20(1)(v).

2605. The final issue concerned the requirements for unanimity under Rule 21. It had been decided, with the exception of Rule 8(1)(a) and Rule 21 itself, not to refer to a specific Rule but, instead, to refer to the Rules under the relevant Articles. This was to ensure that the unanimity requirement would apply to any potential future amendments to the Rules and any addition of new Rules under those provisions, rather than only to the Rules as adopted at the Diplomatic Conference.

2606. The PRESIDENT of the Drafting Committee also explained that, in Agreed Statement No. 4, second paragraph, the term "developed country members" had been changed to "industrialized market economy countries" in line with the terminology used within WIPO.

2607. The PRESIDENT thanked the President of the Drafting Committee for his report. He invited the International Bureau to make further comments.

2608. Mr. TRAMPOSCH (WIPO) stated that the International Bureau wished to raise two additional issues. One was a drafting change concerning Article 22(1) that had been raised by a delegation after the Drafting Committee had concluded its work. As adopted by Main Committee I, this Article would have the effect that the filing date requirements under Article 5 would not apply to applications which were filed on or after the date on which the Treaty binds the Contracting Party concerned. This was clearly not the intention of the Basic Proposal or of Main Committee I in adopting this provision. In the Basic Proposal, former Article 21(1)(a) applied only to existing applications and patents. The International Bureau suggested going back to language which was closer to the language of that proposal. It already flowed from Article 3 of the Treaty, which defines the applications and patents to which the Treaty applies, that the Treaty applied to applications that are filed on or after the date of entry into force of the Treaty and to patents which are granted on or after the entry into force of this Treaty. To clarify the application of the Treaty with respect to applications which are pending and patents which are in force on the date on which the Treaty binds the Contracting Party, the International Bureau suggested that Article 22(1) be amended to read:

"Article 22

Application of the Treaty to Existing Applications and Patents

(1) [Principle] Subject to paragraph (2), a Contracting Party shall apply the provisions of this Treaty and the Regulations other than Articles 5 and 6(1) and (2), and related Regulations to applications which are pending, and to patents which are in force, on the date on which this Treaty binds that Contracting Party under Article 21."

2609. The second issue was the agreed statement contained in document PT/DC/44, which had been adopted in substance by Main Committee II and referred to the Drafting Committee. Under Rule 12 of the Rules of Procedure, only Main Committee I had the power to adopt such statements. Accordingly, Main Committee I needed to consider whether to refer this agreed statement to the Plenary for adoption along with the Treaty.

2610. The PRESIDENT noted that Rule 12(1) of the Rules of Procedure indicated that Main Committee I was responsible for proposing for adoption by the Conference, meeting in Plenary, the substantive provisions of the Treaty, the Regulations and any recommendation, resolution or agreed statement

referred to in Rule 1(2)(v) and (vi). Accordingly, Main Committee I should give final approval for proposing for adoption by the Conference meeting in Plenary, of any Agreed Statements. He recalled that, as had been agreed by the Main Committees, the substantive provisions of the Treaty were those contained in Articles 1 to 16, Article 22 and Article 23(1), as renumbered. The Committees had also agreed that all the Regulations were substantive provisions. As had already been mentioned, it was the responsibility of Main Committee I to approve all of the Agreed Statements even if they relate to subject matters that were discussed in Main Committee II. Accordingly, the Committee needed to approve, for proposing for adoption by the Conference meeting in Plenary, of all of those provisions of the Treaty that had been mentioned, all of the Regulations and all of the Agreed Statements.

2611. Mr. BOGDANOV (Russian Federation) asked for confirmation that, in the text of Article 22 suggested by the International Bureau, the words "or after" contained the Basic Proposal, were not to be included.

2612. Mr. TRAMPOSCH (WIPO) confirmed that, although the suggested wording was closer to that of the Basic Proposal, it was not identical to it. In particular, as pointed out by the Delegation of the Russian Federation, a difference with the Basic Proposal was the omission of the words "or after". The reason for this was that the reference to an application which is pending after the date on which the Treaty binds a Contracting Party could be considered as covering an application which is filed on or after that date. Similarly, the reference to a patent that is in force after the date could be considered as covering a patent which is granted on or after that date. To avoid any ambiguity, and for legal correctness, the words "or after" had not been included.

2613. Mr. BADRAWI (Egypt) expressed his gratitude to the Drafting Committee and thanked, in particular, the Delegate of Algeria for his work on the Arabic text. However, in his view, the expression "in accordance with the provisions of Articles..." should be used in the Arabic text throughout the Treaty, instead of "subject to Article...".

2614. The PRESIDENT stated that this matter concerning the Arabic text would be discussed outside the Committee by the Arabic translator of the International Bureau and the Delegations of Egypt and Algeria. The Committee could then return to the matter following those discussions.

2615. Mr. HERNÁNDEZ VIGAUD (Cuba) said that in the Drafting Committee it had been agreed to use the word "*medidas*" ("measures") in the Spanish text of Article 11 of the Treaty. In order to maintain consistency with that article of the Treaty, he requested that the Fifth Agreed Statement in the Spanish version of document PT/DC/43 be corrected, and the word "*remedio*" ("remedy") be replaced by "*medidas*" ("measures"). He specified that his comment affected only the Spanish version of the Fifth Agreed Statement, in which the word "*remedio*" was to be replaced by the term "*medidas*", which it had been agreed would be included in Article 11 of the Treaty and in the Regulations.

2616. The PRESIDENT, noting that no one had asked for the floor, concluded that this change to the Spanish text was acceptable. He asked whether there was support for the changes to Article 22(1) suggested by the International Bureau.

2617. Mr. HERALD (Australia) stated that his Delegation supported the suggested changes to Article 22(1).

2618. Mr. GOLDBERG (Israel) expressed support for the amendments to Article 22(1), as suggested by the International Bureau.

2619. Mrs. EL MAHBOUL (Morocco) accepted Article 22 as it stood.

2620. Mrs. PETIT (Belgium) asked with regard to Article 6(5) (priority document) whether in the penultimate line of the French text the words "*ou à toute autorité compétente*" ("or other competent authority") should not be added so that the clause would read "be submitted to the Office or other competent authority, in accordance with the requirements prescribed in the Regulations." Thus, this paragraph would comply with Rule 4(4), which stated "upon invitation by the Office or other competent authority."

2621. The PRESIDENT suggested that the Committee defer consideration of Article 6(5) after it had concluded its discussion on Article 22(1).

2622. Mr. TRAMPOSCH (WIPO) asked for clarification as to the position of the Delegation of Morocco in respect of Article 22(1).

2623. Mrs. EL MAHBOUL (Morocco) said, in response to the President, that her Delegation accepted Article 22 in its amended form, as proposed by the International Bureau.

2624. The PRESIDENT concluded that there was clear support for the changes to Article 22(1) suggested by the International Bureau. He then invited the International Bureau to comment in the point raised by the Delegation of Belgium in respect of Article 6(5).

2625. Mr. TRAMPOSCH (WIPO) noted that Rule 4(4) was established under Article 6(5) and therefore needed to be in conformity with it. He suggested, in Article 6(5), to delete the words "with the Office" so that it would read "where the priority of an earlier applications is claimed, a Contracting Party may require that a copy of the earlier application and a translation where the earlier application is not in a language accepted by the Office be filed in accordance with the requirements prescribed in the Regulations." This would then be consistent with the reference in the Regulations to the Office or other authority.

2626. The PRESIDENT noted that the Delegation of Belgium had indicated that this amendment was acceptable to it. In the absence of any opposing view, he concluded that Article 6(5) was approved with this amendment. He invited views on any other issues.

2627. Mr. GOLDBERG (Israel) suggested that it would be clearer in Article 22(1) to refer to granted patents, as in the Basic Proposal, instead of to patents which are in force. He noted that there were cases in which proceedings in respect of a patent were pending in court. Also, in some countries, a patent had retrospective effect after it was reinstated.

2628. Mr. TRAMPOSCH (WIPO) noted that to refer to "granted patents" without reinstating the words "or after" as well would only cover the case where a patent is granted on the exact date that the Treaty binds that Contracting Party. However, to reinstate the words "or after" would revive the problem to which he had referred earlier. He suggested that, instead, a statement be added in the Explanatory Notes to explain what was meant by "in force," having regard to the use of different terminology in certain Contracting Parties.

2629. Mr. BÜHLER (Switzerland) asked whether the amendment to Article 6(5) would affect Agreed Statement No. 1.

2630. Mr. TRAMPOSCH (WIPO) stated that, in the opinion of the International Bureau, the amendment to that Article would not in any way affect that Agreed Statement.

2631. Mr. JACKSON (CIPA) noted, with reference to the intervention by the Delegation of Israel on Article 22(1), that in Article 3(2), referred to patents that had been "granted" rather than "in force". He suggested that, for consistency with Article 3(2), Article 22(1) refer to "patents which have been granted".

2632. Mr. TRAMPOSCH (WIPO) explained that, since Article 3(2) already provided that the Treaty applied to patents which had been granted with effect for a Contracting Party, it was not necessary to repeat the words "which have been granted" in Article 22(1). If a patent had not been granted with effect for a Contracting Party, it would not be covered by the Treaty at all. The International Bureau was therefore of the opinion that Article 22(1) should be worded as had been suggested.

2633. Mr. OMOROV (Kyrgyzstan) stated that his Delegation would prefer to refer, in Article 22(1), to applications which are "filed". His Delegation also supported the suggestion by the Delegation of Israel.

2634. Mr. TRAMPOSCH (WIPO) noted that if the words "filed" and "granted" were retained, it would be preferable to split Article 22(1) into two separate paragraphs. One paragraph would apply all of the provisions of the Treaty, including Articles 5 and 6(1) and (2), to applications which are filed on or after the date that the Treaty binds the Contracting Party and to patents which are granted on or after that date. The second paragraph would contain the substance of Article 22(1) as suggested. However, it was the opinion of the International Bureau that substance of the first paragraph was already covered by

Article 3, so that only the second of those two paragraphs was needed. In order to meet the concerns of the Delegations of Kyrgyzstan and Israel, he suggested that the Explanatory Notes clarify what was intended. He stated that the International Bureau would be happy to consult informally with the Delegations of Kyrgyzstan and Israel in drafting those Explanatory Notes.

2635. Mr. VIDAURETTA (Argentina) said that when Article 8(7) had been debated by Main Committee I, his Delegation had expressed a reservation to the effect that the applicant, owner and other interested persons did not necessarily have to be given notification on each occasion, contrary to the provision. He recalled that the Committee had accepted that observation and had agreed to send it to the Drafting Committee. He noted, however, that the wording of Article 8(7) had not been amended in that respect.

2636. The PRESIDENT invited the President of the Drafting Committee to comment.

2637. Mr. HERALD (Australia) confirmed that the Drafting Committee had considered the matter and had decided to retain the text as contained in the Basic Proposal.

2638. Mr. TRAMPOSCH (WIPO) further explained that the International Bureau had suggested to the Drafting Committee that the phrase "applicant, owner or other interested person" be replaced by the phrase "person that filed the communication" but that this suggestion had not been adopted by the Drafting Committee. He confirmed that the International Bureau saw no objection to adding the word "concerned," as had been originally suggested by the Delegation of Argentina. He noted that whether or not the word "concerned" was included, a comma should be added.

2639. The PRESIDENT invited views on the addition, in Article 8(7), of the word "concerned" and a comma, so that the relevant text would read "where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (6) are not complied with in respect to communications, the Office shall notify the applicant, owner or other interested person concerned, giving the opportunity..."

2640. Mr. BOGDANOV (Russian Federation) asked for an explanation of the consequences of the proposal addition since the word "interested person" appeared to mean the same as "concerned person".

2641. Mr. TRAMPOSCH (WIPO) explained that the International Bureau's understanding of the reason for the proposal change, which the Delegation of Argentina could clarify, was to make it clear that, if another interested person had made a communication which did not comply with the requirements, that person would be the person who was notified.

2642. Mr. VIDAURETTA (Argentina) said that he concurred with the comments made by the Delegate of Australia, but that it was unclear from Article 8(7) that it was not necessary to notify all parties simultaneously on each occasion, since there may be different interested parties in the course of a patent procedure, depending on the subject in question. His Delegation had proposed that where reference was made to "the applicant, owner or other interested person" the phrase "as appropriate" should be added. This would make it clear that notification was to be given only to those persons who were interested in the matter subject to notification.

2643. The PRESIDENT invited views on the proposal to add in the words "as appropriate", after the expression or after the words "the Office shall notify the applicant, owner or other interested person".

2644. Mr. BOGDANOV (Russian Federation) stated that, in view of his Delegation, the existing text was adequate since the Office would know who should be notified. The provision did not mean that it was compulsory to notify everyone.

2645. The PRESIDENT noted that there did not appear to be any support for the proposed change, and asked the Delegation of Argentina if it could accept keeping the text of Article 8(7) as it was.

2646. Mr. VIDAURETTA (Argentina) said that his Delegation accepted the consensus on this matter, but nevertheless retained its point of view.

