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STANDING COMMITTEE ON THE LAW OF PATENTS

Second Session
Geneva, April 12 to 23, 1999

REPORT

adopted by the Standing Committee

INTRODUCTION

1. The Standing Committee on the Law of Patents (hereinafter referred to as “the Standing Committee” or “the SCP”) held its second session, in Geneva from April 12 to 23, 1999.
2. The following States members of WIPO and/or the Paris Union were represented at the meeting: Algeria, Argentina, Armenia, Australia, Austria, Belgium, Brazil, Cameroon, Canada, China, Colombia, Costa Rica, Côte d’Ivoire, Cuba, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Latvia, Lithuania, Madagascar, Malaysia, Mali, Malta, Mexico, Mongolia, Netherlands, Norway, Panama, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Siege, Senegal, Slovakia, Slovenia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkmenistan, United Kingdom, United States of America, Ukraine, Uzbekistan, Venezuela, Viet Nam and Zimbabwe (71).
3. Representatives of the World Trade Organization (WTO), the Eurasian Patent Office (EAPO), the European Commission (EC) and the European Patent Office (EPO) (4) took part in the meeting in an observer capacity.

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Asian Patent Attorneys Association (APAA), Asociación de Agentes Españoles autorizados ante Organizaciones Internacionales de Propiedad Industrial e Intelectual (AGESORPI), Brazilian Association of Industrial Property Agents (ABAPI), Brazilian Intellectual Property Association (ABPI), Chartered Institute of Patent Agents (CIPA), Committee of National Institutes of Patent Agents (CNIPA), Federal Chamber of Patent Attorneys (FCPA), Federation of German Industry (BDI), Institute of Professional Representatives before the European Patent Office (EPI), Intellectual Property Institute of Canada (IPIC), International Association for the Protection of Industrial Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), International Federation of Inventors' Associations (IFIA), International League of Competition Law (LIDC), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), Korean Patent Attorneys Association (KPAA), Trade Marks, Patents and Designs Federation (TMPDF), Union of Industrial and Employers' Confederations of Europe (UNICE) and World Association for Small and Medium Enterprises (WASME) (21).

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

6. Discussions were based on the following documents prepared by the International Bureau of WIPO: "Report" (SCP/1/11), "Agenda" (SCP/2/1), "Rules of Procedure" (SCP/2/2), "Draft Patent Law Treaty and Draft Regulations" (SCP/2/3), "Notes" (SCP/2/4), "Draft Patent Law Treaty and Regulations: Draft Administrative and Final Clauses" (SCP/2/5), "Information Concerning Fee Reductions by the Offices" (SCP/2/6), and "Summary of Recommendations of the Study Regarding the Interface between the Draft Patent Law Treaty and the Patent Cooperation Treaty" (SCP/2/7). The following documents also served as a basis for discussions: "Study Regarding the Interface between the Patent Law Treaty ("PLT") and the Patent Cooperation Treaty ("PCT")" (hereinafter referred to as "the PLT-PCT Study"), Proposal by the Delegation of the United States of America on Draft Articles 10 to 12 and Draft Rules 12 to 14 (SCP/2/8), Proposal by the Delegation of Australia on Draft Article 4(5*bis*) and Draft Rule 2(2) (SCP/2/9), Suggestion by the International Bureau, based on SCP/2/9 (SCP/2/9*bis*), Proposal by the Delegation of Sudan on Fee Reductions by the Offices (SCP/2/10), Proposal by the Delegation of the United Kingdom on Draft Article 5(5)(a) (SCP/2/11) and Proposal by the Delegation of the Republic of Moldova on Fee Reductions by the Offices (SCP/2/12).

7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions without reflecting all of the observations made.

GENERAL DISCUSSION

Agenda Item 1: Opening of the session

8. The session was opened by Mr. Shozo Uemura, Deputy Director General of WIPO, who welcomed the participants and underlined the importance of the present meeting for the international harmonization of Patent Law.

Agenda Item 2: Modification of the Rules of Procedure

9. As invited in paragraph 5 of Document SCP/2/2, the Standing Committee adopted two special rules of procedure concerning the term and re-election of the Chair and the two Vice-Chairs. According to these two special rules, and in order to allow for the greatest continuity in their work, the Chair and Vice-Chairs will be elected for one year, and shall be immediately eligible for re-election to the offices which they have held.

Agenda Item 3: Election of a Chair and two Vice-Chairs

10. The Standing Committee unanimously elected Mr. Alan Troicuk (Canada) as Chair, and Mrs. Maria Margarida Mittelbach (Brazil) and Mr. Jacob Rajan (Ireland) as Vice-Chairs. Mr. Albert Tramposch acted as Secretary to the Standing Committee.

Agenda Item 4: Adoption of the Agenda

11. In response to a question by the Delegation of the United Kingdom, it was agreed that the matter of access of third parties to priority documents should be discussed in conjunction with draft Article 5.

12. The Delegation of the United States of America proposed that the report should be adopted at the end of the meeting, as at the meetings of the former Committees of Experts. This proposal was supported by the Delegations of Argentina, Australia, Canada, Ecuador, Germany, Mexico, the Republic of Korea, Sweden, Switzerland, and the United Kingdom. As a result, it was agreed to follow the proposal by the United States of America, and to amend agenda item 9 to read "Adoption of the Report."

13. The International Bureau proposed to include, in agenda item 6, references to document SCP/2/7, and the PLT-PCT Study.

14. The draft agenda was adopted with these modifications.

Agenda Item 5: Adoption of the Report of the first session, second part

15. The Delegation of the Russian Federation suggested to replace, in paragraph 183, the word "earlier" by "later" in order to accurately reflect the intervention made by that Delegation at the last session of the Standing Committee.

16. The report was adopted with the above mentioned amendment.

Agenda Item 6: Draft Patent Law Treaty

17. The Standing Committee discussed the provisions of the draft PLT based on documents SCP/2/3, SCP/2/5, SCP/2/7, SCP/2/11 and the PLT-PCT Study. Unless otherwise indicated, the following summary is based on the text presented in documents SCP/2/3 and SCP/2/5.

Draft Article 1: Abbreviated Expressions

18. *Item (i)*. This item was adopted as proposed.
19. *Item (v)*. The International Bureau introduced the suggestion put forward in the PLT-PCT Study to add in subparagraph (v) the words “, document, correspondence” after the word “declaration”. This item was adopted with the proposed modification.
20. *Items (xviii) to (xxi)*. These items were adopted as proposed.

Draft Article 2: Applications and Patents to Which the Treaty Applies

21. *Paragraph (1)(a)*. The International Bureau introduced the suggestion put forward in the PLT-PCT Study to specifically provide for patents of addition in draft Article 2(1)(a) and (b), and (2).
22. As to draft Article 2(1)(a), the International Bureau also introduced its proposal contained in document SCP/2/3, and proposed a further drafting change to that proposal. A further drafting proposal was put forward by the Delegation of Australia. This provision was adopted with the following text:
- “(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.”

23. *Paragraph (1)(b)*. The International Bureau introduced a suggestion put forward in the PLT-PCT Study, to describe the time limit referred to in this provision more precisely by adding the words “, and for patents of addition” after the words “patents for invention,” and to reword item (ii) as follows:

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

The provision was adopted with the proposed modifications.

24. *Paragraph (2)*. This provision was adopted with the modification suggested in the PLT-PCT Study to add the words “, and to patents of addition,” after the words “patents for invention.”

Draft Article 3: National Security

25. This Article was adopted as proposed.

Draft Article 4: Filing Date

26. *Paragraph (1)*. Following some discussion during which the Delegation of the United Kingdom observed that, in its understanding, Article 4(1) contained the absolute requirements for awarding a filing date, and that it would constitute a move away from harmonization if Offices were free to confer a filing date without those requirements being met, a proposal by the Delegation of the United States of America, supported by the Delegation of Australia, that the words “no later than” be added in square brackets before the words “the date on which its Office” in the introductory words of paragraph (1), was adopted. It was also agreed that the words “no later than”, within square brackets, would be included in any other relevant places under Article 4.

27. The Delegation of the Philippines observed that the absence of a requirement under paragraph (1) to file claims in order to obtain a filing date was incompatible with its existing national law. The Delegation of Spain confirmed its previous reservation with respect to paragraph (1).

28. *Paragraph (2)*. This paragraph remained as adopted, subject to a reservation by the Delegation of Spain.

29. *Paragraph (3)*. The International Bureau proposed that, in accordance with the PLT-PCT-Study, the words “of any requirement not complied with” be replaced by “, giving an opportunity to comply with any such requirement and to make observations within the relevant time limit prescribed in the Regulations.” The Delegation of Senegal suggested, as an alternative, to end the paragraph after the word “applicant”. The Delegation of Israel, supported by the Delegation of China, proposed the retention of the words “as soon as practicable” without square brackets and the deletion of the alternative “promptly” together with the square brackets, but suggested to keep the end of the paragraph as proposed. Several delegations and two representatives of intergovernmental organizations preferred the term “promptly” and accepted the new wording proposed by the International Bureau. A majority of delegations which took the floor preferred the words “as soon as practicable” and supported the new wording proposed by the International Bureau. Two representatives of non-governmental organizations supported by the Representative of the EAPO, pointed out that “promptly” was important to applicants, since it would at least imply some obligations on offices, while another non-governmental organization saw no difference between the two alternatives. The paragraph was adopted with the words “as soon as practicable” and with the new text proposed by the International Bureau at the end of the paragraph.