2647. Mr. TRAMPOSCH (WIPO) suggested that the International Bureau clarify in the Explanatory Notes that Article 8(7) did not require the Office to notify all three of the persons mentioned.

2648. The PRESIDENT recalled that the International Bureau had proposed the addition of a comma after "other interested person". He concluded that, in the absence at any objection, that this addition was approved.

2649. Mrs. OVIEDO ARBELAEZ (Colombia) reiterated the importance for her country of having the statement it had made reflected among the agreements reached during the Conference. Her Delegation wished to ensure that the statement would be reflected in the relevant document as an agreement reached by the Organization.

2650. Mr. TRAMPOSCH (WIPO) confirmed that the declaration read out by the Director General and the full statement of the Delegation of Colombia would be included in the Summary Minutes.

2651. The PRESIDENT concluded that, since no one else had asked for the floor, there were no other issues to be considered by the Committee. He also concluded that, subject to the one issue concerning the Arabic text in the expression "subject to", the Committee approved the proposal of Articles 1 to 16, Article 22, Article 23(1), all of the Regulations, as well as the Agreed Statements contained in PT/DC/43 and 44, with the amendments agreed, for adoption by the conference meeting in Plenary.

2652. The PRESIDENT invited comments on the issue of the Arabic text of the words "subject to".

2653. Mr. BADRAWI (Egypt) reported that, in discussions between the delegations of interested States and the translator, agreement had been reached on the Arabic text. He suggested that an explanation regarding the implementation of Rule 8(1) be included in the Explanatory Notes.

2654. The PRESIDENT invited the Delegation of Egypt to read out the Arabic text that had been agreed.

2655. Mr. BADRAWI (Egypt) read out the Arabic text of Rule 8(1)(a).

2656. The PRESIDENT concluded that, in the absence of any other comments, the Committee had reached agreement on the Arabic version of text which was therefore approved. *He noted that the Committee had approved, for proposing for adoption by the Conference meeting in Plenary, all of the substantive provisions and all the Agreed Statements. Accordingly, the Committee had concluded its work.* He thanked all of the members of the Committee and the International Bureau for their very hard work and for the spirit of cooperation that had brought the work of the Committee to a very successful result.

2657. Mr. HERALD (Australia), speaking on behalf of the Committee, expressed appreciation to the President's excellent chairmanship that, despite some very difficult debates, had enabled the Committee to approve the text for adoption without recourse to voting procedures, which was a significant achievement.

2658. Mr. BADRAWI (Egypt) stated that his Delegation would like to thank the President for his patience and ability to deal with difficult situations.

2659. The PRESIDENT commented that it had been a group effort and that, in working together, it had been possible to achieve the results that had been attained. The Committee should feel very proud of what it had been able to achieve by consensus. He declared the work of Main Committee I finished and the meeting closed.

SUMMARY MINUTES OF MAIN COMMITTEE II

prepared by the International Bureau

President: Mr. Arturo Hernández Basave (Mexico)

Secretary: Mr. F. Gurry (WIPO)

FIRST SESSION

Friday, May 26, 2000

Morning

Article 17: International Bureau

1. The PRESIDENT, introducing the work of Main Committee II, said that a number of delegations had requested that Articles 16 and 19 be dealt with at a later date, and that those two articles would therefore remain pending. Opening discussion of Article 17, he said that a proposal had been made on that Article by the Delegation of the United States of America.
2. All delegations that took the floor for the first time in Main Committee II congratulated the Chairman for his election into that Office.
3. Ms. CRITHARIS (United States of America) referred to her Delegation's proposal concerning Article 17 as set forth in paragraph 15 of document PT/DC/8. She stated that it was preferable to include consultations with all WIPO Member States, since otherwise, WIPO Member States who are not party to the PLT could be excluded from consultations, but international and national organizations would be included.
4. Mrs. EL MAHBOUL (Morocco) questioned, in the light of the statement by the Delegation of the United States of America, the need to include "WIPO Members", whereas certain countries were not Contracting Parties to the Treaty. She asked how the WIPO Members who were not bound by the provisions of the Treaty, because they had not acceded thereto, could vote and take part in the vote within the PLT Assembly.
5. Mr. GURRY (WIPO) referred to the intervention of the Delegation of Morocco and explained that, under paragraph 4(a), the Assembly of the Contracting Parties of the PLT would have the directing and deciding power in respect of any revisions. Subparagraph (b) addressed only a consultative power and set out a desirable range of entities with which consultations would take place, but the decision was with the Contracting Parties to the Treaty.
6. Mrs. EL MAHBOUL (Morocco) asked that it be specified that WIPO Members were participating as observers.
7. Mr. BOGDANOV (Russian Federation) said that, in Article 17(3)(a), reference was made to the persons designated by the Director General, while subparagraph (b) referred to a staff member designated by the Director General who should be *ex officio* secretary of the Assembly. The delegate asked whether a person designated under subparagraph (a) did not have to be a staff member.
8. The PRESIDENT said that it could be clarified in paragraph (3) that the persons designated were always staff members of the International Bureau such that, for example, the phrase "members of the staff" could be used. *He declared Article 17 adopted with the amendments proposed by the Russian Federation and United States of America.*

Article 18: Revisions

8bis The PRESIDENT said that, opening discussion of Article 18, a document had been submitted on that Article by the United States of America. *Since there was no objection to the document, he declared Article 18(1) and (2) approved.*

9. Ms. CRITHARIS (United States of America) referred to her Delegation's proposal on Article 18(3) as contained in document PT/DC/31. Since this proposal was tied in substance to Article 16, she suggested that it was preferable to discuss this proposal together with Article 16.

10. The PRESIDENT said that Article 18(3) could be left for later, pending resolution of Article 16.

Article 20: Entry into Force; Effective Dates of Ratifications and Accessions

10*bis* Undertaking consideration of Article 20, he said that in paragraph (2)(ii) the words "ratification or accession" appeared to be missing, after the word "instruments."

11. Mr. VIDAURETTA (Argentina) said that his Delegation considered that the number of accessions and ratifications necessary for the Treaty to enter into force would have to be greater than ten, taking into account the features and aims of the Treaty, which was designed to harmonize the formalities and procedures for patent offices throughout the world.

12. Mrs. ABOULNAGA (Egypt) suggested to increase the number of ratifications or accessions required for the entry into force of the Treaty to a number that was proportionate to the members of the Conference.

13. The PRESIDENT said that the number of accessions necessary for the Treaty to enter into force appeared to be more of a political issue.

14. Ms. CRITHARIS (United States of America) supported the text of the Basic Proposal.

15. Mr. HERALD (Australia) referred to the PCT concluded in 1970, which in Article 63(1)(a), required, for its entry into force, the ratification or accession of eight States, and to the TLT adopted in October 1994, which, for the same purpose, required the ratification or accession of five States. He supported a figure no greater than 10, as was presented in the Basic Proposal.

16. Mr. CAVAZOS TREVIÑO (Mexico) proposed asking the International Bureau to prepare a document allowing a comparison of the number of necessary accessions specified in other treaties administered by WIPO. This would allow a decision to be taken in view of the international precedents established at the most recent conferences.

17. Mrs. EL MAHBOUL (Morocco) said that her Delegation supported the proposal made by Mexico.

18. Ms. FRANCISCO (Philippines) recalled that the TLT required only five instruments for its entry into force, whereas the Internet Treaties required 30 instruments. Furthermore, an important number of countries were already members of the PCT. Because of the nature and the underlining principles of the Treaty, she believed that it should take effect as soon as possible and, therefore, supported the Basic Proposal as it stands.

19. Mr. BARTELS (Germany) expressed support for the text presented in the Basic Proposal.

20. Mr. HE (China) referred to Article 20(2)(i) and asked whether only 10 instruments of ratification or accession would be taken into account.

21. Mr. GURRY (WIPO) explained that after the tenth instrument was received, a notification was sent out by the Director General as depositary, indicating that the Treaty will enter into force, and the date was three months after the date of the deposit of the tenth instrument. The three-month period was provided precisely in order to notify all Contracting Parties that the Treaty will come into operation.

22. Mr. RAJAN (Ireland) supported Article 20(1) in the Basic Proposal.

23. Mr. TROICUK (Canada) said that his Delegation fully supported the text as it was found in the Basic Proposal. The number of ten instruments of ratification or accession was already higher than the numbers found in the PCT, the Geneva Act of the Hague Agreement, or the TLT.

24. Mr. GURRY (WIPO) announced that an informal document would be made available in response to the request of the Delegation of Mexico which would list all of the Treaties administered by WIPO and the number of Contracting States that was required for them to enter into force.
25. Mr. HERALD (Australia) expressed concern regarding Article 20(2) and the provision, under that paragraph, that the Treaty should bind each State from the expiration of three months after the date on which the State had deposited its instrument or from any later date indicated in that instrument. His concern was that it appeared possible for a State to join the Treaty with a period rather longer than three months before it was bound by it, and yet had voting rights under the Treaty.
26. The PRESIDENT considered that it would be unlikely that a Contracting Party would deposit its instrument of ratification with an indication that it would take effect only after a number of years. It was more probable that this would occur only for a brief but reasonable period.
27. Mr. GURRY (WIPO) stated that the provision under consideration was a standard provision in WIPO administered Treaties. The purpose of the provision was to allow States to make the entry into force of a Treaty coincide with the entry into force of domestic legislation.
28. Mr. HERALD (Australia) asked whether Article 1(xviii) meant that a State had deposited its instrument of ratification, or the fact that it was bound by the Treaty.
29. Mr. GURRY (WIPO) indicated that Article 1(xviii) meant that a party was bound by the Treaty.
30. Ms. WILLIAMS (Australia) asked whether, under Article 20(2)(ii), it would be possible for a State to indicate in its instrument of ratification that it wished to become bound by it ten years later.
31. Mr. GURRY (WIPO) said that Article 20(2)(ii) referred to a time rather than to any other condition. He also referred to a general principle of international law that a State was supposed not to act inconsistently with the fundamental obligations of a Treaty. It was not clear what interest or reason there would be to deposit an instrument of accession with such extraordinary condition attached to it.
32. Ms. CRITHARIS (United States of America) said that her Delegation, in paragraph 17 of document PT/DC/8, had proposed to delete the expression "or from any later date" indicated in that instrument which appeared in item (ii), (iii) and (iv) of Article 20(2).
33. Mr. WALKER (United Kingdom) suggested that some of the concerns raised by the Delegations of the United States of America and Australia could probably be met by amending the chapeau to paragraph (2), and to read, "this Treaty shall enter into force for." Furthermore, the Delegation supported the proposal of the Delegation of the United States of America that any later date indicated in that instrument could be capped to avoid extreme cases where any later date was far in the future.
34. Mr. GRIGORIEV (EAPO) drew attention to the fact that some of the expressions in the provisions under discussion were still presented between square brackets.
35. Mr. EL FAKI ALI (Sudan) said that Member States should not be restricted in their choice of the date on which they deposit their instrument of ratification. A date no later than one year following the deposit of the instruments of ratification or accession could be added to the provision. This would ensure that States were serious in depositing their instruments and would still allow a certain degree of flexibility to the Treaty.
36. Mrs. EL MAHBOUL (Morocco) said that her Delegation could support the proposal made by the Delegation of the United States of America.
37. Mr. CAVAZOS TREVIÑO (Mexico) asked the International Bureau whether the provision contained in Article 20(2)(ii) was one that was already to be found in other WIPO Treaties and, if so, what the Secretariat's experience had been in administering those clauses, and whether there had ever been any actual occurrences demonstrating the concern expressed by the Delegation of the United States of America.
38. Mr. JACKSON (CIPA) supported the statement made by the Delegation of the EAPO.

39. Mr. GURRY (WIPO) said that it was a very frequent occurrence in depositary practice that States communicate with WIPO to organize the date on which the Treaty entered into force. This was often because of legislative requirements at home and it happens in at least 50% of the cases in which an instrument of accession or ratification was deposited.

40. Mr. ABOULNAGA (Egypt) suggested that, it might be advisable to refer to the Vienna Convention on the Law of Treaties in order to resolve the question of the entry into force of the Treaty.

41. Mr. CAVAZOS TREVIÑO (Mexico) said that, considering that the provision of Article 20(2)(ii) was a clause that already existed in other international treaties, and the high percentage of cases in which recourse could be had to that clause, his Delegation wished that item (ii) remained the same as in the Basic Proposal.

42. Mr. HERNÁNDEZ VIGAUD (Cuba) said that his Delegation shared the views expressed by the Delegation of Mexico but asked what effect the deletion of the last sentence of item (ii) would have. He understood that unless expressly prohibited, Parties would have the freedom to designate the date of entry into force of the Treaty in its instrument of accession, and he therefore requested an explanation on the matter from the International Bureau.

43. Mr. CAVAZOS TREVIÑO (Mexico) considered that since the International Bureau had explained that approximately 50% of the States that acceded to treaties required some kind of special arrangement at the time of accession so as to give them the time to bring their national legislation into line with the respective treaty, the fact that such a possibility was eliminated would mean that the States in question would take longer to accede to or ratify the Treaty. He considered it unlikely that a State would accede to the Treaty following a period of suspension of five or ten years, since the deposit of an instrument of ratification would indicate that the State was ready and willing to fulfill its obligations.

44. Mr. GURRY (WIPO) said that, as far as the Vienna Convention on the Law of Treaties was concerned, the Article dealing with the entry force of treaties was of no assistance, because it simply said that a Treaty should enter into force in such manner and upon such a date as the Treaty may provide, and as the negotiating States may agree. If the States decided for a period of three months, that time period would apply and it would simply be a matter of arrangement between the depositary and any State intending to deposit an instrument of accession to make the dates coincide for any purposes of domestic legislation.

45. Ms. CRITHARIS (United States of America) said that, although there was precedence for the language "or from any later date indicating that instrument" in some of the WIPO treaties, several treaties did not include that language, namely the PCT, the Madrid Protocol or the TLT.

46. Mr. TROICUK (Canada) said that his Delegation shared the concerns raised by the Delegations of the United States of America and Australia about the open-ended nature of that particular provision. One of the possible abuses that could arise was from the possibility that an instrument of ratification could indicate that the effective date would be 20 years from now, and then the treaty would enter force immediately. However, if it was just a matter of providing flexibility, it seemed that a fairly short time should be sufficient and all objectives could be satisfied if a very short time limit would be put in for the later date, for example six months.

47. Mr. CAVAZOS TREVIÑO (Mexico) specified that in countries with a traditional Roman law system it was not necessarily essential for the legislation implementing a Treaty at the domestic level to have entered into force prior to accession to the Treaty. Flexibility should be maintained in the Treaty and, in that regard, his Delegation could support the proposal made by Canada.

48. Mr. BADRAWI (Egypt) said that the suggestion by Canada was a good one, which could be used as a basis for discussion in order to reach a compromise over that issue.

49. Mr. HE (China) asked for a clarification from the International Bureau on paragraph (2) which his Delegation found unclear with regards its implications on the timing for the entry into force of the Treaty.

50. Mr. CRITHARIS (United States of America) expressed support for the proposal of the Delegation of Canada.

51. Mr. VIDAURETTA (Argentina) said that his Delegation considered that the proposal made by the Delegation of Canada was satisfactory, and could therefore support it.

52. Ms. FRANCISCO (Philippines) said that the proposal made by the Delegation of Canada looked attractive. However, the Delegation requested clarification as to the status of the rights and obligations during the period between the deposit of the instrument and the coming into effect of that instrument.

53. Miss EL KATEB (Tunisia) said that her Delegation supported the proposal made by the Delegation of Egypt, as based on the proposal made by the Delegation of Canada.

54. Mrs. EL MAHBOUL (Morocco) noted that the Vienna Convention on the Law of Treaties contained no clear provisions on the entry into force of treaties, and asked the International Bureau whether it would not be possible to entrust to the depositary, i.e. the Director General, the task of fixing a period for entry into force.

55. Mr. EL FAKI ALI (Sudan) recalled that his Delegation had tabled the same proposal as submitted by the Delegation of Canada, except that his Delegation had suggested that the period would be no later than one year. The period should not be later than one year, in order to give adequate time to all the organizations and countries that wished to accede to the Treaty to align their legislation and take other necessary measures to accede properly to the Treaty.

56. Mr. VÉKÁS (Hungary) expressed support for the proposal of the Delegations of Canada and the United States of America in respect of paragraph (2)(ii).

57. Mr. RAJAN (Ireland) supported the proposal by the Delegation of Canada.

58. Mr. TOURÉ (Burkina Faso) agreed, with regard to Article 20(2)(ii), that the proposal made by the Delegation of Canada constituted a good compromise, in as much as it gave a certain amount of leeway to the other party and room for maneuver that was not excessive. On that basis, he said that his Delegation supported the position of the Delegation of Canada regarding a period not exceeding six months.

59. Mr. PESSANHA CANNABRAVA (Brazil) stated that his Delegation was satisfied with the Basic Proposal but considers the Canadian proposal as an acceptable compromise.

60. The PRESIDENT noted that there appeared to be a consensus regarding the proposals by Sudan and Canada to limit the period in which an instrument of accession would take effect. He suggested that at the end of the Spanish text of Article 20(2)(ii), the additional words "la cual no deberá exceder el plazo de seis meses a partir de la fecha del depósito" ("which should not exceed the period of six months from the date of deposit") should be included. In that regard, Contracting Parties would, as a standard rule, have three months for their accession to enter into force, although this could be extended to six months, if indicated accordingly in the instrument.

61. Mr. BLINNIKOV (EAPO) stated that he did not object to the proposal made by the Delegation of Canada, but that it should also apply to Article 20(2)(iv) concerning intergovernmental organizations.

62. Ms. CRITHARIS (United States of America) pointed out that the same condition should apply to item (iii) of Article 20(2).

63. Mr. BAVYKIN (Russian Federation) stated that items (iii) and (iv) of Article 20(2) assumed that international organizations could deposit an instrument of ratification or accession, and observed that the English version only mentioned this in item (iii), whereas the Russian version contained such a reference in both items (iii) and (iv). He pointed out that only States, but not international organizations could ratify international treaties. He therefore suggested either to correct the relevant passages in Article 20(2), items (iii) and (iv), or to define the term "instrument of ratification" in Article 1 as including instruments of acceptance or approval.

64. Mr. EL FAKI ALI (Sudan) questioned the need for including a provision on intergovernmental organizations in item (iv) of Article 20(2) that differed from item (iii) of the same Article regarding the organizations mentioned in square brackets. He asked whether an Arab association for patents that

submitted its instrument of accession before the Treaty entered into force would be bound by the Treaty three months after the date of accession.

65. Mr. BADRAWI (Egypt) supported the statement made by the Delegation of Sudan. He also proposed that the number of ratification in order for the PLT to enter into force should be 15 instead of 10.

66. Mr. GURRY (WIPO) explained that the procedure envisaged by Article 20(2) was as follows: First, the Treaty had to enter into force, and for that purpose ten instruments of ratification or accession had to be deposited by States. Thereafter, it had to be determined when an instrument of ratification or accession deposited by any other State or any pertinent intergovernmental organization would come into force and cause the Treaty to bind that State or organization. Under Article 20(2)(iii) the PLT would enter into force three months after the deposit of the instrument of ratification or accession by one of the organizations specified in square brackets. This was the case if the Treaty had already entered into force generally. Alternatively, it would come into force with respect to such an organization three months after the Treaty itself had entered into force. Article 20(2)(iv) simply specified with regard to other intergovernmental organizations that might be admitted by the Assembly to become party to the Treaty, that any instrument deposited by such an organization would come into force three months after its deposit. He explained that item (iv) did not go into the question whether the Treaty was already in force, because it had to be in force so that an Assembly could take the act of admitting such an organization. If it was desired to simplify the drafting, he suggested to merge these items into item (ii) by referring, in that item, to "each other State, and each of the specified organizations in paragraph (iii)."

67. The PRESIDENT said that there appeared to be a consensus to the effect that the instruments of ratification necessary for the Treaty to enter into force would have to be instruments that did not contain a period of entry into force that differed from the standard three-month period. Appropriate wording could be sought for that purpose.

68. Mr. HE (China) asked for a response to his request for clarification on Article 20(2).

69. Mr. GURRY (WIPO) agreed that Article 20 as currently drafted envisaged only the possibility of an increase in the number of ratifications or accessions from nine to ten, without providing for the possibility of a rise from nine to eleven. In the latter case, however, paragraph (2)(i) would be operative for ten States, and paragraph (2)(ii) for the eleventh, even though the Treaty would come into effect with respect to all eleven states on the same day.

70. Mr. HE (China) stated that Article 20 might have the consequence that the PLT enters into force six months after the deposit for the first 10 countries, and three months after the deposit for the eleventh country.

71. Mr. GURRY (WIPO) agreed and stated that it might be necessary to reword the provisions in order to accommodate precisely the eventualities that had been envisaged by the Delegation of China.

72. Mr. HE (China) asked what kind of wording might solve that issue.

73. Mr. GURRY (WIPO) stated that, upon further reflection, it would not seem necessary to change the drafting because the facility for designating a date other than three months after the date of deposit of the instrument was only available to States other than the first ten. Under Article 20(2)(ii) any State other than the first ten States, could deposit an instrument which would become effective either three months after deposit, or on such later date not being later than six months from the date of deposit. For the first States, their instruments would become effective, and indeed the whole Treaty would come into force, only three months after the deposit of the tenth instrument.

74. Mr. HE (China) asked that this clarification be included in an Explanatory Note.

Article 22: Reservations

Article 23: Denunciation of the Treaty

75. The PRESIDENT opened the discussion on Article 22(2), (3) and (4).

76. Mr. PRAMUDYO (Indonesia) asked why the International Bureau had not proposed to include a provision concerning dispute settlement in the Treaty.

77. *The PRESIDENT considered that Article 22(2), (3) and (4) could be approved and, since there was no opposition to Article 23, he also declared that Article approved.*

Article 24: Languages of the Treaty

78. Ms. CRITHARIS (United States of America) introduced the proposal made by her Delegation in document PT/DC/8 to add the expression "as the Assembly may designate" at the end of the first sentence in Article 24(2). She explained that this would be consistent with Article 33 of the Geneva Act of the Hague Agreement. She also proposed to include a clarification in the Explanatory Notes to the effect that the official texts were not original or equally authentic texts, as the texts mentioned in Article 24(1).

79. Mr. BAVYKIN (Russian Federation) proposed an addition to the text of Article 24(2), to the effect that official texts in any language are authenticated by the Director General at the request of interested countries. He noted that such a provision was contained in other Treaties which have been adopted in the framework of WIPO. He proposed to add "at the request of the interested party" in Article 24(2) after the words "established by the Director General" and pointed out that a similar wording had been used for example in Article 24 of the WIPO Copyright Treaty of 1996.

80. Mr. GURRY (WIPO) remarked that there were two proposals, one that the other languages for official texts be determined by the Assembly, and the other that they be determined by any State making a request. He observed that, while this was the method of determining official texts under the WIPO Copyright Treaty, in the Geneva Act of the Hague Agreement this decision was left to the Assembly. He noted that both methods were found disseminated across the various WIPO Treaties.

81. Mr. TROICUK (Canada) said that his Delegation could accept the wording in the Basic Proposal. It could also accept the proposal made by the Delegation of the United States of America to add the words "as designated by the Assembly".

82. Mr. PESSANHA CANNABRAVA (Brazil) asked where exactly the Delegation of the United States of America had proposed to include the words "as the Assembly may designate".

83. Mr. GURRY (WIPO) stated that the Drafting Committee would have to decide on the exact wording, but recalled that the intention of the proposal of the Delegation of the United States of America was to adopt a text which is somewhat similar to the language used in the Geneva Act of the Hague Agreement, which states in Article 33(1)(b): "Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate." He explained that, whereas the Basic Proposal envisaged that the Director General decided which other official texts should be established, the proposal of the United States of America would be that that decision be taken by the Assembly rather than the Director General.

84. Ms. WILLIAMS (Australia) said that she could support the current wording as well as the proposal made by the United States of America.

85. Mr. BADRAWI (Egypt) proposed to delete the words "after consultation with the interested parties" in the Basic Proposal. He also stated that it should be clarified that authentic texts have priority over official texts. Such clarification should be included in the provision itself, and not in the Explanatory Notes.

86. Mr. EL FAKI ALI (Sudan) supported the proposal made by the Delegation of Egypt.

87. Mr. GURRY (WIPO) said that an authentic text would be understood as referring to the text or the texts in which the Treaty had been adopted. He explained that any one of the authentic texts could be relied upon and asserted by a Contracting Party, as opposed to an official text which was always subject to the authentic texts.

88. Mr. BADRAWI (EGYPT) repeated that the addition he had proposed should be placed within the Treaty, not in the Explanatory Notes. He proposed to include the words "in the event of conflict, the authentic texts take precedence over an official text" in the part concerning the languages at the end of

paragraph (2). Alternatively, he proposed to state that "official languages do not have the same value as the original texts".

89. Mr. GOLDBERG (Israel) proposed that the decision on official texts be left to the Director General, without requiring the approval of the Assembly.

90. Mr. PESSANHA CANNABRAVA (Brazil) supported the proposal by the Delegation of Israel.

91. The PRESIDENT noted that three different proposals had been made with respect to Article 24(2), i.e. that included in the Basic Proposal, that made by the Delegation of the Russian Federation, and that of the United States of America.

92. Mr. GOLDBERG (Israel) stated that, according to his understanding, a text had to receive the approval of the Assembly in order to be an official text.

93. Mr. WALKER (United Kingdom) said that his Delegation was content to clarify the relationship between authentic and official texts in an Explanatory Note as suggested by the Delegation of the United States of America. If, however, it was necessary to clarify that in the Treaty, he proposed to include the words "and exclusively" after the words "all texts being equally" at the end of paragraph (1), rather than to amend paragraph (2) as proposed by the Delegation of Egypt.