30. *Paragraph (4)(b)*. The International Bureau introduced the suggestion made in the PLT-PCT Study to add the following sentence to draft Article 4(4)(b) to ensure consistency with Rule 20(7) of the Patent Cooperation Treaty: “Where the application is regarded as not having been filed, the Office shall notify the applicant accordingly, indicating the reasons therefore.” The provision was adopted with the modification proposed.

31. *Paragraph (5)(a)*. After some discussion, it was agreed that the text should require that a notification should be sent “promptly” after the determination had been made. It was also agreed to replace the word “determines” by “finds”, in accordance with the PCT.

32. One delegation expressed the view that it would be difficult for the Office to determine which part of the description was missing, and hence to decide on the filing date to be accorded. After a short discussion, the International Bureau recalled that this paragraph did not impose any obligation on offices to determine which part of the application was missing, but if the Office did, however, note such an omission, it would be obliged to notify the applicant. The Representative of the EPO proposed to twice replace “is missing” by “appears to be missing”.

33. Paragraph (5)(a) was adopted, subject to renumbering as paragraph (5), with the following text:

“(5) [*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.”

34. *Paragraph (5)(b) to (e)*. The discussion of these paragraphs was based on text presented in document SCP/2/3 and a proposal of the Delegation of Australia for a new paragraph (5*bis*) contained in document SCP/2/9. The Delegation explained that its concerns included, in particular, the high risk for an applicant when stating, in a declaration, that the missing part of the description or missing drawing in question included no new matter, and the need to preserve the contents of the earlier application of which the priority was claimed. The Delegations of Canada, the United States of America, Japan, Sweden, Germany, the Russian Federation, the United Kingdom, Kenya, Ireland and Argentina, and the Representatives of the EPO, EPI, and UNICE generally supported the proposal of the Delegation of Australia, while stating specific concerns or reservations on certain points.

35. The International Bureau explained that the wording of subparagraph (b) was modeled after PCT Article 14.2. The International Bureau also noted that, where the time limit referred to in subparagraph (b) was not met, the applicant could resubmit the application, pay the application fees, and accept a later filing date. Following an observation by one delegation that the provisions of subparagraph (b) did not cover the situation where the application contains a reference to a sequence listing which is neither included in the application nor provided subsequently, a suggestion by the International Bureau to delete that sentence as not pertaining to the filing date was supported by the Delegations of the United States of America, Australia, the Russian Federation, China and the Representative of the EAPO, and was adopted.

36. There was general agreement that the substance of paragraph (5)(b) in document SCP/2/3 was acceptable, subject to further discussion concerning procedures for submission of a missing part or drawing and retention of the earlier filing date. The main points of the discussion concerning the latter procedures are summarized below.

37. After some discussion, the International Bureau presented, in document SCP/2/9*bis*, a further suggested text of new paragraph (5*bis*) based on the proposal of the Delegation of Australia.

38. A proposal by one delegation that the procedures be made optional instead of mandatory was not adopted following opposition by three delegations and one representative of an intergovernmental organization.

39. The Delegation of Canada, supported by the Delegation of the United States of America, suggested that a time limit for filing a request should be prescribed in the Regulations.

40. A proposal of the Delegation of Canada that the words “, at the time of filing,” not be included in the provisions, to allow for requests to be made even where the priority claim was filed later than the submission of the application documents, was not adopted in the absence of support from any other delegation.

41. The Delegation of the United States of America, supported by the Delegation of the United Kingdom, suggested that an applicant, who had claimed priority and had been notified that parts of its application were missing, should not need to make a specific request to obtain the full benefit of the provisions. The Delegation noted that the procedures could be effected by the use of incorporation-by-reference or a check-box in a request form. For that purpose, the International Bureau suggested that an Office be permitted to require that the applicant indicate, at the time of filing, that the contents of the earlier application were incorporated by reference. The Delegation of Canada favored making the operation of the procedures subject to the request of the applicant. This proposal was opposed by the representative of a non-governmental organization.

42. The Delegation of Germany, supported by the Delegation of the Russian Federation, proposed the retention of the substance of paragraph (5)(e) in document SCP/2/3, which would allow an applicant to withdraw its submission of the omitted material and thus retain its original filing date.

43. The Delegation of Kenya, supported by the Representatives of EPI and UNICE, suggested that the procedures be applicable only in case of “unintentional” omission.

44. A proposal by the Delegation of Canada that the words “no later than” should be retained without square brackets in this provision so that a Contracting Party might accord an earlier filing date, in particular, where Offices found that the missing part of the description or missing drawing did not contain new matter, was supported by three other delegations and the Representatives of two non-governmental organizations. A proposal by the Delegation of Japan that those words should be deleted was supported by four other delegations in order to guarantee a stable and reliable filing date. Following some discussion, it was agreed that the words in question should be retained in square brackets. In reply to a concern expressed by the Delegation of the United Kingdom, the International Bureau explained that the intention of the insertion of the words “no later than” was to allow the retention of the original filing date where the omitted parts of the description or drawing were examined and found to contain no new matter, rather than allowing the accordal of a filing date where fewer than all of the elements listed in Article 4(1) were submitted. The Delegation of the United States of America suggested that such insertion be made wherever necessary in Article 4 to ensure its nature of maximum requirements.

45. A proposal by the Delegation of the Russian Federation that, in Article 4(5*bis*)(a) of document SCP/2/9*bis*, the words “no later than” and “, whichever is later” be deleted was not agreed. The International Bureau pointed out that deletion of this phrase could result in a Contracting Party being obliged to accord a filing date which was earlier than the date on which the requirements under paragraphs (1) and (2) were complied with.
46. A proposal by the Delegation of Canada to make the procedures non-mandatory and to transfer them to the Regulations was not agreed. A proposal by the Delegation of Argentina to retain the words “at the request of the applicant” without square brackets, supported by three other delegations, was agreed.
47. The Delegation of the Russian Federation stated that the procedures discriminated against an applicant who did not claim priority, and proposed that they should either be deleted or expanded to include any earlier application.
48. Following this and additional discussion, the text as suggested in document SCP/2/9*bis* was adopted with modifications, as follows:

“(5*bis*) (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 a description or missing drawing is filed under subparagraph (a) to rectify its omission from an application which, at the time of filing, claims the priority of an earlier application, the filing date shall, at the request of the applicant 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 the date on which the requirements referred to in paragraphs (1) and (2) are complied with.”

49. *Paragraph (6)*. The Delegation of China reserved its position on this provision.
50. *Paragraph (7)*. Following some discussion, it was agreed, based on a proposal of the Delegation of the Russian Federation, supported by the Delegations of Australia, the United Kingdom and the United States of America, that the references to continuation or continuation-in-part of an earlier application and divisional applications should be moved to the Regulations. The Delegation of the United Kingdom also suggested that the case where a filing date is preserved pursuant to a decision in an entitlement dispute be also included in the Regulations. In conclusion, this paragraph was adopted, subject to modification of the title to read “Exceptions,” and modifications in item (ii) which would read as follows:

“(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.”

Draft Article 5: Application

51. *Paragraph (1)*. The International Bureau proposed that, in accordance with the PLT-PCT Study, the words “, except where otherwise provided for by this Treaty” be moved after the words “the Patent Cooperation Treaty,” and be followed by the words “or prescribed in the Regulations”. The provision was adopted with these modifications.

52. *Paragraph (2)(b)*. Upon the suggestions of the Delegation of Australia and the International Bureau concerning drafting changes, Article 5(2)(b) was adopted as follows:

“(b) Notwithstanding subparagraph (a) and subject to Article 7(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) on a request Form, filed on paper, if that request Form corresponds to the Patent Cooperation Treaty Request Form with any modifications provided for in the Regulations.”

53. *New Paragraph (2)(c)*. The International Bureau suggested the introduction of a new paragraph (2)(c) to clarify the status of Model International Request Formats. In response to a question by the Delegation of the Côte d’Ivoire, the International Bureau clarified that the obligation on a Contracting Party to accept communications that correspond to any Model International Request Format as prescribed in the Regulations was explicitly subject to the guarantee in Article 7(1) that no Office could be forced to accept electronic filing or to exclude filing on paper. The new subparagraph was adopted as follows:

“(c) Notwithstanding subparagraph (a) and subject to Article 7(1), a Contracting Party shall accept the presentation of the contents referred to in subparagraph (a) in a format, if that format corresponds to the Model International Request Format provided for in the Regulations.”

54. *Paragraph (3)*. The proposal in the PLT-PCT Study that this paragraph should be modified to provide for the translation or transliteration of any part of the application not in a language accepted by the Office, was supported by the Delegation of the United States of America. Following some discussion, during which the Delegation of Australia pointed out that it should be sufficient if the translation or transliteration was furnished subsequent to the filing date, this paragraph was adopted as follows:

“(3) [*Translation; Transliteration*] A Contracting Party may require a translation or, where appropriate, a transliteration, of any part of the application that is not in a language accepted by its Office.”

55. *Paragraph (5)*. The International Bureau proposed new wording for this paragraph, on the basis of the PLT-PCT Study, whereby paragraph (5)(a) would be reworded and renumbered as paragraph (5), and subparagraphs (b) to (d) would be moved to Rule 14 of the Regulations. The provision was adopted with the changes suggested by the International Bureau, as follows:

“(5) [*Priority Document*] Where the priority date 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 furnished to the Office in accordance with the Regulations.”

Proposal of the Delegation of the United Kingdom contained in document SCP/2/11.

56. The Delegation of the United Kingdom stressed the importance of ensuring access to priority documents for third parties. In its opinion, the current text of Article 5(5)(a) did not place an obligation on Offices to ensure that copies of earlier applications whose priority was claimed were available to third parties throughout the life of the patent which claimed the priority. The Delegation therefore proposed the insertion of an additional subparagraph (*abis*), as contained in document SCP/2/11, to cover this situation. Several delegations expressed general sympathy for this proposal, but also expressed certain concerns with specific details.

57. The Delegation of the Russian Federation considered that the issue of whether a Contracting Party which has received a copy of a priority document was allowed to provide a copy to third parties was not addressed by this proposal. Additionally, the Delegation, supported by the Delegation of Australia and the Representative of IPIC, considered that any obligation for an Office to enter into communications with another Office could be burdensome to the Offices, and that such communications should be undertaken by the parties concerned.

58. The Delegation of Australia suggested that the applicant be required to obtain a certified copy of a priority document from the Office in which it was filed, and to ensure the lifetime availability of the copy. The Representatives of TMPDF, CIPA and FICPI pointed out that this proposal caused some difficulties, because a third party would not wish to make an applicant or owner aware of his interest in the application or patent. The Delegation of Germany said that it was almost impossible for Offices to keep priority documents for 30 years, and that it preferred to require the filing of a certified copy.

59. The Chair summarized the discussion as reflecting general support for the idea that priority documents be made accessible to third parties throughout the life of the patent which claimed the priority, and that third parties should not have to rely on the applicant or owner for copies of the original document. One possible solution might be to keep copies of priority documents in a digital library. It was agreed that the issue would be referred to the International Bureau for further study, with the option of discussing proposals through the electronic forum

60. *Paragraph (6)*. The International Bureau proposed to add the word “only” after the word “application” in order to clarify that this provision contained a maximum requirement. It further proposed to add at the end a reference to paragraph (3), and to delete the words “of a priority document”.

61. The International Bureau further proposed to add a new subparagraph (b) which would read as follows:

“(b) A Contracting Party may require that any evidence concerning non-prejudicial disclosures or exceptions to lack of novelty which may be required in respect of international applications under the Patent Cooperation Treaty be furnished to its Office in the course of the processing of the application.”

62. The International Bureau explained that this modification would permit a Contracting Party to require, in all cases, evidence concerning non-prejudicial disclosures or exceptions to lack of novelty, as permitted under PCT Rule 51*bis*.1(a)(vi) and provided for, in respect of goods exhibited at official or officially recognized international exhibition, under Article 11(3) of the Paris Convention.

63. The Delegation of the United States of America questioned the necessity to include such a provision. The Delegation pointed out that proposed new subparagraph (b) enabled a Contracting Party to request, in a national or regional application, evidence that had a bearing on patentability. The provision, therefore, dealt not only with formal matters, but also with matters which, under national law, were treated in substantive patent law. The Delegation of Australia proposed that this paragraph be included as proposed, since the situation was comparable to the case where a Contracting Party could require a priority document. After some discussion, paragraph (6) was adopted with the drafting modifications suggested by the International Bureau, subject to further study by the International Bureau concerning suggested new subparagraph (b) in conjunction with draft Rule 2*bis*.

Draft Article 6: Representation

64. *Paragraph (1)(a)(ii)*. A suggestion by the International Bureau that the words “for service on the territory of” be amended to “on a territory prescribed by” was agreed. In response to a query from the Delegation of the United States of America, the International Bureau explained that this item was intended, primarily, to cover the practice in the United Kingdom where there was no “right to practice before the Office” requirement under item (i). The International Bureau also confirmed that this provision was without prejudice to the right of a Contracting Party to require an address for correspondence and an address for legal service on its territory under Article 7(4) and Rule 10(1). This provision was adopted with the modification proposed.

65. *Paragraph (1)(b) and (c)*. These provisions were adopted as proposed.

66. *Paragraph (2)*. The Delegations of the United States of America, Australia and Sweden and the Representatives of the EPO, BDI, WASME, UNICE, AIPLA and CIPA were in favor of including a maximum number of exceptions under this paragraph, and therefore proposed to remove the square brackets around items (ii) to (vi). They believed that these exceptions would result in cost reduction, and would benefit, in particular, individual inventors and small businesses by removing barriers to the use of patent systems. These Delegations were of the opinion that the filing of certain documents and payment of fees were of a purely formal, administrative nature and did not require any substantive expertise. Applicants should be given the choice of deciding whether they needed a representative in these matters, and mandatory representation should be limited to matters which required patent expertise. The Delegation of France stated that, in view of maximizing the reduction of cost, any action of an administrative nature could be excluded from mandatory representation.

The Delegations of Argentina, Greece, Mexico and Senegal pointed out that their national laws did not provide for mandatory representation and that they could therefore support maximizing the number of exceptions by removing the square brackets around items (ii) to (vi).

67. The Delegations of the Russian Federation and Indonesia and the Representative of the EAPO were in favor of deleting all exceptions. The Delegation of the Russian Federation pointed out that professional representatives would effectively facilitate access to the international patent system and would enable applicants to properly protect their rights. Since most national laws provided for exceptions from the general principle of mandatory representation in patent proceedings, it would not be justified to introduce such exceptions by way of international harmonization. The Representative of the EAPO noted that the regional law applying to the EAPO and the national laws of its Member States provided for mandatory representation in these matters, and that the inclusion of exceptions in that provision would hinder the development of skills of the patent agent profession.

68. The Delegations of Portugal, Zimbabwe, China, Cuba, Kenya, Ireland, Japan and Tunisia reserved their position concerning the paragraph as a whole. The Delegation of China and Zimbabwe pointed out that their national law required foreign applicants to be represented. The Delegations of Cuba and Kenya reported that the laws of their countries provided for mandatory representation in all matters mentioned in items (ii) to (vi). The Delegation of Kenya observed that, if applicants did not appoint a representative in the matters mentioned in Article 6(2), but were subject to mandatory representation in other matters, this would in effect lead to two different addresses for service. The Delegation of Belgium reserved its position on this paragraph, except item (iii).

69. The Delegation of Germany proposed to delete only the exception mentioned in item (vi), and to remove the square brackets around items (ii) to (v). The Delegations of Canada, Spain, Zimbabwe, the Republic of Korea, and the Representatives of AGESORPI, IPIC and JPAA proposed to delete items (ii) to (vi) and to only include the exception regarding the payment of maintenance fees mentioned in item (i). They argued that mandatory representation was generally necessary in order to ensure the applicant's safety, the proper operation of the Office and the quality of translations, and they further noted that including the exceptions mentioned in items (ii) to (vi) would increase the burden on Patent Offices and effectively hinder the development of a sufficient and reliable patent agent profession, especially in developing countries. The Representative of AGESORPI observed that maximizing exceptions to mandatory representation was in the interest of technology-exporting countries, while technology-importing countries would favor keeping such exceptions to a minimum.

70. The Representative of FICPI proposed that exceptions should be provided only in respect of the payment of maintenance fees and the establishment of a filing date under Article 4. He expressed the opinion that the current draft of Article 6(2) could be considered as a threat to the patent agent profession and was in the interest of only a limited part of the interested circles. He observed that there was no proof that limiting mandatory representation would lead to cost savings. A reduction of the cost of international patent protection would rather require an international harmonization of substantive patent law, which had not yet been achieved.

71. The Representative of AIPLA pointed out that the aim of the draft Treaty was the reduction of costs and that this provision was central for the achievement of that goal. He therefore proposed the inclusion of a maximum number of exclusions into this paragraph. He further expressed the opinion that this would not hinder patent agents from providing useful services, in particular those which require professional expertise.

72. The Delegation of Portugal, supported by the Delegations of France and Greece, observed that Article 7(4) enabled a Contracting Party to require an address for correspondence on its territory, and that such requirement necessitated in most cases the appointment of a representative. The Delegation of Belgium suggested that excepting the filing of an application from mandatory representation, as provided for in subparagraph (iii), contradicted the statement in the chapeau that such exception only applied “after the filing date”. In reply to interventions from the Representatives of WASME and the EAPO, the Chair stated that Article 2(3) of the Paris Convention for the Protection of Industrial Property would not seem to prevent Member States to comply with the national treatment requirement with respect to the appointment of a representative.

73. After a full discussion, the Chair noted that it did not seem possible to reach a consensus on an expert level because of the political nature of the question, and that the question would therefore have to be decided by the Diplomatic Conference. The International Bureau explained that, in accordance with Rule 29(1)(c) of the draft Rules of Procedure of the Diplomatic Conference, where the basic proposal contains words within square brackets, those words were not regarded as part of the basic proposal, but would be treated as a proposal for amendment if any Member Delegation proposed such amendment.

74. The Delegation of the Russian Federation proposed that the following words be added to Article 6(2)(vii): “, provided that the applicant, owner or other interested person fulfills the requirements of the Contracting Party to provide an address for receiving notifications.”