94. Mr. CAVAZOS TREVIÑO (Mexico) considered that the proposal made by the United Kingdom with respect to Article 24(2) appeared to be a good one, since it eliminated the negative connotations inherent in specifying that only six languages would be authentic. In that connection, it would not be necessary for the Assembly to be the body that determined whether another text was made official, since in no way would such a text be authentic.

95. Mr. BADRAWI (Egypt) stated that his first proposal had attempted to combine the proposals made by the Delegations of the Russian Federation and the United States of America by stating that an official text in a language other than the languages referred to in paragraph (1) should be established by the Director General after a request by an interested party, and to add the words "as the Assembly might designate." With regard to his second proposal he emphasized that it was indispensable, from a legal point of view, to have a provision clarifying the hierarchy between authentic and official texts in case of conflict.

96. The PRESIDENT said that it should be elucidated firstly how an official text could be established, irrespective of its value in relation to authentic texts. According to the proposal made by the Russian Federation, this should be at the request of one of the Contracting Parties, while the proposal of the United States of America suggested that this should be done by decision of the Assembly.

97. Mr. TROICUK (Canada) said that his Delegation could accept a statement in the Explanatory Notes that only the original texts were authentic. His Delegation also supported an inclusion in the Treaty, such as the addition suggested by the Delegation of the United Kingdom. As an alternative, he proposed to amend the beginning of paragraph (2) to read "a non-authentic official text".

98. Mr. GOLDBERG (Israel) supported the suggestion made by the Delegation of Mexico since the official text was merely for internal use and internal purposes. In his view there was no reason why the Assembly should deal with the matter, and that the approval of the Director General should suffice.

99. Mr. BADRAWI (Egypt) repeated that the purpose of his proposal was to clarify that in case of a conflict, the original texts had precedence over the official texts.

100. Mr. GURRY (WIPO) referred to the Vienna Convention which addressed that particular matter in Article 33(2) by providing that a version of a Treaty in a language other than one of those in which the text had been authenticated be considered an authentic text only if the Treaty so provides and the Parties so agree.

101. Mr. BADRAWI (Egypt) said his proposal was a very common provision it should be in the Treaty since, in the event of a conflict between an original text and an official text, the original text has precedence or is authentic.

102. The PRESIDENT said that a provision could be included to the effect that, in the case of a discrepancy, the original texts would always prevail. Noting that there was no opposition to his suggestion, he said that such clarification would be included.

103. Mrs. EL MAHBOUL (Morocco) considered, on the basis of Article 33 of the Vienna Convention on the Law of Treaties, that the amendment made by the United Kingdom was broadly sufficient with its use of the term "exclusively", i.e. excluding the official languages in case of problems of interpretation of the Treaty.

104. Mr. CAVAZOS TREVIÑO (Mexico) said that his Delegation was in favor of the Basic Proposal as the best way to arrive at the authentic text.

105. The PRESIDENT said that there was a consensus in favor of retaining the text of the Basic Proposal, i.e. the Director General would draw up an official text that differed from those mentioned in paragraph (1), subject to consultation with the interested parties. In case of a discrepancy, the authentic texts, i.e. those which were original, would always prevail. Subject to those terms, he declared Article 24(2) approved.

106. Mr. JACKSON (CIPA) asked whether the text presented in brackets should be maintained or deleted.

107. Mr. CAVAZOS TREVIÑO (Mexico) asked whether the suggestion made by the Delegation of the United Kingdom was included in the approved text.

108. The PRESIDENT said that the proposal made by the United Kingdom would be taken into account by the Drafting Committee.

Article 25: Signature of the Treaty

108bis The PRESIDENT opened the discussion of Article 25, "Signature of the Treaty." *Since there was no objection, he declared Article 25 approved.*

Article 26: Depositary; Registration

108ter The PRESIDENT noted that, opening the discussion of Article 26, "Depositary; Registration," there was no objection and declared the Article approved.

109. Mr. PRAMUDYO (Indonesia) recalled the proposal its Delegation had made earlier regarding the settlement of disputes.

110. Mrs. BOLAND (United States of America) said that her Delegation wished to raise a similar issue.

111. Mr. EL FAKI ALI (Sudan) queried whether the word "adopted" which is used in the Arabic translation of Article 25 has the same meaning as the word "approved" in the English text.

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Article 16: Assembly

112. The PRESIDENT proposed continuing with Article 16 and the pending portion of Article 18. He said that the Secretariat had distributed an informal document indicating the number of ratifications required for the different Treaties administered by WIPO.

113. Mrs. ORNELAS LOERA (Mexico) said that her Delegation proposed that Article 16(1)(c) should be deleted, since it considered the subparagraph to be unnecessary. The door should not be closed to the possibility of granting financial support to members of the Delegations of Contracting Parties that participated in the Treaty Assembly, since such support was the practice in other WIPO meetings.

114. Mrs. OVIEDO ARBELAEZ (Colombia) expressed the support of her Delegation for the proposal made by the Delegation of Mexico.

115. Mrs. BOLAND (United States of America) stated that her Delegation opposed the deletion of paragraph (1)(c). In the previous meeting of the SCP the issue had been discussed in terms of minimizing the costs of holding these meetings, and the Delegation fairly strongly felt that the costs should be borne by the delegations of the Contracting Parties of the Treaty.

116. Mrs. EL MAHBOUL (Morocco) said that her Delegation supported the proposal by the Delegation of Mexico to delete subparagraph (c).

117. Miss EL KATEB (Tunisia) also said that her Delegation supported the proposal put forward by Mexico.

118. Mr. TRÉPANIÉ (Canada) indicated that his Delegation supported the comments made by the Delegation of the United States of America and opposed the deletion of Article 16(1)(c).

119. Mr. MATENJE (Malawi) stated that his Delegation supported the proposal made by the Delegation of Mexico.

120. Mr. MORENO PERALTA (Panama) said that his Delegation fully supported the proposal made by the Delegation of Mexico.

121. Mrs. MÁRQUEZ (Venezuela) said that, for the reasons outlined by the Delegation of Mexico, she considered that the proposal it had made was reasonable and that she supported it.

122. Mr. PESSANHA CANNABRAVA (Brazil) said that his Delegation also supported the proposal by the Delegation of Mexico because it believed that excessive reduction of costs would minimize participation in the Assembly.

123. The PRESIDENT said that it was not a matter of a roll call in which each Delegation would show itself to be in favor of or against the proposal. There appeared to be broad support for the proposal put forward by Mexico and he therefore suggested that the Committee should delete subparagraph (c), in accordance with that proposal. He proposed that, if there were no objection, he would request the Delegations of Canada and the United States of America to express their agreement with the proposal.

124. Mr. MOUKOURI (Congo) supported the proposal by Mexico to delete paragraph 1(c).

125. Mr. IWASAKI (Japan) stated that his Delegation shared the views of the Delegations of the United States of America and Canada and opposed the deletion of paragraph (1)(c).

126. Mrs. BOLAND (United States of America) recalled that the Assembly would not have its separate financial arrangements, so that the question of the source of the money to facilitate these expenses arose. In general, it would probably come out of PCT fees. The Delegation felt that this put too large a strain and demand on PCT users throughout the world. It, therefore, maintained its position in terms of opposing the deletion of subparagraph (c).

127. Mr. EL FAKI ALI (Sudan) stated that his Delegation supported the proposal to delete paragraph(1)(c). He recalled that the President had explained the practice in the International Bureau, namely that it was not the Assembly that provided the resources but the International Bureau of WIPO. The Treaty being within the purview of WIPO, the International Bureau would find the necessary means to provide assistance to delegations for this Treaty as it did for other treaties.

128. Mr. MOUKOURI (Congo) said that WIPO helped to cover the participation costs of delegates from several developing countries in most of its meetings. He also referred to the existence of appropriate bodies for matters relating to the resources used to organize a particular meeting, to which the representatives of certain countries were invited. He confirmed his support for the WIPO cooperation for development program, by means of which half of those present had been able to participate in the Conference, and said that the fact that a country made a generous contribution to the WIPO budget did not entitle it to request a stake in mechanisms which were not designed for that purpose.

129. Mr. BADRAWI (Egypt) said that his Delegation supported the deletion of paragraph(1)(c). As had been said by the Delegation of Mexico, it was not a question of the Assembly having the necessary resources and the Delegation believed that the International Bureau of WIPO had the resources for that. Provided this was so, there was no problem.

130. Ms. WILLIAMS (Australia) said that her Delegation was in favor of retaining paragraph (1)(c). Like the Delegation of the United States of America, it was concerned about the funding arrangements in this respect and whether it would result in further burdens being imposed on the users of the PCT.

131. Mrs. LAGARMILLA (Uruguay) said that her Delegation supported the proposal made by Mexico for two reasons. Firstly, there was no basis for the Patent Law Treaty to include a provision of the nature of Article 16(1)(c) and, secondly, that provision adversely affected the principle of democracy which the Treaty Assembly must respect and which WIPO held.

132. Mr. TOURÉ (Burkina Faso) noted, in line with the Delegation of Congo and the President himself, that it was not desirable to hamper the cooperation and development role that WIPO had played for a number of years by including a particular provision. Such a provision related to practical matters which could not be recorded in a Treaty of this kind, but which could be dealt with in timely fashion, within bodies such as the WIPO Assemblies. Adding that there had been no statement to the effect that developing countries could not, where necessary, provide for their delegates in accordance with their means, he said that his Delegation supported the proposal made by the Delegation of Mexico.

133. Mrs. BOLAND (United States of America), stated that it was the understanding of her Delegation that the PLT Assembly would have no budget. In contrast, other treaties that provided funding for delegates generally had budgets. It wished therefore to better understand the source of the funding that might take place if paragraph(1)(c) were deleted.

134. Mr. CAVAZOS TREVIÑO (Mexico) noted that the participation of the largest possible number of countries involved allowed a better and more balanced text to be adopted, which in the end would be of more help to users of the system. The only argument that had he heard against the Mexican proposal appeared to be that relating to costs. He considered that the costs could be very significant for developing countries, but would not necessarily be so for the International Bureau, since the costs for developing countries of participating in the Assembly would not represent even one per cent of the current WIPO surplus. As a compromise solution, his Delegation suggested incorporating a provision similar to that contained in Article 9(d) of the Treaty on Intellectual Property with respect to Integrated Circuits, adopted in Washington, D.C. in 1989, which stated: "The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations." Similarly, he proposed inserting the phrase "subject to subparagraph (d)" in the current paragraph (c), in order to establish the principle that each delegation should cover its own costs but at the same time acknowledge that it was possible to obtain financial assistance for those delegations that sought it.

135. Mrs. OLEMBO (Kenya) stated that her Delegation supported the proposal by the Delegation of Mexico, as explained in the latter version of that Delegation's presentation and in the intervention by the Delegation of Congo. Her Delegation was of the view that paragraph(1)(c) should be deleted rather than provide that those delegations needing assistance should request it. This would make it difficult for some delegations, in particularly when invitations to attend were received belatedly, and would be too limiting. The International Bureau should use its resources to obtain an equitable representation of all Contracting Parties in important meetings.

136. Mr. VIDAURETTA (Argentina) said that his Delegation noted with a certain concern the form the debate had taken, since it recalled that when discussing Rule 8 on the transitional period for the elimination of the filing of paper applications, reference had been made to the support that developed countries would provide for developing countries. It was worrying to note that doubt was now being cast on a much more fundamental issue, such as that of providing financial assistance for the purposes of participating in the Assembly, which was the body in which important decisions would be taken with respect to the Treaty and its Regulations. For that reason, his Delegation firmly supported the proposal made by the Delegation of Mexico.

137. Ms. BANYA (Uganda) said that her Delegation shared the feelings expressed by a number of other delegations, namely that the deletion of this particular item would be the best solution to the problem facing particularly developing countries. The very presence of so many delegations in this particular meeting was testimony of how useful it would be to have this particular Article here because it allowed the Organization to facilitate the participation of Member States that could otherwise not attend most meetings.

138. The PRESIDENT thanked the Delegation of Uganda for having recalled that a sizeable number of the delegates present at the Conference received funding traditionally provided by WIPO, and that without their participation it would be difficult to make progress in the work done and make certain treaties universally accessible.

139. Mrs. MÁRQUEZ (Venezuela) said that her Delegation supported the first proposal put forward by Mexico to delete Article 16(1)(c). She also noted that the Treaty had not included any provision that governed technical cooperation and assistance for the Contracting Parties that needed it, notwithstanding the fact that a number of standards had been included that obliged offices to make a significant change to structures for filing applications in electronic format and other related aspects. Finally, his Delegation considered that a provision such as that of subparagraph (c) should not be included in a treaty of the kind of that being negotiated, and therefore proposed that the subparagraph should be deleted.

140. The PRESIDENT asked once again whether there was any objection to Article 16(1)(c) being deleted, in view of the considerable number of delegations that had made a proposal to that effect.