75. After some discussion, it was agreed that item (i) should be retained without square brackets, items (ii), (iv) and (vi) should remain in square brackets, and items (iii) and (v) should be combined into a new item, “(*ibis*) any procedure referred to in Article 4”, to be retained in square brackets. The provision was adopted with those modifications.

76. *Paragraph (3)*. Following some discussion, during which a proposal by the Delegation of the United States of America to delete the words “on paper” in subparagraph (b) was supported by the Delegations of Australia and Germany and the Representative of the EPO, but opposed by the Delegations of Brazil, Ireland, Mexico, Argentina, the Russian Federation, a suggestion of the International Bureau that the words “or by other means permitted by the Office” be added after “on paper”, was adopted. The proposals in the PLT-PCT Study that items (i) and (ii) under this paragraph should be transferred to the Regulations as a new Rule 7(*1bis*) was also agreed, together with the following modifications: a change of the title “Power of Attorney” to “Appointment of Representative” and the addition of “in a manner prescribed in the Regulations” after “Office” in the chapeau of subparagraph (a). This paragraph was adopted with these modifications.

77. Paragraphs (4) to (6). The text of these paragraphs was adopted and, as proposed in the PLT-PCT Study, moved to new Rule 7(1ter) to (1quinquies).

78. Paragraphs (8) and (9). These paragraphs were adopted as proposed.

Draft Article 7: Communications; Addresses

79. *Paragraph (1)*. Upon the suggestion of the International Bureau, it was agreed that the International Bureau would harmonize the terminology in the draft Treaty in line with the use of the term “filing” in this paragraph.

80. *Paragraph (1)(a)*. In response to an intervention by the Delegation of the United States of America that an application filed by any means must be accorded a filing date, it was agreed to move the words “, subject to subparagraphs (b) and (c),” after the words “the Regulations shall”.

81. *New Paragraph (Ibis)*. This provision was adopted as proposed in the PLT-PCT Study as follows:

“(1bis) [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.”

82. *New paragraph (Iter)*. This provision was adopted as suggested by the International Bureau with the following text:

“(Iter) [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 provided for in the Regulations, if any.”

83. *Paragraph (3)*. This provision was adopted as proposed in the PLT-PCT Study, subject to the transfer of its content to Rule 10, as follows:

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

84. *Paragraph (4)*. This provision was adopted with the removal of the square brackets and retention of the text of item (iii).

85. *Paragraph (5)*. This paragraph was adopted as proposed.

86. *Paragraph (6)*. The International Bureau proposed the following changes to this paragraph: to delete subparagraph (b), item (ii) in view of the change introduced to paragraph (4) from “may” to “shall”; to move subparagraph (b) to Rule 10(5); and to add the following text after the words “Article 4”: “and to any exceptions prescribed in the Regulations”. The Delegations of Australia, the United Kingdom and the United States of America expressed their support for this proposal. The provision was adopted with these modifications.

Draft Article 8: Notifications

87. *Paragraph (1)*. In response to observations by the Delegation of the Russian Federation and the Representative of CIPA to provide for the same legal effect of a notification sent to an address other than an address for correspondence or an address for legal service, a proposal by the International Bureau to add the words “or any other address provided for in the Regulations for the purpose of this provision” was agreed. The provision was adopted with this modification.

88. *Paragraph (3)*. In response to observations by the representatives of two non-governmental organizations that this provision may relieve the office from any obligation to notify the applicant, the International Bureau explained that this paragraph could not take away that obligation since, in almost all cases, the time limit for compliance with the requirement in question would not start to run until notification had taken place. Further, if a patent were granted after non-compliance with an obligation because the Office did not send a notification, the safeguard under Article 9(1) would apply. It was agreed that the International Bureau should clarify this matter in the Notes. Following some discussion, during which the Delegation of the United States of America supported the revised text of this paragraph, the paragraph was adopted as proposed.

Draft Article 9: Validity of Patent; Revocation

89. *Paragraph (1)*. This provision was adopted with the replacement of the words “Article 7(1) and (3)” by “Article 7(1) to (4)” as suggested by the International Bureau.

*Draft Article 10: Extension of a Time Limit Fixed by the Office**Draft Article 11: Continued Processing and Re-Instatement of Rights Without a Finding of Due Care by the Office*

90. The Delegation of the United States of America proposed a text for revised draft Articles 10 to 12 and Rules 12 to 14 (document SCP/2/8). This proposal was based on the Delegation’s preference to continue the present system in its country, under which the vast majority of requests for extension of time limits are filed after the expiration of the time limit, but before the expiration of the extension period, and must be accompanied by the requirements needed to comply with the original time limit. It considered this procedure to be user-friendly, and to reduce the administrative burden on the Office.

91. The Delegation of Brazil sought clarification of the applicability of draft Articles 10 and 11 to a country like Brazil, in which all provisions regarding time limits were fixed by national law. The International Bureau confirmed that, in such a case, Articles 10 and 11 would not apply.

92. The Delegation of Germany, supported by the Delegations of Austria, the Russian Federation and France and the Representatives of EPI, UNICE and BDI, expressed a preference for the text contained in document SCP/2/3, and proposed that Articles 10 to 12 and the related Rules be retained. These Delegations emphasized that users were familiar with the practice of submitting requests for extension of a time limit prior to the expiration of the time limit, and referred to the need for a clear distinction between the procedures under

Articles 10 and 11. With respect to Rule 12, the Delegation of Germany noted in particular that the proposal of the Delegation of the United States of America contained a positive list, while in the text proposed in document SCP/2/3, it contained a limited list of exceptions. As regards the proposal of the Delegation of Australia, the Delegation of Germany noted that the proposed deletion of Article 10 would have the effect that matters of extension would be dealt with only as further processing, under Article 11. A proposal by the Delegation of the Russian Federation to limit the scope of Articles 10, 11 and 12 to applications was not supported. In response to that proposal in relation to Article 10, another delegation, supported by a third delegation, pointed out that there were procedures with regard to patents which should be covered by Article 10, for example the registration of a license. It was agreed that the International Bureau would include explanations in the Notes on this question.

93. The Representative of the EPO, supported by the Representatives of EPI and UNICE, emphasized that Articles 10 to 12 were important provisions for applicants, and that extensions under Article 10 should be retained and be distinguished from reinstatement of rights under Articles 11 and 12.

94. The Delegation of Japan stated that it did not oppose the proposal of the Delegation of the United States of America, but regarded the provisions as drafted by the International Bureau more user-friendly.

95. The Delegation of Australia expressed support for the proposal by the Delegation of the United States of America, but had some concerns with its structure. The Delegation, supported by the Delegation of the United Kingdom, stated that, during the course of proceedings where a party other than the applicant or the Office was involved, an extension which was available to the applicant but not to that third party might be utilized unfairly as a means to delay a proceeding and would result in increased costs. It noted that, in its opinion, the most important issues were the procedure set forth in Article 11 and how applicants who file abroad are protected. The Delegation therefore proposed to delete Article 10 and Rule 12 of the proposal of the Delegation of the United States of America and to insert certain consequential changes to the remaining articles and rules. The Delegation of the United States of America withdrew its proposal in favor of the proposal by the Delegation of Australia.

96. The Delegation of Mexico declared that it could accept deletion of Article 10, since under its national law most time periods have an automatic two-month extension with fees for further extension. The International Bureau noted that, even with the deletion of Article 10, a Contracting Party would be allowed to implement, in its own Office, a procedure similar to that set forth in Article 10, but that it would then not ensure that the procedures were available to applicant who filed applications in another country.

97. The Representative of the EAPO proposed that Articles 10, 11 and 12 be retained for the benefit of applicants and the discussion be based on document SCP/2/3. This proposal was supported by the Representative of JPAA with regard to Article 10. In view of the strong support for Articles 10 to 12 as proposed in document SCP/2/3, the Chair invited delegations to continue the discussions on the basis of that document.

98. In response to an intervention by the Delegation of China, the International Bureau proposed that “the reasons for the intended refusal and” be inserted after “being given” in Articles 10(5), 11(7) and 12(8).

99. The Representative of EPI favored retention of Article 10 as proposed in document SCP/2/3, since, for the benefit of applicants, in certain Offices, the extension of time limits could be obtained very easily by telephone or telefax. However, it could be envisaged to modify Article 10 so that a Contracting Party would have the option whether the request may be filed before or after the expiration of the time limit. Nevertheless, even if this proposal were considered, Article 11 should be retained. The Delegation of the United States of America, supported by the Delegations of Australia and Germany and the Representative of AIPLA, proposed to follow the latter approach suggested by the Representative of EPI. The Delegation of the United States of America made its approval subject to the condition to be able to apply the requirements provided in Article 11(1)(ii) at the time the request under Article 10(1) was submitted, and also stated that it did not support the notification requirement in Rule 13(1). The Representative of the EPO explained that he could accept the proposal, if it allowed the gap between the different systems to be bridged. The Delegations of China and the Russian Federation opposed the proposal to provide for two separate procedures under Article 10 that would be available at the option of the Contracting Party. In reply to an intervention by the Delegation of China, the International Bureau explained that the proposal would allow Offices to maintain their present practice.

100. In reply to a question of the Delegation of Greece, the International Bureau clarified that Article 10 only applied to time limits set by an Office, but not to time limits set by law.

101. The Chair noted that there appeared to be different assumptions concerning the proposed procedures, in particular, as to what was meant by a “time limit fixed by the Office” and asked which countries had provision for such time limits. In reply, the Delegation of Japan stated that Japanese law provided for such time limits in respect of notices of intended refusal by the substantive examiner and that the requirement for notification under Article 11 was problematic for that procedure because of the large number of applications. The Delegation of France stated that, under French law, a report by the examiner specified a time limit for response; if no response were received, a draft refusal was sent which could be cancelled by payment of a fee. The Delegation of China stated that there are only a few time limits provided in the Chinese Patent law, in particular in relation to examination or the filing of a copy of a priority document. The majority of time limits were fixed by the Office. The sanction for non-compliance with the time limit was withdrawal of the application. The Delegation of Germany stated that, under German law, many time limits were fixed by the Office, and application of extensions was very flexible and user-friendly. In case of a time limit fixed by the Office, the Office of that Delegation accepts, even without a request for an extension, a reply of the applicant which is filed after the time limit has expired and before an action by the Office is undertaken, as if the reply had been filed within the time limit.

102. After some discussion, the Chair concluded that further understanding on different national systems might be required. Following a suggestion by the International Bureau, supported by the Delegations of the United Kingdom, Mexico, China, Denmark and the United States of America, it was agreed that the International Bureau would send a circular to the Offices in order to gather information on current practices in relation to extension of time limits, and that it would further study Articles 10 and 11 and Rules 12 and 13. The results of that study would be submitted to the Standing Committee for further consideration at its next meeting.

Draft Article 12: Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office

103. The Delegations of the United States of America and Australia expressed their strong support for this provision. The Delegation of Mexico pointed out that, while this Article was clear-cut, the current Mexican legislation did not contain comparable provisions.

104. *Paragraph (1)*. The International Bureau introduced the suggestion made in the PLT-PCT Study to transfer the content of item (i) of this paragraph to the Rules, and to amend item (i) to provide a basis for the provision in the Regulations. It was agreed that the content of item (iv) not be moved to the Regulations. The Delegation of the United States of America favored moving as much as possible to the Regulations, and proposed to include in item (v) the words “that any delay” after the words “Contracting Party,”. This provision was adopted with the following text:

“(1) [*Request*] Where an applicant or owner has failed to comply with a time limit for an action in a procedure before the Office, 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), (iii) and (iv) [no change to the text contained in document SCP/2/3]

(v) 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.”

105. *Paragraph (2)*. This provision was adopted as proposed.

106. *Paragraph (3)*. It was agreed that, in accordance with the PLT-PCT Study, the contents of this paragraph would be moved to the Regulations and the paragraph deleted.

107. *Paragraph (4)*. This paragraph was deleted as suggested by the International Bureau, since its substance was incorporated into new Article 7(1*bis*).

108. *Paragraph (5)*. This paragraph was adopted as proposed in the PLT-PCT Study as follows:

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

109. *Paragraph (6)*. A proposal by one delegation to delete this paragraph and place its contents either in paragraph (1) or (7) to require that sufficient evidence should be furnished to the Office was not adopted following opposition by two other delegations. This provision was adopted as proposed.

110. *Paragraph (7)*. This provision was adopted as proposed.

Draft Article 13: Addition and Restoration of Priority Claim

111. After discussion, during which the Delegation of the Russian Federation proposed to add the words “Correction or” in the title and in paragraph (1), for conformance with PCT Rule 26*bis*, it was agreed to refer this question to the International Bureau for further study, as well as the question of movement of portions of the provision to the Regulations.

Draft Article 14: Regulations

112. *Paragraph (1)(a)*. The Delegation of the United States of America suggested that the words “and Notes” be added after “Regulations” in paragraph (1)(a), in order to reflect the importance of the issues raised by several delegations and contained in the Notes. The International Bureau agreed that the Notes were important both in interpreting and implementing the Treaty. In this respect, two options could be foreseen: first, to adopt each paragraph of the Notes one by one at the Diplomatic Conference, a procedure which did not seem practical and was without precedent in previous diplomatic conferences; second, to keep the Notes separately as a document prepared by the International Bureau and reflecting the legislative history of the Treaty, which could be published together with the Treaty. The Delegation of the United Kingdom declared itself in favor of publishing the Notes as a statement of the negotiating history, but not to give interpretative value to them.

113. The International Bureau also observed that there have been in the past “agreed statements” or understandings by the Diplomatic Conference on matters not included in the Treaty. One possibility would be for the Diplomatic Conference to adopt a number of such statements in place of Notes, since an agreed statement adopted by the Diplomatic Conference would have more force than the Notes published by the International Bureau. In response to a suggestion by the Delegation of the United States of America to establish “Administrative Instructions” similar to those of the PCT, the International Bureau observed that the PCT instructions were mandatory guidelines adopted by the Director General and not by the Member States, and were different in nature to the PLT Notes. The International Bureau suggested, as an alternative, that the Notes might be updated from time to time by the PLT Assembly, for example, in the form of guidelines for the Contracting Parties concerning procedures under the PLT. Following this discussion, paragraph (1)(a) was adopted as proposed.

114. *Paragraph (1)(b)*. This provision was adopted as proposed.

115. *Paragraph (1)(c)*. The International Bureau suggested that the word “formats” be replaced by the words “Model International Formats, and for the establishment of the modifications referred to in Article 5(2)(b),” so that the Assembly was entitled to establish model formats and the modifications to the PCT request Form. The provision was adopted with this modification.

116. *Paragraph (2)*. This provision was adopted as proposed.

117. *Paragraph (3)*. The International Bureau proposed that “unanimity” be substituted for “unanimous consent” in Article 14(3)(a) and (b). The Delegation of the United States of America questioned the necessity of paragraph (b) given paragraph (a), whereupon the International Bureau noted that paragraph (a) was an enabling provision for Rule 22, while

paragraph (b) applied to any addition or deletion of the provisions specified in that Rule. This provision was adopted with the modifications proposed by the International Bureau.

118. *Paragraph (4)*. This provision was adopted as proposed.

Draft Article 15: Relation to the Paris Convention

119. *Paragraph (1)*. It was agreed, based on a suggestion by the International Bureau, that the first sentence of this paragraph be deleted. Since parties to the PLT may not necessarily be parties to the Paris Convention, the PLT could not be regarded as a “special agreement” in the sense of Article 19 of that Convention. It was also agreed that the second sentence be deleted since it had become superfluous in light of the references to the PCT which were now included in the relevant provisions of the PLT.

120. In response to a question from the Delegation of Australia as to whether this paragraph limited the ability of Contracting Parties to make use of Article 11(3) of the Paris Convention, the International Bureau proposed to deal with this question in the context of draft Article 5(6). The paragraph was adopted with the modifications proposed by the International Bureau.

121. *Paragraph (2)*. This paragraph was adopted as proposed.

122. *Paragraph (3)*. This paragraph was adopted, subject to renumbering as paragraph (1).

Draft Article 16: Assembly

123. *Paragraph (1)*. A proposal by the Delegation of the United States of America to delete the second sentence of Article 16(1)(c) was opposed by the Delegations of Tunisia and Malaysia. After the International Bureau had explained that this sentence referred to the ability of the Assembly to request that a share of the funds of the World Intellectual Property Organization be spent for activities relating to the Patent Law Treaty, Article 16(1) was adopted as proposed.

124. *Paragraph (2)*. The paragraph was adopted as proposed.

125. *Paragraph (3)(b)*. The International Bureau explained that the last sentence had been added in order to ensure that two intergovernmental organizations could not both vote if their members were the same. It proposed to replace, in the last sentence, the word “another” by “other”. In reply to an observation of the Delegation of the United States of America whether an intergovernmental organization that was wholly and solely responsible for granting patents would, in the future, have only one vote, the International Bureau explained that the first sentence of this paragraph, under which an organization would have as many votes as it had Member States, would continue to apply. In response to a question by the Delegation of the Russian Federation, the International Bureau confirmed that the number of votes of such an organization increased with an increase in the number of its members.

126. In response to questions by the Delegation of the Russian Federation, Denmark and Senegal as to whether, in cases of conflict, the intergovernmental organization or its Member States had priority to exercise the votes, the International Bureau explained that this was an matter to be decided by the intergovernmental organization and its Member States, and that similar provisions in other international treaties had worked well. The Representative of the EPO explained that the EPO had its own internal procedural provisions for which its Member States had no competence, and that the EPO was not competent to speak and vote on behalf of the procedural provisions of individual Member States. The Delegation of Malaysia expressed the view that Member States of an intergovernmental organization should always have priority to exercise their vote, and proposed to delete the words “vice versa”.

127. In response to an intervention by the Delegation of the Russian Federation, the International Bureau agreed that the relationship between draft Article 16(3)(b) and draft Article 19(3) needed clarification. It proposed to add, at the end of Article 19(3) after the word “Treaty” the words “as intergovernmental organizations”. This addition would clarify that regional patent organizations would be treated as intergovernmental organizations under the Treaty with the result that their right to vote would be determined by Article 16(3)(b). This view was supported by the Representative of the EPO. The Representative of the EAPO supported this proposal in principle but preferred, for the sake of clarity, the addition of a new Article 16(3)(c) specifically dealing with the voting rights of a regional patent organization. This suggestion was supported by the Delegation of Malaysia which, as an alternative, suggested to add in Article 16(3)(b) the words “, or regional patent organization” after each mention of intergovernmental organizations.