141. Mrs. BOLAND (United States of America) said that, in terms of the issue of participation, her Delegation strongly supported and encouraged the widest possible participation in these meetings and thought it was very important to have wide participation to have the best outcome possible. She asked the Secretariat what funds would be available since there was no budget in this Union.

142. Mr. GURRY (WIPO), stated that if financial assistance were extended to delegations, the funding would have to be budgeted in the Program and Budget by the Organization when it adopted its biennial Program and Budget. It would thus come from one of four possible sources—there being four separate components to the Program and Budget—first, the contribution-financed Unions of WIPO; secondly, the budget derived from PCT fees; thirdly, the Madrid Union budget; and fourthly, the budget of the Hague Union.

143. *The PRESIDENT said that, in view of the consensus achieved, it had been agreed to delete Article 16(1)(c) and approve the rest of Article 16(1). Discussion of Article 16(2) was then opened.*

144. Mr. CALHEIROS DE GAMA (Portugal) referred to the proposal of his Delegation, presented, on behalf of the Member States of the European Union, to replace the text of Article 19(2) as presented in the Basic Proposal by the text proposed in document PT/DC/9. Adoption of this proposal would affect Article 16(2) item (v) concerning the functions of the Assembly. The Delegation therefore wished to suggest that the discussion of Article 16(2)(v) take place only after the discussion concerning Article 19.

145. Mr. JACKSON (CIPA), referring to an earlier discussion, drew attention to the fact that the words "Model International Formats" and "Formats" had been deleted elsewhere in the Treaty and that they should, therefore, also be deleted in Article 16(2), item (ii).

146. The PRESIDENT said that with the clarifications provided by CIPA and that since discussion of item (v) remained pending, as requested by the Delegation of Portugal, paragraph (2) was approved. Discussion of Article 16(3) began and said Article was approved. Opening discussion of paragraph (4), he said that the Secretariat had a proposal regarding Article 16(2).

147. Mr. JACKSON (CIPA) stated that his previous intervention also applied to Article 16(2).

148. Mr. BAECHTOLD (WIPO) explained that this proposal formed part of a suggestion which had been made by the Secretariat in Paper No. 3, in respect of the relationship between the PLT and the PCT. While the other suggestions in that Paper had already been adopted by Main Committee I, there was a remaining part on new Article 16(2), item (v)*bis*, concerning a task of the Assembly which would need to be performed in respect of the relationship between the PCT and the PLT. It was the view of Main

Committee I that this issue should be left to Main Committee II. He observed that the relationship between the PCT and the PLT would have not been able to operate without this paragraph.

149. Ms. WILLIAMS (Australia) stated that her Delegation strongly supported the inclusion of the proposed new item.

150. Mr. BARTELS (Germany) said that his Delegation supported the proposal made by the International Bureau.

151. The PRESIDENT said that the Secretariat's proposal would be inserted in paragraph (2) as item (*vbis*). *He then declared approved Article 16(4), (5) and (6).*

152. Mr. CRAMER (EPO) recalled that there was a proposal by the Delegation of Sudan on paragraph (4).

153. Mr. EL FAKI ALI (Sudan) introduced his Delegation's proposal in respect of Article (4) as contained in document PT/DC/29. Having considered the Basic Proposal and the Explanatory Notes, his Delegation felt that paragraph (4), as set out in the Basic Proposal, could create a conflict between intergovernmental organizations on the one hand and the Member States of such organizations on the other. The first part of the text referred to any Contracting Party and, if such a Contracting Party was an intergovernmental organization, it could participate in the vote in place of its Member States. However, it could not express the views of other members. This would mean that all representatives of the Member States of the organizations would have to be present in the meeting in order to express their own views as Member States according to the provisions of paragraph (1) which provided that each Contracting Party had one vote and would vote only in its own name. The Delegation of Sudan felt that this was not really necessary. The question that arose was who was entitled to vote. Was it the intergovernmental organization or its Member States? Under the current proposal, an organization had to take decisions by consensus. Indeed, the second part of the paragraph provided that no organization could vote if any one of its Member States were to vote. There could be conflicts of interests between the organization on the one hand and the Member State on the other. The question arose as to where the priority should lie. The text proposed by his Delegation would offer greater flexibility since intergovernmental organizations would be able to participate in the vote with a number of votes equal to the number of their Member States which were Parties to the Treaty, without creating any problem for those Member States. This was a very simple proposal in terms of its wording and compared to the text as it stood in the Basic Proposal.

154. Ms. WILLIAMS (Australia) stated that her Delegation did not support the proposal of the Delegation of Sudan which provided that an intergovernmental organization could vote on behalf of less than all of its Member States. An intergovernmental organization could only vote on the basis that it had competence to make binding legislation for all its members, or otherwise had competence throughout its territory, in respect of the matter put to the vote. If an intergovernmental organization were to vote for anything less than its full membership, this would demonstrate that it did not have the effective competence. This would invalidate its entitlement to vote in the first place. It would also lead to considerable uncertainty about the legal status of any outcome voted upon and this could undermine the normative effect of the Treaty. If an intergovernmental organization could not vote with the authority of all its members, then it should not have a vote. The current wording was also modeled on the existing wording in the WIPO Copyright Treaty and the Delegation of Australia considered that it provided for a satisfactory situation with regard to the rather complicated issue of intergovernmental organizations' voting. Her delegation, however, proposed that the term "vice-versa" at the end of the second sentence be deleted. It appeared superfluous since it was clear that the exercise of a vote by an intergovernmental organization would preclude any of its Member States' voting.

155. Mr. IWASAKI (Japan) stated that his Delegation was of the same view as the Delegation of Australia and wished to maintain paragraph(4) as set out in the Basic Proposal.

156. Mr. CRAMER (EPO) stated that his Delegation welcomed the idea behind the proposal by the Delegation of Sudan. It was not necessary that there be a conflict between the opinion of the organization and the opinion of its Member States. Where not all Member States were represented at a meeting of the Assembly, the EPO, for example, could possibly also express a vote for those countries that were not represented, which was in conformity with the wish of the Member States present.

157. Mrs. BOLAND (United States of America) said that her Delegation associated its position with that of the delegations that had opposed the changes proposed in document PT/DC/29. As mentioned by the Delegation of Australia, there was a precedent for the provision that was in the Basic Proposal and the Delegation of the United States of America wished to respect the negotiating history of that precedent and did not wish to depart from it in the Treaty.

158. Mr. NOOTEBOOM (European Community) observed that he represented one of the international organizations concerned by the proposal of the Delegation of Sudan. His organization had discussed the issue with the 15 Member States of the European Union. There were some difficulties with the proposal. The issue had been discussed at length at the Diplomatic Conference for the adoption of a new Act to the Hague Agreement concerning the International Deposit of Industrial Designs. The wording of this particular paragraph contained in the Basic Proposal reflected the outcome of that discussion and the participants in that Conference had been happy to reach an agreement. The novelty introduced by paragraph(4) was in its third sentence, which the European Community supported. It was therefore, extremely reluctant to open a discussion on this issue on the basis of the proposal by the Delegation of Sudan.

159. Ms. FRANCISCO (Philippines) declared that her Delegation did not support the proposal made by the Delegation of Sudan and associated itself with the intervention by the Delegation of Australia.

160. Mrs. WEIL-GUTHMANN (France) said that her Delegation associated itself with the statement made by the Commission of the European Communities and that it was satisfied with the provision included in the Basic Proposal. She added that her Delegation could not accept the proposal made by the Delegation of the Sudan, in as much as the Treaty under discussion should not be used to regulate the way in which one or other of the international organizations would participate in the vote, since the matter was entrusted to the competent bodies of the different international organizations.

161. Mr. KAUDYROV (Kazakhstan) observed that his country was a member of an intergovernmental organization and that the situation regulated in paragraph(4) was therefore of interest to it. The Delegation of Kazakhstan believed that any State which was a member of an intergovernmental organization would wish to participate because it was important to such States. The proposal of the Delegation of Sudan provided a possible solution to the conflictual situations that might arise. The Delegation, however, supported the Basic Proposal as it stood.

162. The PRESIDENT said that there appeared to a majority preference for retaining the original text of Article 16(4)(b)(ii) and deleting the words "and vice versa", in accordance with the suggestion made by the Delegation of Australia. *He therefore proposed that item (ii) should be approved and, since there was no objection, the item was duly approved. He also noted that there was no objection to Article 16(5), (6) and (7), which were therefore declared approved.*

Article 18: Revisions

162bis The PRESIDENT then opened discussion of Article 18(3).

163. Mrs. BOLAND (United States of America) introduced the proposal of her Delegation with request to Article 18(3)(a) contained in document PT/DC/31. The proposal was to exclude certain tasks of the Assembly under Article 16(2) from being amended by the Assembly. In particular, it was proposed, with reference to Article 16(2), that only items (i), (ii), (iv) and (v) be subject to amendment. In terms of the recitation in the Basic Proposal, the reference to item (iii) provided that the Assembly may amend the Regulations, and item (vi) authorized the Assembly to perform such other functions as were appropriate under the Treaty. The Delegation was of the opinion that the two provisions contained in Article 16(2)(iii) and (vi) should be excluded from Article 18(3) because Article 16 already provided the Assembly with broad authority and flexibility to respond accordingly to future issues and concerns. As a result, the Delegation did not see a need for including these provisions of Article 16(2) in the revision provisions of Article 18(3). Without these exclusions, these two provisions of Article 16(2) might be amended by the Assembly by a majority of a three-quarters vote cast in a manner that was not acceptable to a given Contracting Party. For example, the Assembly could amend Article 16(2)(vi) referring to the ability of the Assembly to perform appropriate functions under the Treaty, by either limiting those functions of the Assembly, or by permitting the Assembly to perform other functions as appropriate under another treaty. For these reasons, the Delegation of the United States of America wished to exclude items (iii) and (vi) from the reference in Article 18(3) to Article 16(2).

164. Mr. IWASAKI (Japan) stated that his Delegation could accept the proposal of the Delegation of the United States of America.

165. Ms. WILLIAMS (Australia) said that her delegation supported retaining Article 18(3)(a) as it stood in the Basic Proposal. Under Article 18(3)(b), a revision of Article 16(2) would require three-fourths of the votes cast which was a greater requirement than that provided in Article 16(5)(a), whereby other decisions of the Assembly required two-thirds of the vote cast.

166. Mr. BÜHLER (Switzerland) requested clarification from the Delegation of the United States of America as to item (v)*bis*, which had just been adopted in the context of Article 16(2), namely whether it was included or not in the proposal.

167. Mr. BOUCOUVALAS (Greece), said that his Delegation supported the Basic Proposal with regard to Article 18(3)(a).

168. Mrs. BOLAND (United States of America), replying to the question of the Delegation of Switzerland, said that her Delegation's proposal for Article 18(3) included Article 16(2)(i), (ii), (iv), (v) and (v*bis*).

169. Mr. BOGDANOV (Russian Federation) stated that his Delegation supported the Basic Proposal as regards paragraph (3). However, it requested clarification as to Article 16(2) new item (v*bis*). Comparing the Russian translation and the English text, it was unclear to the Delegation exactly to what the English word "which" after the comma referred to.

170. Mrs. OLEMBO (Kenya) said that her Delegation wished to maintain paragraph (3) as contained in the Basic Proposal. In its view, leaving out item (iii) as suggested by the Delegation of the United States of America, did not really make much difference since here it was only emphasized again.

171. Ms. LÖYTÖMÄKI (Finland) declared that his Delegation preferred paragraph (3) as set out in the Basic Proposal.

172. Mrs. BOLAND (United States of America) asked, in terms of the structure of Article 16 relative to Article 18, if the International Bureau could elaborate on the need to have the possibility of amending the Regulations in Article 18(3) when it was already a task of the Assembly under Article 16(2), item (vi). It seemed duplicative to recite this again in Article 18(3).

173. Mr. GURRY (WIPO) explained that Article 18 dealt with the revision of the provisions of the Treaty as opposed to the amendment of the Regulations themselves. Article 18(3) thus set out an alternative means of amending certain provisions of the Treaty, a method that was alternative to a revision pursuant to a diplomatic conference. Article 16(2) empowered the Assembly to amend the Regulations. So it might be, for example, that, under Article 18(3), the Assembly would decide that, in the future, Article 16(2)(iii) should read "amend the Regulations and any Administrative Instructions that are adopted under the Regulations". Those provisions addressed two different procedures.

174. Ms. FRANCISCO (Philippines) noted that under Article 18(3)(b), the quorum required was three-fourth of the votes cast, whereas under Article 14(2), the three-fourth of the votes cast was subject to Article 14(3) which allowed amendment of certain Rules only by unanimity. In applying Article 18(3)(b), there might be a conflict on the number of votes required, should the item to be voted on be an amendment of the Regulations. The delegate expressed her support for item (ii) in the list of the proposal of the United States of America.

175. Mr. PESSANHA CANNABRAVA (Brazil) expressed his Delegation's preference for the Basic Proposal.

176. Mr. EL FAKI ALI (Sudan) expressed support for the text of the Basic Proposal.

177. *The PRESIDENT noted that there were no objections to retaining Article 18 in accordance with the Basic Proposal and therefore declared the Article approved.*

Article 20: Entry into Force; Effective Dates of Ratifications and Accessions

177*bis* The PRESIDENT then opened discussion of Article 20.