128. As a result of the discussions, Article 16(3) was adopted with the drafting modification proposed by the International Bureau, subject to reservations by the Delegations of the Russian Federation, Sudan and Armenia with respect to Article 16(3)(b).

129. *Paragraph (4)*. This provision was adopted as proposed, with the deletion of the square brackets and retention of the word “two.”

130. *Paragraph (5)*. This provision was adopted as proposed.

Draft Article 17: International Bureau

131. This provision was adopted as proposed.

Draft Article 18: Revisions

132. *Paragraph (1)*. This paragraph was adopted as proposed.

133. *Paragraph (2)(a)*. The Delegation of the United States of America proposed that this provision should be restricted to proposals for the amendment of Article 16(2) and (4) instead of proposals for the amendment of Articles 16 and 17. The Delegation of Australia supported the deletion of any language which referred to Article 16(3). This provision was adopted with the modification proposed by the Delegation of the United States of America.

134. *Paragraph (2)(b)*. The International Bureau suggested, consequential to the changes adopted in subparagraph (a), to replace the word “Articles” by “provisions”. It further proposed to delete the words “, provided that any revision to Article 16 shall require four-fifths of the votes cast,” since the provisions now covered by this subparagraph were of an administrative nature and therefore did not warrant a four-fifths majority. The provision was adopted with these amendments.

135. *Paragraph (2)(c)*. Following proposals for some drafting and consequential changes by the Delegation of Canada and the International Bureau, the provision was adopted in the following form, subject to possible future redrafting of the last sentence for clarity:

“(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 Contracting Parties 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.”

Draft Article 19: Eligibility for Becoming Party to the Treaty

136. Paragraph (1). A suggestion of the International Bureau, inspired by the discussion on Rule 2(1)(i) of the draft Rules of Procedure by the Preparatory Meeting for the Diplomatic Conference for the Adoption of the Patent Law Treaty, held on April 15 and 16, 1999 (document PT/PM/3), that “Any Member State of the Organization [or State which is a party to the Paris convention]” be deleted and “Any State which is a party to the Paris Convention or which is a member of the Organization” be inserted in its place without square brackets, was agreed. This paragraph was adopted with these modifications.

137. *Paragraph (2)*. A suggestion by the International Bureau that “Member States of [or party to] the Organization [or Paris Convention]” be deleted and “party to the Paris Convention or members of the Organization” be inserted in its place without any square brackets, consequential to the amendment adopted for paragraph (1), was agreed. In response to a query from the Delegation of the Russian Federation, the International Bureau indicated that an intergovernmental organization could become party to this Treaty even though all of its members were not. This paragraph was adopted with the modifications suggested by the International Bureau.

138. A suggestion by the International Bureau as modified by a proposal by the Delegation of Australia, that an intergovernmental organization must be “competent to grant patents with effect for its member States” was agreed, subject to consultation by the International Bureau with the European Union as to whether this might preclude the latter from becoming party to the Treaty. This paragraph was adopted with the following text:

“(2) [*Intergovernmental Organizations*] The Assembly may decide to admit any intergovernmental organization to become party to this Treaty if all the member States of that intergovernmental organization are party to the Paris Convention or members of the Organization, and the intergovernmental organization declares that it is competent to

grant patents with effect for its member States and that it had been duly authorized, in accordance with its internal procedures, to become party to this Treaty.”

139. *Paragraph (3)*. A suggestion by the International Bureau that the words “as intergovernmental organizations” should be inserted after “Treaty” to clarify the relationship with Article 16(3) was agreed. After some discussion, this paragraph was adopted with this modification.

Draft Article 20: Signature of the Treaty

140. This Article was adopted as proposed.

Draft Article 21: Entry into Force

141. Paragraph (1). A proposal by one delegation that some weighting should be applied, as under PCT Article 63.1(a), to the States needed for entry into force of the Treaty was not adopted following an explanation by the International Bureau that the requirements under the PCT were intended to ensure that, when the PCT entered into force, an adequate number of international applications would be filed for the system to be viable. A proposal by the Delegation of the Russian Federation, supported by the Delegations of the United States of America, Germany and Senegal, that entry into force should require ten instruments of ratification or accession by States was agreed. This paragraph was adopted with the replacement of “[five]” by “ten.”

142. Paragraph (2), item (i). The Chair noted that the word “[five]” should be changed to “ten” (without square brackets) in consequence of the amendment to paragraph (1). This item was adopted with this modification.

143. *Paragraph (2), item (ii)*. This item was adopted as proposed.

144. *Paragraph (2), item (iii)*. This item was adopted with the insertion, suggested by the International Bureau, of a comma after “that instrument”.

145. *Paragraph (2), item (iv)*. This item was adopted as proposed.

Draft Article 22: Reservations

146. *Paragraph (1), introductory words*. This provision was adopted, subject to the correction of a typographical error by the deletion of the single square bracket at the beginning of the paragraph.

147. *Paragraph (1), item (i)*. This item was adopted as proposed.

148. *Paragraph (1), items (ii) and (iii)*. A proposal by the Delegation of the United States of America that these items be deleted in consequence of the adoption of Article 6(1)(c) and Rule 19(11)(a) was agreed.

149. *Paragraphs (2) to (4)*. These paragraphs were adopted as proposed.

Draft Article 23: Denunciation of the Treaty

150. *Paragraph (1)*. The International Bureau explained that the word “written” in square brackets might be necessary for the avoidance of doubt, although it did not appear in other Treaties administered by WIPO. This paragraph was adopted with the deletion of the square brackets and retention of the word “written”.

151. *Paragraph (2)*. Following a question by the Representative of CIPA, the International Bureau suggested to delete the words “one year” in the second sentence. This provision was adopted with the modification suggested.

Draft Article 24: Languages of the Treaty

152. This Article was adopted as proposed.

Draft Article 25: Depositary; Registration

153. This Article was adopted as proposed.

Transitional Provision

154. The Delegation of the United States of America observed that the draft Treaty did not contain any indication on how existing patents and pending patent applications would be affected. The Delegation of Australia proposed that the provisions of the Treaty should apply to existing patents and to pending patent applications in respect of situations occurring on or after the date of accession. This view was supported by the Delegation of Mexico but questioned by the Delegation of the United States of America. The Chair observed that Article 70 of the TRIPS Agreement might provide some guidance as to the protection of existing subject matter. The International Bureau confirmed that a transitional provision dealing with this question would have to be included into the Final Clauses, and that the International Bureau would submit a proposal for the next meeting of the Standing Committee.

Draft Rule 2: Details Concerning Filing Date Under Article 4

155. *New Paragraph (1)*. The International Bureau introduced the suggestion made in the PLT-PCT Study that, following the adoption of the modification to Article 4(3), a new paragraph (1) should be added as follows with the consequential renumbering of former paragraph (1) as paragraph (1bis): “(1) [*Time Limit Under Article 4(3)*] The time limit referred to in Article 4(3) shall be not less than two months from the date of the notification under that Article.” In response to a question by the Delegation of the Russian Federation, the International Bureau explained that the time limit under this new paragraph was longer than the corresponding time limit under the PCT because international applications were usually

filed with the applicant's national office, whereas many national applications were filed abroad. The new paragraph was adopted as proposed.

156. *Paragraph (1)*. The International Bureau introduced the suggestion made in the PLT-PCT Study to replace item (i) with the phrase "subject to item (ii), the time limit applied under paragraph (1)," to insert the words "under Article 4(3)" after the words "where a notification" under item (ii), and to renumber draft Rule 2(1) as draft Rule 2(1*bis*). This provision was adopted with the modifications proposed.

157. *Paragraph (2)*. This paragraph was adopted with a modification, suggested by the International Bureau in consequence of the modifications adopted in respect of Article 4(5*bis*)(b), to refer, in the title and in the text, to "Article 4(5*bis*)(a) and (b)."

158. *Paragraph (3)*. It was agreed that this paragraph should be replaced by paragraph (3*bis*) in document SCP/2/9*bis*, which would then be renumbered as paragraph (3), subject to the considerations concerning items (i) to (vi), below.

159. *Paragraph (3), item (i)*. This item was adopted as suggested in document SCP/2/9*bis*.

160. *Paragraph (3), item (ii)*. After some discussion following proposals by the Delegations of the United States of America and Australia and the Representative of the EPO, it was agreed that the word "two" be deleted together with the associated square brackets and the word "four" be retained without square brackets, and the phrase "or the time limit applicable under Rule 6(1), whichever expires earlier" be inserted at the end of this item. This item was adopted as suggested in document SCP/2/9*bis* with these modifications.

161. *Paragraph (3), items (iii) to (vi)*. In response to a query by the Delegation of Belgium, the International Bureau suggested that the indication under item (vi) may negate the need for a declaration in respect of item (iv). After some discussion, these items were adopted as suggested in document SCP/2/9*bis*.

162. *Paragraph (4)(a)*. In response to questions from the Delegation of Germany and the Representative of the EPO as to whether the reference to an earlier application should also include claims, the International Bureau explained that missing claims would, as a formal deficiency of the application, be covered by the notification requirement under draft Article 5(7), whereas Rule 2(2) only related to the establishment of the filing date of an application. The Delegation of the United State of America stated that a Contracting Party should be allowed to require an indication stating express incorporation by reference or a check box in the request form. In response, the International Bureau proposed to add the words "that, for the purposes of the filing date, the description and any drawing are replaced by the reference to the previously filed application," after the words "shall indicate". The words "for the purposes of the filing date" intend to clarify the scope of this provision, while the term "any" before "drawing" covers the case of applications which do not contain drawing.

163. In light of Article 4A(1) of the Paris Convention, the Delegation of Japan proposed to limit the possibility of referring to an earlier application to the former applicant or his successor in title. This view was supported by the Delegation of the Russian Federation, which pointed out that references to an earlier application by a person who was neither the former applicant nor his successor in title would occur only in extremely rare cases, and

should be subject to an explicit agreement of the earlier applicant or his successor in title. The Delegations of Australia and the United States of America questioned such a limitation, in particular in view of entitlement dispute cases which might occur after joint research had been carried out. In response to a question raised by the Delegation of the Russian Federation, the International Bureau suggested that the requirement in draft Rule 2(4)(b)(ii) that a certified copy of the previously filed application be furnished may provide a safeguard against such fraudulent references. Additionally, new draft Rule *2bis* would enable a Contracting Party to require a declaration by the applicant identifying the inventor and stating how he became entitled to apply for and be granted a patent. After some discussion, this provision was adopted with the modification proposed by the International Bureau.

164. *New Paragraph (5)*. This paragraph was adopted, in consequence of the modification adopted in result of Article 4(7)(ii), as follows:

“(5) [*Exceptions Under Article 4(7)(ii)*] The types of applications referred to in Article 4(7)(ii) shall be:

- (i) a divisional application;
- (ii) an application for a continuation or a continuation-in-part.”

New Draft Rule 2bis: Additional Permitted Requirements Under Article 5(1)

165. Before discussing new draft Rule *2bis*, the Chair invited comments on the result of the PLT-PCT Study concerning the list of provisions of the PCT which are considered to be incorporated by reference under Article 5.1 of the PLT, contained in paragraphs 3 and 4 of document SCP/2/7. The International Bureau noted that, in the Notes of the Washington Conference on the PCT regarding PCT Article 27.1, PCT Articles 5 to 7 and the Rules pertaining to these Articles were indicated as requirements relating to the form and contents of an application. It said that, if these provisions were not considered to be included by reference into the draft Treaty, it might be advisable to exclude them in express terms.

166. The Delegation of Australia suggested that the provisions of Rules *13bis* and *13ter*, other than Rules *13bis(2)* and *13bis(3)(a)*, related to procedures concerning the form and contents of an application as such and should therefore not be included. It further observed that PCT Rule 6.1(b) might also be included. The Delegation of the United States of America stated that, as regards paragraph 3 of document SCP/2/7, the Delegation still opposed the inclusion of unity of invention. The Delegation considered the items contained in paragraph 4 as referring to substantive issues.

167. The PLT-PCT Study had included a suggestion for the inclusion of a new draft Rule *2bis*, which would contain an exhaustive list of additional requirements as to form or contents of an application which a Contracting Party would be permitted to require under draft Article 5(1), which would read as follows:

*“Rule 2bis**Additional Permitted Requirements Under Article 5(1)*

(1) [*Content of Application*] A Contracting Party may require that the application contain:

(i) a declaration by the applicant identifying the inventor and stating how he became entitled to apply for and be granted a patent;

(ii) a declaration by the applicant as to how he became entitled to the right to claim the priority of the earlier application;

(iii) a declaration relating to non-prejudicial disclosures or exceptions to lack of novelty;

(iv) where the applicant wishes the application to be treated as a divisional application, an indication to that effect accompanied by the number of the application from which it is divided;

(v) an oath or declaration by the inventor;

(vi) information concerning the applicant’s foreign applications and grants;

(vii) a declaration by the applicant in respect of a duty of disclosure;

(viii) where the invention to which the application relates was produced under a government contract, a statement to that effect;

(ix) where a search has been carried out on any related application or patent, a disclosure of the result of that search;

(x) where the application was prepared with the assistance of an invention marketing company, a statement to that effect accompanied by the name and address of that company.”

168. The International Bureau pointed out that the wording of items (i) to (iii), which were modeled after proposals for PCT Rule 4.1(d) considered by the latest Ad Hoc Advisory Group on PCT Legal Matters, were subject to future discussions at the Ad Hoc Advisory Group, and that items (iv) to (x) reflected the discussions on the draft Treaty in previous meetings.

169. The Delegation of the Russian Federation questioned the necessity of draft Rule 2bis in light of Note 5.04 in document SCP/2/4, and pointed out that Contracting Parties would remain free to determine requirements with respect to matters that were not considered to be form and contents. The Delegation of Australia also expressed its concern that draft Rule 2bis might be used to prevent a Contracting Party from asking for a requirement that neither clearly qualified as “form and contents” nor was included in the list. The Delegation of the United States of America, sharing the opinion of the aforementioned Delegations, stated that

the list in draft Rule *2bis* should not be exhaustive, and pointed to the divergence of opinion existing under the PCT regarding what constitutes form and contents. It suggested that item (iv) should also provide for requirements in respect of types of applications other than divisional applications. The Representative of FICPI expressed his concern that the list contained in Rule *2bis*(1) might condone anomalies in national laws, rather than further international harmonization. The Representative of AIPLA wondered whether draft Rule *2bis* was necessary.

170. The Delegation of Brazil raised the matter of whether a declaration in respect to the origin of biological material referred to in the application was already covered by PCT Rule *13bis.7*, or whether it was necessary to provide for this in a further item. The Delegation of Australia pointed out that reliance on PCT Rules might not be sufficient since the publication of information in the PCT Gazette under PCT Rules *13bis.3(iv)* and *13bis.7* was not appropriate for requirements under national law. The Representative of TMPDF observed that matters relating to the access to biological material were beyond the scope of patent law. The International Bureau agreed that this matter needed further study.

171. The Delegation of Canada suggested that the address of the inventor be included in item (i) Rule 4(6)(a). The Delegation of India proposed to include the words “an examination” under item (ix) in the interest of developing countries.

172. It was agreed that the International Bureau would further study the list of PCT provisions incorporated by reference into the draft PLT under draft Article 5(1), as well as whether any such list should be drafted as a Rule, as an agreed statement or merely be included into the Notes, and the consequential need for any additional permitted requirement under Article 5(1).

Draft Rule 3: Modifications to the PCT Request Form Under Article 5(2)(b)

173. The suggestion of the International Bureau that this Rule be deleted as a consequence of the adoption of Article 14(1)(c) was agreed.

Draft Rule 6: Time Limits Concerning the Application Under Article 5

174. *Paragraph (2)*. This paragraph was adopted with the modifications suggested by the International Bureau to change “that Article” to “Article 5(7)” in subparagraph (a), to delete subparagraph (b) in its entirety, to delete the reference to paragraph (c) in paragraph (a), and to renumber paragraph (c) as paragraph (b).

175. *Paragraph (3)*. The Delegation of Australia, supported by the Representative of the EPO, proposed that, in order to avoid a loss or delay of revenue for any Office which currently requires the payment of a filing fee at the time of filing of the application, the time limit for the payment of the filing fee should be not less than one month from the notification, in conformity with PCT Rule *16bis.1*. This proposal was not adopted, following opposition by the Delegation of the United States of America, on the grounds that this would be inconsistent with the uniform use of a two month period in the draft Treaty, that one month may not be sufficient with regard to communications between countries, and that disruption to revenue streams could be addressed in a transitional provision, and by the Delegation of

Mexico. In addition, the Chair pointed out that nothing in the Treaty would prevent an Office from requiring a surcharge to discourage late payment.

176. A suggestion by the International Bureau that subparagraph (a) be modified to regulate all time limits under Article 5(8) by amending “Article 5(8)(a)” to “Article 5(8)”, with the consequential deletion of subparagraph (b) was agreed. It was also agreed to delete the words “or (c)” under item (iii) in consequence of the amendment adopted under paragraph (2). The paragraph was adopted with these modifications.

Draft Rule 7: Details Concerning Representation Under Article 6

177. *Paragraph (1)*. In accordance with the adoption of Article 6(2)(vi) in square brackets, the paragraph as a whole was adopted in square brackets.

178. *Paragraph (2)*. A suggestion by the International Bureau that subparagraph (b) be deleted, in line with the deletion of Rule 6(2)(b), was agreed, together with the deletion of the words “Subject to subparagraph (b)” in subparagraph (a). This paragraph was adopted with these modifications.

179. *Paragraph (3)*. It was agreed that, consequential to the deletion of paragraph (2)(b), item (iii) of this paragraph be deleted, and the words “items (ii) and (iii)” in item (i) be amended to “item (ii)”. This paragraph was adopted with these modifications.

Draft Rule 8: Filing of Communications Under Article 7(1)

180. *Paragraph (1)*. This paragraph was adopted with the modification proposed in document SCP/2/3.

181. *Paragraphs (2) and (3)*. The International Bureau referred to its proposal in document SCP/2/3, to incorporate draft paragraph (3)(a) into paragraph (2)(a), and to modify paragraph (3)(b) as new paragraph (2)(c).