178. Mr. GRIGORIEV (EAPO) asked for clarification on whether Article 19 had been adopted, or whether it would still have to be discussed.

179. Mr. CAVAZOS TREVIÑO (Mexico) said that the information presented by the Secretariat on the number of ratifications and accessions necessary for treaties to enter into force demonstrated that of 22 international treaties only three required a number of accessions greater than that indicated in the Basic Proposal for the Treaty. In that connection, his Delegation supported the wording of Article 20(1), as expressed in the Basic Proposal.

180. Mrs. AFONSO (Portugal) said that she wished to introduce a proposal on behalf of the Member States of the European Union regarding Article 19(2).

181. Mr. VIDAURETTA (Argentina) requested that his Delegation's position be recorded in the Conference records, to the effect that it considered ten accessions or ratifications to be too low a number for the new Treaty to enter into force.

182. Mr. BADRAWI (Egypt) stated that the WPPT required 30 ratifications in order to enter into force. The suggestion for the Treaty under discussion was 15 ratifications, and his Delegation wondered what other delegations felt about that suggestion.

183. Mr. ZOUA (Cameroon) said that his Delegation wished to subscribe to the views of the Delegation of Egypt. Given the principle of proportionality and the high participation in the present Conference, more than 10 ratifications or accession should be required.

184. Mr. HERALD (Australia) referred to the informal list with the overview on the various requirements for entry into force contained in WIPO administered treaties. He noted, in particular, that the TLT which appeared to have a similar number of participating countries required five instruments of ratification or accession in order to enter into force. The Delegation said that it was in favor of lowering the figure of required instruments of ratification or accession rather than increasing it.

185. Mr. HE (China) expressed support for the text of the Basic Proposal.

186. Mr. RAJAN (Ireland) said that he could not see any logic in arguing that the numbers should be increased, because the Treaty was meant to be a "user-friendly treaty," and would benefit all nationals of all States once it entered into force.

187. Mr. BADRAWI (Egypt) said that, in a spirit of cooperation, his Delegation could accept the text of the Basic Proposal.

188. The PRESIDENT asked whether there would be any objections to approving the text of Article 20(1), as per the Basic Proposal. *Since there were no objections, he declared the provision approved.*

Article 19: Becoming Party to the Treaty

188bis The PRESIDENT then opened discussion of Article 19.

189. Mrs. AFONSO (Portugal) introduced a proposal on behalf of the Member States of the European Union regarding Article 19(2). The background for that proposal was that the European Community was preparing a Community Patent that would cover all Member States of the European Union. Once the system was adopted, the European Community would be prepared to join the Treaty. In other treaties on industrial property, there was no requirement on the decision by the Assembly to admit an intergovernmental organization. Therefore, the Presidency of the European Union suggested deleting that requirement from Article 19(2). This reflected the conditions for adherence of intergovernmental organizations to treaties such as the Madrid Protocol on the International Registration of Trademarks, and the Hague Agreement Concerning the International Registration of Industrial Designs. Following an informal discussion of that proposal with delegations from third countries, the Delegation said that it had further reflected on the wording of the proposal. As a consequence, the delegate propose to add an additional requirement to Article 19(2)(ii), to the effect that having its own legislation was not sufficient for an intergovernmental organization to become party to the Treaty. In addition to the existing requirements, intergovernmental organizations would have to provide for a regional Patent Office for granting patents in the territory of the intergovernmental organization. This additional requirement

reflected the current situation under the Madrid Protocol and the Hague Agreement. These amendments, if accepted would entail the deletion of Article 16(2)(v) and the reference, in Article 20(2)(iv), to an intergovernmental organization that was admitted to become party to the Treaty.

190. The PRESIDENT asked the Secretariat how the proposal made by Portugal could be incorporated in the text.

191. Mrs. AFONSO (Portugal) said that the words "and it has charged a regional Office for the purposes of registering patents with effect in its territory in accordance with that legislation" would be added to Article 19(2)(ii).

192. Mr. GURRY (WIPO) explained that the proposal that has just been tabled by the Delegation of Portugal would have the effect of amending the text that was already contained in document PT/DC/9 so that paragraph (2)(ii) would read as follows: "it is competent in respect of, and has its own legislation binding on all its Member States concerning matters covered by this Treaty, and it has, or has charged, a regional Office for the purposes of granting patents with effect in its territory in accordance with that legislation."

193. Mr. NOOTEBOOM (European Community) expressed the full support of his Delegation to the proposal of the Delegation of Portugal made on behalf of the Member States of the European Union. The European Community was about to adopt and to present a proposal for the creation of a unitary Community patent which would cover the whole territory of the European Union, and the Union would clearly be ready to adhere to the PLT in order to ensure the respect of the PLT by the nationals of its Member States and in relation to the European Community patent system. The Delegation said that it would prefer that the mechanism that had been agreed for earlier international treaties would apply, namely that international organizations which fulfilled the conditions for accession laid down in those Treaties would be eligible for membership. The text of the Basic Proposal added a new component to that accession system by requiring a specific decision from the Assembly for the accession of international organizations such as the Community. However, such a precedent would be difficult to accept. In view of concerns with the initial proposal of the Delegation of Portugal, the Delegation fully supported the additional requirement presented by the Delegation of Portugal. This clarified that the fact that an international organization had legislation on the subject matter covered by the Treaty in itself should not be sufficient ground for accession. A second additional element should be fulfilled, namely that such an international organization should also have a regional Patent Office which was empowered to grant patents with effect for the territory of such organizations. As far as the European Community was concerned, it was the intention of the European Community that the European Patent Office in Munich would be charged with the task to grant Community patents.

194. Mr. STRENC (Romania) expressed support for the proposal of the Delegation of Portugal. Concerning Article 19(1), the delegate proposed the replacement of the word "obtain" by the word "granted."

195. Mr. GRIGORIEV (EAPO) said that his Delegation supported the proposal by the Delegation of Portugal. Indeed, the EAPO already granted a model patent that was valid in nine States. He further suggested to omit, in Article 19(3) the square brackets around the words "the Eurasian Patent Organization."

196. Mr. HERALD (Australia) said that his Delegation would prefer to retain the text as it appeared in the Basic Proposal. In spite of the extra wording, which has been proposed by the Delegation of Portugal, his Delegation had concerns about the interpretation of the conditions for eligibility, for example, in subparagraph (2)(ii). Uncertainty could arise regarding the nature of legislation that appeared to have some relationship to matters covered by the Treaty.

197. Ms. CRITHARIS (United States of America) proposed additional language to the chapeau of Article 19(2). Prior to the semi-colon, the Delegation wished to add "it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty and that;". With the addition of this language, the Delegation could support the proposal with the amended language that was tabled by the Delegation of Portugal.

198. Mr. RAJAN (Ireland) expressed support for the proposal of the Delegation of Portugal. Furthermore, he suggested to change the word "registering" to "granting" so that the wording

conformed with that of Article 3(2). Furthermore, the delegate referred to paragraph (2)(ii), according to which "the intergovernmental organizations must be competent in respect of and has its own legislation binding on all its Member States concerning matters covered by this Treaty." One of the regional organizations listed in Article 19(3) was the EPO. It was competent to grant patents with effect for its Member States, including Ireland in accordance with item (i). However, the delegate wished to point out that the legislation of the EPO was not binding on the procedures in the Irish Patent Office, which were covered by the Treaty. He suggested that this explanation be included in the Explanatory Notes.

199. Ms. HUIEROVÁ (Czech Republic) supported the proposal made by the Delegation of Portugal and the statement of the European Community.

200. Mr. IWASAKI (Japan) welcomed the intention of the European Union to join the Treaty. The Delegation would accept the amended proposal of the Member States of the European Union.

201. Mr. OMOROV (Kyrgyzstan) expressed support for the proposal of the Delegation of the United States of America regarding Article 19(2). Furthermore, his Delegation was opposed to removing the square brackets around Article 19(3) regarding Eurasian Patent Organization.

202. Ms. FRANCISCO (Philippines) asked the Delegation of Portugal to repeat the consequential changes arising from the new wording and with respect to the other Articles in the Treaty. Furthermore, the delegate asked whether membership in the EPC and the European Community was not exactly the same.

203. Mr. NOOTEBOOM (European Community) referred to the draft suggestion made by the Delegation of the United States of America and said that the European Community as such would be very positive to the proposal made by the Delegation of the United States of America. However, he asked for the possibility to discuss that proposal with the Member States.

204. Mr. GURRY (WIPO) read out the proposal by the Delegation of Portugal on behalf of the Member States of the European Union, as amended. The basic text appeared in document PT/DC/9, and the amendment concerned the addition, at the end of the first paragraph, of the words, "declares that it has been duly authorized in accordance with its internal procedures to become party to the Treaty and that:" Item (i) remained the same. Item (ii) would be supplemented, after the word "Treaty," by "and it has, or has charged, a regional Office for the purposes of granting patents with effect in its territory in accordance with that legislation."

205. Mr. GRIGORIEV (EAPO) said that it had been concluded in informal discussions that the Eurasian Patent Organization was competent for the purposes of Article 19(2)(i).

206. Mrs. AFONSO (Portugal) on behalf of the Member States of European Union, accepted the proposal made by the Delegation of the United States of America.

207. Mr. OMOROV (Kyrgyzstan) said that an informal agreement had been reached with the President of the Eurasian Patent Organization, to delete the square brackets around the term "Eurasian Patent Organization" in Article 19(3).

208. Mr. HERALD (Australia) stated that, with the two amendments that had been proposed to the original amendment contained in document PT/DC/9, his Delegation could agree to the proposed amendment.

209. Mr. PESSANHA CANNABRAVA (Brazil) expressed support for the amended proposal.

210. Mr. BOGDANOV (Russian Federation) declared that his Delegation supported the text of the second paragraph with the amendments provided by the European Union and the Delegation of the United States of America. However, his Delegation stated that the participation of an organization in the Treaty depended on fulfilling certain requirements and not on making any kind of declaration. Therefore, Article 19(2) should not refer to a declaration made in the Assembly.

211. Mr. GURRY (WIPO) explained that the opening words "the Assembly may decide" had been removed, which left the issue for paragraph (3), where certain regional organizations were designated between square brackets. It was envisaged that they might make the declaration in the Diplomatic Conference and he believed that one such Delegation has just made such a declaration. The other

declarations would be made presumably in the Plenary. However, it seemed that there was a more general proposal on the table concerning declarations that might deal with the concerns of the Delegation.

212. Mr. BOGDANOV (Russian Federation) declared that, if the most recent drafting proposed by the European Community with the amendments proposed to the Delegation of the United States of America was accepted, then there was no logic in maintaining the word "declare" nor in maintaining Article 19(3).

213. Mr. NOOTEBOOM (European Community) suggested to delete in the amended proposal the words "declares that it," so that the sentence would read "that the intergovernmental organization has been duly authorized in accordance with the internal procedures to become party to the Treaty and that it is competent ...".

214. Mr. HERALD (Australia) asked who was going to make the assessment of whether an organization had been duly authorized.

215. Mrs. WEIL-GUTHMANN (France) said that, in order to resolve the difficulty raised by the Delegation of the Russian Federation, her Delegation was prepared to accept the amendment proposed informally by the Commission.

216. Mr. CRAMER (EPO) said that, under the revised wording as read out by the International Bureau, the Delegation would be able to make the declaration referred to in Article 19(2) of the Basic Proposal as it stood at the Diplomatic Conference, but it would not be able to declare that it had been duly authorized to be party to the Treaty at the Diplomatic Conference.

217. Mr. BOGDANOV (Russian Federation) said that, in the opinion of his Delegation, it would be the States as referred to in paragraph (1) that would determine the conditions set out in paragraph (2).

218. Mr. GURRY (WIPO) explained that, if there was a declaration, it was a normal part of the depositary functions of the Director General as depositary of the treaty to notify all Contracting Parties that such a declaration had been made. As a matter of practice in WIPO administrated treaties, the Director General as depositary did not verify the substance of any declaration but only the formal compliance of the declaration with the requirements of the treaty in question, and duly notified the declaration as it was set out in the functions of the depositaries in Article 77 of the Vienna Convention on the Law of Treaties. According to that Convention, precisely one of the functions of the depositary was to receive any signatures of the treaty or any notifications or communications relating to it and to inform the parties and States entitled to become parties to the treaty of any acts, notifications, and communications relating to the treaty. Consequently, there was a formal mechanism to deal with declarations.

219. Mr. HERALD (Australia) said that in the context of the mechanisms for depositing ratifications to the Treaty, the Delegation would like to see the continuing practice of a State making a declaration. The situation at hand was quite different to the rest of the Treaty, and it was appropriate and desirable that the declaration was made in that context.

220. Ms. CRITHARIS (United States of America) said that her Delegation would like to retain the declaration practice.

221. Mr. NOOTEBOOM (European Community) said that his Delegation would like to maintain the proposal including the making of declarations.

222. The PRESIDENT asked whether Article 19 could be approved. Since there was no objection, he declared the Article approved.

223. Ms. CRITHARIS (United States of America) referred to the proposal of her Delegation set out in paragraph 16 of document PT/DC/8. The proposal was deleting the expression "refer to" which appeared in the chapeau of Article 19(4) and replacing it with "satisfying the requirements."

224. The PRESIDENT asked whether a consensus existed with a view to approving the proposal made by the Delegation of the United States of America. *Since there was no objection, he declared the proposal put forward with respect to Article 19 approved.*

225. Mr. CRAMER (EPO) said that his Delegation was questioning the implications of the suggested amendments to Article 19(2). It wished to clarify what would happen to paragraph (3) if the EPO were not able to make the declaration of being authorized. The delegation asked what would happen to the square brackets in paragraph (3) and the other Articles which contained a reference to the EPO in square brackets.

226. Mr. GURRY (WIPO) said that the problem appeared to be that the EPO was saying that it was unable to make a declaration that it had been authorized in accordance with its internal procedures to become party to the Treaty and, therefore, paragraph (3) could not apply to it. Therefore, the words "European Patent Organization" in paragraph (3) would have to be deleted and the EPO would have to rely on paragraph (4) in order to become party to the Treaty.

227. Mr. CRAMER (EPO) asked whether it was not possible to limit the declaration to paragraph (2)(i), because his Delegation could make that declaration at the Diplomatic Conference.

228. The PRESIDENT said there was a consensus to delete Article 19(3) whereby the procedure would be fixed in accordance with paragraph (4) of that Article.

229. Mr. BOGDANOV (Russian Federation) said that it seemed to his Delegation that paragraph (3) had to remain in the Treaty because it provided for a simplified procedure for those organizations to become potential parties to the Treaty. In connection with the comments made by the European Community, one simply needed to determine what kind of declaration would be made and, in particular, whether it had any bearing on item (i) and (ii) of paragraph (2). The delegate believed that the amendment proposed by the Delegation of the United States of America would lead to a situation in which the four organizations cited in paragraph (3) were not able to make such declarations at the Diplomatic Conference. The Eurasian Patent Organization decided to set aside the question whether it should become party to the Treaty. The Eurasian Patent Organization met the requirements under item (i) since it was competent to grant patents with effect for its nine Member States. When preparing for the Diplomatic Conference, there was no doubt that the Eurasian Patent Organization would be able to be a potential party to the Treaty. It also seemed fair to make the same comment in relation to the EPO. If other organizations were not prepared to make such declarations at the Diplomatic Conference, the Delegation would request that paragraph (3) be maintained with mention of the Eurasian Patent Organization.

230. Mr. TROICUK (Canada) commented that inclusion of the words "it has been duly authorized in accordance with its internal procedures" could take care of the concerns raised. Article 19(2) could have three items. The first item was that proposed by the Delegation of the United States of America, namely a declaration that "it has been duly authorized in accordance". The other requirements would become item (ii) and (iii). Article 19(3) would only have to relate back to item (ii) and (iii). Because it was done in the context of this Diplomatic Conference, the delegate did not think that there was a need for the declaration to relate back to the first part. In paragraph (3), it could say having made the declaration referred to in paragraph (2)(ii) and (iii).

231. Mr. BARTELS (Germany) said that the Diplomatic Conference was now in the same situation as was the Standing Committee last September, when the Standing Committee discussed exactly the same question concerning the inclusion of the words "it has been duly authorized in accordance, etc." In the Standing Committee these words had been deleted in the light of an intervention of the EPO, in which it had stated that it could not make this declaration in the Diplomatic Conference. Explanatory Note 19.03 explained that the four organizations which were referred to in paragraph (3), should be able to become party to this Treaty without a decision of the Assembly. From that Note, it became clear that there should be a simplified way for these four organizations to join the Treaty, because there were no doubt of their eligibility to become party to the Treaty. Therefore, the delegate welcomed the proposal by the Delegation of Canada and expressed his support for it.

232. Mr. KAUDYROV (Kazakhstan) suggested not to make any changes to paragraph (2)(i), and to omit the square brackets in paragraph (3), because the EAPO was ready to make the declaration referred to. However, the best solution would be, even if there was only one organization that was ready to meet the requirements, to use the simplified procedure for that organization.

233. Mr. GRIGORIEV (EAPO) expressed support for the statements made by the Delegations of the Russian Federation, Germany and Kazakhstan. He wondered whether there was any other organization which was able to lift the square brackets.

234. Ms. CRITHARIS (United States of America) asked the Delegation of Canada to repeat its proposal.

235. Mr. TROICUK (Canada) said that the proposal would provide that the additional language, which the United States of America had proposed for addition to the end of the chapeau of paragraph (2), would become item (i), then existing item (i) and (ii) would become item (ii) and (iii). Furthermore, the words "having made the declaration referred to paragraph (2)" would be limited to "having made the declaration" or "parts of the declaration." "Having made the declaration referred to in paragraph (2)(ii) and (iii)" meant that there would be no need for the organizations to make the declaration required under item (i) at the Diplomatic Conference.

236. Mr. TRAMPOSCH (WIPO) commented that a simpler version of the same proposal could be to insert, in paragraph (3), a reference to paragraph (2)(i) or (ii). It could even be said "having made the parts of the declaration referred to in paragraph 2(i) or (ii)."

237. Mr. CRAMER (EPO) welcomed the proposal made by the Delegation of Canada. As regards paragraph (3), the Delegation proposed to use the word "or" between item (ii) and (iii) instead of "and."

238. Ms. CRITHARIS (United States of America) said that, while her Delegation could support the substance of the proposal by the Delegation of Canada, she thought that location of the connectors was very important and, for that reason, supported the proposal made by the International Bureau, namely to keep the language of the original proposal of the United States of America in the chapeau and, to refer in paragraph (3) to item (i) and (ii), rather than to the entire paragraph.

239. Mr. OMOROV (Kyrgyzstan) expressed agreement with the proposal of the Delegation of Canada on paragraph (2), but opposed the removal of item (i) from paragraph (3).

240. *The PRESIDENT said that there was a consensus to adopt Article 19(3), which was therefore declared approved with the amendments suggested by the European Union, United States of America and the Secretariat.* He also specified that there was agreement to adopt the suggestion made by the Russian Federation to add in Article 1 a definition of "instrument of ratification", as contained in document PT/DC/14.

241. Mr. PRAMUDYO (Indonesia) referred to the question raised earlier in connection with the need to add an Article on settlement of disputes to the Treaty. Almost all international treaties had Articles concerning the settlement of disputes. The Delegation proposed an Article concerning settlement of disputes with the following wording: "Any dispute arising between two or more Contracting Parties concerning the interpretation or the application of this Treaty and Regulations shall be settled amicably through consultation or negotiations under the auspices of the Director General."

242. The PRESIDENT said that in addition to the proposal made by Indonesia, there was a proposal by the Delegation of the United States of America, contained in document PT/DC/8, to include a new article on statements made by Contracting Parties. He requested the Delegation of Indonesia to prepare its proposal in writing for circulation. He then declared the session of Main Committee II closed.

Third Session
Monday, May 29, 2000
Morning

243. The PRESIDENT said that proposals from some Delegations were still pending. He proposed firstly to consider the proposal made by Indonesia, contained in document PT/DC/34.

244. Mr. PRAMUDYO (Indonesia) said that he wished to amend the proposal submitted by his Delegation by changing the word "shall" to "may" so that the sentence would read as follows: "Any dispute arising between two or more Contracting Parties concerning the interpretation or the application of this Treaty and its Regulations, may be settled amicably through consultation or negotiation under the auspices of the Director General." He explained that this provision would provide Contracting Parties with a mechanism to seek a solution in case of any dispute occurring in the implementation of this treaty, as well as differences in its interpretation. Stating that he realized that some treaties administered by

WIPO did not contain any dispute settlement provisions, Article 59 of the PCT did contain such a provision, even though some countries including Indonesia had made reservation to this Article. He said that the Director General would, in view of his high personal integrity and wide experience, be the most suitable person to act as neutral mediator and to give valuable advice and assistance during the process, particularly to parties from developing countries. He expressed his belief that the Director General would exercise his authority wisely and provide good offices appropriately. He said that, during the consultation or negotiation under the auspices of the Director General, the dispute could be brought into other means of dispute resolution under the WIPO system, if the parties so agreed.

245. Mr. VIVAS EUGUI (Venezuela) said that his Delegation supported the proposal made by Indonesia with the changes described. He suggested that in the proposal the word "negotiation" should be replaced by the term "mediation," which technically speaking appeared to be more appropriate.

246. Mrs. EL MAHBOUL (Morocco) thanked the Delegation of Indonesia for the proposal it had made and the Delegation of Venezuela for the amendment provided, and emphasized that since WIPO had an arbitration center, it would be well placed to deal with this kind of problem.

247. Ms. CRITHARIS (United States of America) expressed her appreciation to the Delegation of Indonesia for bringing that important issue to the attention of the Conference. With regard to the suggestion of making it a discretionary provision, she said that, rather than including it as an Article in the Treaty, it might be better placed as an Agreed Statement since it would not be mandatory.

248. Mr. HABIBI (Libyan Arab Jamahiriya) stated that any solution arrived at during mediation under the auspices of the Director General should be final and not subject to any possibility of appeal.

249. Mr. MORIYASU (Japan) declared that he hesitated to support the insertion of the new Article proposed by the Delegation of Indonesia. He agreed with the view expressed by the Delegation of the United States of America that an Agreed Statement would be more suitable.

250. Mr. SHEHU-AHMED (Nigeria) supported the proposal made by the Delegation of Indonesia with the modification proposed by the Delegation of Venezuela.

251. Mr. MATENJE (Malawi) declared that he supported the proposal made by the Delegation of Indonesia in principle. He stated that the provision would be better placed in the Treaty itself since it concerned an important procedural issue which should not be relegated to the status of an Agreed Statement. However, he joined the Delegation of Libyan Arab Jamahiriya in asking for clarification as to whether the proposed Article would provide for an appeal.

252. Mr. TROICUK (Canada) welcomed the proposal made by the Delegation of Indonesia as a reflection of the generally accepted principle that Contracting Parties should try and resolve any disputes amicably. In his view, such a procedure would appropriately be carried out under the auspices of the Director General of WIPO. He also supported the modification to make it a discretionary procedure nature, but pointed out that it should, under these circumstances, be included as an Agreed Statement which could read as follows: "In adopting the PLT, the Contracting Parties understood that when any dispute arises between two or more Contracting Parties concerning the interpretation or the application of this Treaty or its Regulations, the Contracting Parties will make best efforts to settle amicably through consultation and negotiation under the auspices of the Director General."

253. Mr. RAJAN (Ireland) asked whether provisions concerning settlement of disputes were included in other treaties concluded under the auspices of WIPO.

254. Mr. GURRY (WIPO) explained that many of the WIPO administered treaties, such as the Paris Convention and the Berne Convention, provided as a general provision for a settlement of disputes by reference to the International Court of Justice, whereas the trend in the more recently adopted treaties, such as the WIPO Copyright Treaties of 1996, but with the exception of the 1989 Washington Treaty on Intellectual Property in Respect of Integrated Circuits, was not to include any provision on dispute settlement.

255. Mr. OMOROV (Kyrgyzstan) stated that his Delegation, in principle, supported the proposal made by the Delegation of Indonesia. However, it concurred with the position expressed by the Delegation of the

United States of America to add it to the Treaty as an Agreed Statement. He also noted that the Russian text would have to be slightly amended.

256. Mr. HAQUE (Bangladesh) supported the proposal made by the Delegation of Indonesia.

257. Mr. HERALD (Australia) associated himself with the comments made by the Delegation of Canada and supported the wording for an Agreed Statement suggested by that Delegation.

258. Mr. BOUHNİK (Algeria) suggested drafting an agreed statement on this subject, worded as follows: "The parties shall endeavor to settle amicably disputes arising in cases of *force majeure*," and proposed defining such cases by stating: "*force majeure* shall be considered to be any situation that the parties have been unable to foresee, avoid, or evade."

259. Mr. HE (China) supported the substance of the proposal made by the Delegation of Indonesia, and the proposal by the Delegation of Canada to include it in an Agreed Statement.

260. Mr. PESSANHA CANNABRAVA (Brazil) said that he could live without having a provision on dispute settlement in the Treaty, particularly in view of the fact that the recent WIPO treaties did not contain such a provision. Recognizing that it might be useful to establish some dispute settlement mechanism, he supported its inclusion in an Agreed Statement, and the proposal made by the Delegation of Venezuela to substitute the word "negotiation" for "mediation."

261. The PRESIDENT noted that all the Delegations that had spoken were in agreement to include a provision on settlement of disputes in the Treaty, based on the proposal by Indonesia, contained in document PT/DC/34. He noted that the use of the word "may" in English would make that standard an optional provision.

262. Mrs. HAJDÚ (Hungary) supported the proposal made by the Delegation of Indonesia with the amendment proposed by Venezuela, and expressed a preference for adopting it as an Agreed Statement.

263. Mr. STRENC (Romania) said that he appreciated the importance of the statement made by Indonesia and agreed to the introduction of the possibility to settle the dispute amicably. Nevertheless, his Delegation preferred an agreed statement which should contain this provision.

264. Mr. BARTELS (Germany) thanked the Delegation of Indonesia for having proposed a new article on settlement of disputes. He was also grateful for the question raised by the Delegation of Ireland on the manner in which the settlement of disputes was dealt with in other treaties. His Delegation considered that it appeared to be more appropriate to incorporate the proposal made by Indonesia in an agreed statement than in a new article.

265. Mr. BLINNIKOV (EAPO) informed delegates that the proposal made by the Delegation of Indonesia was similar to Article 24 of the Eurasian Patent Convention which provided: "in the event of any need for settlement of dispute arising under this Convention, the Director General of WIPO, on request of either of the parties, will act as a mediator in helping to arrive at a settlement of a dispute."

266. Mr. EL FAKI ALI (Sudan) thanked the Delegation of Indonesia for having brought up such an important matter, but stated that he preferred to include this provision in the form of an Agreed Statement rather than an Article, and that he supported the amendment proposed by the Delegation of Venezuela.

267. Mr. PRAMUDYO (Indonesia) agreed to replace the word "negotiation" by "mediation" as proposed by the Delegation of Venezuela, but stated that he still preferred to include the Article in the Treaty itself, rather than adopting it as an Agreed Statement.

268. Mr. BADRAWI (Egypt) thanked the Delegation of Indonesia for its proposal, because it concerned an extremely important and vital matter, especially from a legal point of view. It would cause problems if a Treaty did not include a provision for the settlement of disputes. He stated, however, that such a provision or an Agreed Statement would have to set out the different stages of the procedure, in order to provide for a complete mechanism.

269. The PRESIDENT asked whether there was a consensus to approve the proposal made by Indonesia, or whether it were preferable to conduct informal consultations so as to decide whether that proposal should be included as a new Treaty article or whether it would be left as an agreed statement.

270. Ms. CRITHARIS (United States of America) stated that her Delegation strongly preferred the issue of dispute settlement to be dealt with as an Agreed Statement, and would oppose its inclusion as an Article in the Treaty.

271. The PRESIDENT suggested that informal consultations should be held so as to determine whether the proposal made by Indonesia would be included in the Treaty as an additional article or as an agreed statement. He also recalled that the proposal made by the Delegation of the United States of America, contained in paragraph 21 of document PT/DC/8, was pending.

Article 19: Becoming Party to the Treaty

272. Ms. CRITHARIS (United States of America) stated that her Delegation regarded the issue presented in paragraph 21 of document PT/DC/8 as a fairly minor one. She noted that in terms of the review of the final and administrative provisions, there was the ability to make certain declarations in Article 22 of the draft PLT, but that no provision was made for the mechanism of those declarations. She asked the International Bureau or the Drafting Committee to look into that matter.

273. She said that she could not suggest any specific wording at that time.

274. Mr. GURRY (WIPO) stated that Article 19 of the Basic Proposal, would seem to be the only provision under which the possibility of a declaration could arise, and in which the modalities for a reservation were dealt with in the Article itself. He suggested that words like the following be included at the end of paragraph 2: "subject to paragraph 3, any such declaration shall be made at the time of the deposit of the instrument of ratification or accession."

275. The PRESIDENT specified that a new article would not be incorporated but that an addition would be made to the current Article 19(2).

276. Mr. BADRAWI (Egypt) asked for clarification as to the words that would be added and where they would be inserted.

277. Mr. GURRY (WIPO) explained that the only provision that contained a mention of a declaration being made, was Article 19(2), without a modality being specified. Therefore, instead of providing for a completely separate Article, he suggested simply adding at the end of that paragraph 19(2), the following sentence: "subject to paragraph 3, any such declaration shall be made at the time of the deposit of the instrument of ratification or accession."

278. Mr. BADRAWI (Egypt) asked what legal impact this amendment would have.

279. Mr. GURRY (WIPO) explained that it was understood as a procedural mechanism filling in a gap, because a treaty would, when declarations were to be made, normally set out a mechanism or a modality for making that declaration. The draft Treaty, however, did not contain any provision for directing the Contracting Parties on how they could make the declaration referred to under Article 22. The suggested addition would therefore merely provide that formal procedural mechanism.

280. Mr. NIYONKURU (Burundi) said that the reference to "cette déclaration" ("this declaration") in the French version of Article 19(2) was awkward, in as much as the word "déclaration" was not mentioned as such in the subparagraph in question.

281. The PRESIDENT asked delegations whether the suggestion made by the United States of America, with the language and in the position suggested by the legal counsel, could be included in the Treaty. *Since there was no objection, the proposal was approved.*

282. Mr. STOHR (EPO) asked to which type of declaration mentioned in Article 19(2) the suggested addition would relate.

283. Mr. RODAS POZO (Ecuador) asked whether the International Bureau could provide information on the reasons for which the authors of the Paris and Berne Conventions had not included provisions in those treaties on settlement of disputes, similar to the proposal made by Indonesia. Such information would be useful in the informal discussions on the matter.

284. Mr. GURRY (WIPO) suggested that the matter raised by the Delegation of the EPO be referred to the Drafting Committee. The intention was to cover every type of declaration.

285. *The PRESIDENT said that the addition to Article 19(2) had been approved and that it remained for the Drafting Committee to take into account the concerns regarding form and style expressed by delegations.*

286. Mr. GURRY (WIPO) stated that, while he could not give an exact answer, at the time when the provision concerning jurisdiction of the International Court of Justice was inserted, it was the only commonly practiced dispute settlement mechanism on an international level. He explained that it was a non-compulsory jurisdiction, in so far as it was possible for any State adhering to the Treaties to make a reservation as to the jurisdiction of the International Court of Justice. In fact, no dispute had ever been brought before the International Court of Justice concerning a WIPO administered treaty. It was therefore felt by the Member States, that that particular mechanism was too heavy for the sort of dispute that might arise under an intellectual property treaty, and the provision was no longer used in later treaties.

287. The PRESIDENT said that agreement had been reached for the proposal made by Indonesia to be reflected in the records of the Diplomatic Conference as an Agreed Statement. The text would be as proposed by Indonesia, and amended in accordance with the suggestions made by Venezuela. *Since there were no objections to such a solution, he declared the inclusion of the Agreed Statement approved.*

Fourth Session
Thursday, June 1, 2000
Morning

288. Mr. HERALD (Australia) stated that he would not repeat most of what he had said during Main Committee I in terms of the deliberations of the Drafting Committee, except to emphasize that the Committee had taken full account of the requirement, under the Rules of Procedure, that it should not alter the substance of the texts submitted to it. He referred to six issues dealt with in Main Committee II.

289. The first issue was the use of the words "and vice versa" in Article 17(4)(ii). In the discussions in Main Committee II, the Delegation of Australia had suggested that the words in question were redundant and should be deleted, as a drafting issue. Upon further reflection, the Drafting Committee had come to the view that the words in question were not redundant and should therefore not be deleted as a drafting issue. The Committee therefore proposed that those words should be retained.

290. The second issue concerned the change, in Article 18(3)(a), of the term "persons designated" to "staff members designated", which had been agreed by Main Committee II as a drafting issue. In the course of discussions, the Drafting Committee had realized that there were circumstances where it would be appropriate for a person who was not a staff member to participate in meetings, so that the proposed change should not be made as a drafting issue. The Committee therefore proposed that the words "persons designated" should not be changed.

291. The third issue concerned the reference in Article 19(3), to Contracting Parties which become Contracting Parties at subsequent date. To avoid ambiguity, a reference to "States and intergovernmental organizations" had been inserted.

292. The fourth issue concerned the wording, in Article 20(1), that read "through the State's own Office or through the Office of another State or intergovernmental organization of another Contracting Party." The understanding of the Drafting Committee was that the intention of the Main Committee was to permit a State or intergovernmental organization to become party to the Convention even if, for example, it contracted out search and examination to an office that was not party to the Treaty. The wording of that Article had therefore been changed to make this clear.

293. The fifth issue concerned when an intergovernmental organization should make the declaration under Article 20(3) that it is duly authorized. The Drafting Committee understood from the discussions in the Main Committee that it was not intended that this declaration be made at the Diplomatic Conference. Accordingly, it had clarified that the declaration be made at the time of deposit of the instrument of ratification or accession.

294. The final issue concerned the provisions on authentic texts under Article 25(1) and (3). The Drafting Committee decided to maintain the text of paragraph (1), but to clarify the text of paragraph (3). The President of the Drafting Committee stated that this concluded his report on the matters pertaining to Main Committee II, and he commended the text submitted by the Drafting Committee for adoption by that Committee.

295. Mr. BOUHNİK (Algeria) said, in his capacity as a member of the Drafting Committee and given that he had been momentarily absent during the work of Committee I for reasons beyond his control, that his Delegation merely wished to provide a few additional or supplementary clarifications for the African Group which it represented and in particular for Arab countries, as regards the work done within the Drafting Committee. The members of that Group had availed themselves of all possible facilities and the President had granted them the maximum period for consultation and finalization of the French versions of the texts. The necessary consultations had taken place with the Delegation of France and an agreement had been reached on all the points discussed with regard to the Arabic versions of the texts, while the Committee members had essentially based themselves on the English version and had also taken into consideration the French version of the text. The Arabic version of the text on which the Committee members had reached agreement was one that could be universal and which would correspond to all the delegations from Arab countries rather than being confined to a particular terminology which would correspond to a given country or region. The fact that it contained provisions already adopted in a previous text had also been taken into account, and it was thanks to that together with the work done by the translator, Mrs. Diane Chadarevian, that the draft texts which would have been submitted and had been fundamentally modified had resulted in a version of the Arabic text which was much closer to the official version.

296. Mr. NIYONKURU (Burundi), referring to Article 20(2)(iii) and subsequently to Article 21(2)(iii), said that his Delegation wondered what the meaning of the square brackets was in a text that was supposed to be final. It also wondered whether these square brackets were to be retained or deleted, or whether the text in square brackets was to be deleted.

297. The PRESIDENT confirmed that the final text of the adopted Treaty could not contain square brackets. They would be deleted at the appropriate time in the Plenary.

298. Mr. GURRY (WIPO) further explained that the fate of the text within the square brackets, or of the square brackets, depended on whether or not declarations were made, by the delegations of the organizations concerned, in the Plenary.

299. Mr. EL FAKI ALI (Sudan) noted that the deletion of the words "*vice versa*" had not been made in the Arabic text of Article 17(4)(b)(ii).

300. Mr. BOGDANOV (Russian Federation) expressed concern that Article 17(4)(b)(ii) contained two logical errors. The first arising because the words "*and vice versa*" had been reinstated, and the second occurring in the last sentence. He stated that, as a result, where an intergovernmental organization and a member State of that intergovernmental organization both attempted to exercise their right to vote, it was unclear which vote was to be accepted. Similarly, if the right to vote was exercised by two intergovernmental organizations having the same member State, it was also unclear which vote was to be accepted.

301. Mr. GURRY (WIPO) explained, with reference to the concerns expressed by the Delegation of the Russian Federation, that the matter would be determined by the operation of the Rules of Procedure of the PLT Assembly. In general, the WIPO General Rules of Procedure applied to all the meetings of the various Assemblies. These specified that any delegation may ask for a roll call vote. When a roll call vote took place, it was conducted according to the alphabetical order in the French language of Member States, followed by international organizations. To determine the starting point, the presiding Officer of the meeting would draw a card. This procedure would establish whether a Member State of the intergovernmental organization concerned had in fact voted. If a Member State had voted then the

organization could not vote. Intergovernmental organizations would similarly vote in alphabetical order. If the first of the two organizations referred to by the Delegation of the Russian Federation voted, then the second could not.

302. *The PRESIDENT noted that there was a consensus in Main Committee II with regard to the recommendations proposed by the Drafting Committee. That wording was therefore approved.* He said that the Secretariat would be careful to verify that the different language versions were consistent.

303. Mr. GURRY (WIPO) explained, after the completion of the work of the Drafting Committee, that it had been brought to the attention of the International Bureau, by a number of delegations, that a cross-reference had been missed. Article 17(5)(a) established the general rule that a decision of the Assembly be taken on a two-thirds majority. This was subject to those provisions in the Treaty which provided otherwise. One such provision that provided otherwise, but was not mentioned, was Article 16(1) where there was a requirement of a three-quarters majority. Accordingly, as a merely clerical modification, it was suggested that Article 17(5)(a) should include the reference to Article 16(1) so that it would read: "Subject to Articles 14(2) and (3), 16(1) and 19(3)...".

304. The PRESIDENT thanked the Drafting Committee for the work done and declared the work of Main Committee II complete.

PARTICIPANTS

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LIST OF PARTICIPANTS

prepared by the Secretariat

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