182. In response to a request by the Delegation of the United States of America, it was agreed that the International Bureau would clarify in the Notes that a Contracting Party could require a particular format for communications filed on paper.

183. The Delegation of Japan, supported by the Delegation of the United States of America, suggested that Offices should be permitted to delay the application of paragraph (2)(a) in order to implement technical changes required by any revisions of the PCT Regulations. The International Bureau said that it would study the addition of a general “umbrella clause” to cover such situations. The Delegation of the United States of America observed that, according to the general procedure within the PCT, an Office would give the Director General of WIPO two months advance notice of the fact that it was ready for implementation, and that this information, including the date of entry into force, would then be published in the PCT Gazette.

184. In reply to a question by the Representative of JIPA, the International Bureau explained that, if a document was prepared on a computer and directly transmitted by telefax, a printout of that document would constitute the “original” as required by Rule 8(2)(b).

185. This provision was adopted with the modifications suggested by the International Bureau.

186. *Paragraph (4)*. This provision was adopted as proposed, subject to renumbering as paragraph (3).

Draft Rule 9: Details Concerning the Signature Under Article 7(2)

187. *Paragraph (4)*. This provision was adopted as proposed.

188. *Paragraphs (5) and (6)*. The Delegation of the United States of America expressed the opinion that a definition of “electronic signature” may be required, since this term appeared not to be used in a uniform manner in these provisions. The Delegation indicated that a distinction should be made between an electronic signature and a digital certificate, the latter being a confirmation of the first. The Delegation of Japan explained that, in Japan, an ID number and a password constituted the electronic signature. The Representative of FICPI pointed out that the term digital certificate suggested a possible authentication of the signature, an impression which should be avoided in view of the prohibition of authentication of the signature in paper communications. The International Bureau recalled that work was currently been undertaken on that subject in the United Nations Commission on International Trade Law (UNCITRAL) and that the draft Treaty should closely follow that work. These provisions were referred to the International Bureau for further study.

Draft Rule 10: Details Concerning the Indication of Addresses Under Article 7(4)(i) and (ii)

189. *Paragraph (1)*. The International Bureau suggested that, in accordance with Article 1(xi), the words “one or more territories” be replaced by the words “a territory”. This provision was adopted with the modification proposed.

190. *Paragraph (2)*. In response to a question by the Delegation of the Russian Federation as to the need for the words “as his address,” the International Bureau explained that these words were used so that a Contracting Party would not be obliged to accept other addresses which might be included in the application for unrelated purposes. The Delegation of the Russian Federation, supported by the Delegations of Australia and the United Kingdom, and the Representatives of FICPI and UNICE, proposed that “may” be changed to “shall.” The International Bureau proposed that the words “one or more territories” should be changed to the words “a territory,” and the words “the address” should be included after the words “Article 7(4)(i) and.” The provision was adopted with these modifications.

191. *Paragraph (3)*. The Representative of FICPI proposed that “may” be changed to “shall,” as was done in paragraph (2). The International Bureau proposed to add the words “the address” after the word “and”. The provision was adopted with these modifications.

192. *New Paragraph (5)*. As agreed during the discussion on Article 7 and as proposed in the PLT-PCT Study, Article 7(6)(b) was transferred to new Rule 10(5). In response to a query by the Delegation of Mexico, the International Bureau expressed the view that the term “refusal of an application” was sufficiently well understood not to require a definition. It was agreed, on the proposal of the Delegation of the Russian Federation, that an item corresponding to Article 7(6)(b)(ii) was no longer necessary. The paragraph was adopted with this modification to read as follows:

“(5) [*Sanctions for Non-Compliance With Requirements Under Article 7(6)*] No Contracting Party may provide for the refusal of an application for failure to comply with any requirement to furnish a registration number or other indication under paragraph (4).”

Draft Rule 11: Time Limits Concerning Communications Under Article 7(5) and (6)

193. This Rule was adopted as proposed.

Draft Rules 12 and 13: Details Concerning Extension of a Time Limit Fixed by the Office Under Article 10 and Continued Processing and Re-instatement of Rights Under Article 11

194. These provisions were referred to the International Bureau for further study together with Articles 10 and 11.

Draft Rule 14: Details Concerning Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office Under Article 12

195. *Paragraph (1)*. With regard to the choice between six and 12 months for making a request and complying with the requirements under Article 12(1)(ii) which, in item (ii), had been put into square brackets, the Delegation of Japan, supported by the Delegation of Brazil, preferred, in the interest of third parties, a period of six months. The Delegations of Australia, Romania, the Czech Republic, Madagascar, the Russian Federation, Germany and China and the Representatives of the EPO, CIPA, FICPI and JIPA were in favor of 12 months which, according to the experience of these Delegations, was a fair and practicable solution. The Delegation of the Russian Federation pointed out that it had been agreed in a former meeting of the Committee that the protection of intervening rights was a matter that was left to national law. As a result of these discussions, this paragraph was adopted with a period of 12 months not in square brackets.

196. *Paragraph (2)*. Following a proposal by the Delegation of Belgium to delete, in the chapeau of Rule 14(2), the words “to consider the time limit to have been complied with, or” the International Bureau suggested the following text as a chapeau of this paragraph:

“The exceptions referred to in Article 12(2) are failure to comply with a time limit:”

197. In response to an intervention by the Delegation of the United Kingdom, the International Bureau suggested to replace items (vii) and (viii) by a new item in respect of an action in *inter partes* proceedings. This proposal was supported by the Delegations of Australia, the United States of America, the Russian Federation, China, Senegal and France.

198. The Delegations of Australia and the United States of America, supported by the Representative of the EPO, preferred to retain only a minimum number of exceptions and to delete items (ii), (v), (vi) and (ix). The Representative of FICPI, supported by the Representatives of IPIC and CIPA, suggested that, since the application of Article 12(1) required a showing of due care and there were sufficient safeguards to prevent abuse of the re-instatement procedure, all exceptions except in items (iii) and (iv) be deleted.

199. The Delegations of Ireland and China were in favor of retaining all exceptions mentioned in items (i) to (ix). The Delegation of Ireland proposed to add an additional exception for the payment of designation fees. The Delegations of the Russian Federation and Japan supported the deletion of item (ix) and proposed the retention of all other exceptions. The Delegation of France proposed to delete item (vi) and to retain all other exceptions, in particular items (ii) and (v). The retention of item (v) was also supported by the Delegations of the Russian Federation, India and Greece. The Delegation of Belgium reserved its position as to the deletion of item (vi).

200. The Delegation of Argentina, supported by the Delegation of Mexico, proposed to include a general provision, similar to the provisions contained in Rules 12(2)(b) and 13(3)(b), according to which no Contracting Party which provides a maximum time limit for compliance with all of the requirements for the grant of a patent shall be required to consider the time limit to have been complied with, or to re-instate the rights of the applicant with respect to the application after the expiration of that maximum time limit. The Delegation declared that it would have to reserve its position if it was not included.

201. After some discussion, this provision was adopted, subject to the reservations of Belgium, Argentina and Mexico, with the following text:

(2) [*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 under Article 10(1), 11(1) or 12(1);

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

(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.

Draft Rule 15: Details Concerning Addition and Restoration of Priority Claim Under Article 13

202. This provision was referred to the International Bureau for further study together with Article 13.

Draft Rule 16: Request for Recordal of Change in Name or Address

203. *Paragraph (1)*. This provision was adopted, subject to the removal of the word “a” after the word “of”, with the addition of a new item (i) as suggested by the International Bureau (and the renumbering of items (ii) to (iv)), as follows:

“(i) an indication to the effect that recordal of a change in name or address is requested;”

204. *Paragraph (2)(b)*. This provision was adopted as proposed.

205. *Paragraph (3)*. This provision was deleted in view of the adoption of new Article 7(1ter).

206. *Paragraph (4)*. This provision was adopted with the following text as suggested in the PLT-PCT Study:

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

207. *Paragraph (5)*. This provision was adopted subject to the addition of the words “or by other means permitted by the Office” after “paper” in paragraph (b), similar to the modification in Rule 17(6).

208. *Paragraph (6)*. This paragraph was deleted as agreed during the discussion on draft Rule 18(7).

209. *Paragraphs (9) and (10)*. These paragraphs were adopted as proposed.

210. *Paragraph (11)*. The International Bureau suggested that, in consequence to the modification of Article 7(4), the word “service” in the title and the text be changed to “correspondence or address for legal service.” This paragraph was adopted with that modification.

Draft Rule 17: Request for Recordal of Change in Applicant or Owner

211. *Paragraph (1)(a)*. This paragraph was adopted as proposed.

212. *Paragraph (1)(b)*. The Delegation of the United States of America suggested that the square brackets be deleted, that the words “by that Contracting Party” be inserted after the words “government interest” in item (ii) for the purpose of clarification, and that the square

brackets be removed and the text retained in items (i) and (ii). In response to a question raised by a representative of one non-governmental organization, the International Bureau explained that a statement under item (i) could be required in all cases by the Contracting Party, but that evidence could only be required where the Office might reasonably doubt the veracity of any indication contained in that statement. The provision was adopted with the modification suggested.

213. *Paragraph (2)*. This paragraph was adopted as proposed.

214. *Former Paragraph (3)*. This paragraph was deleted as proposed.

215. *Paragraph (3)(a)*. The Delegation of the United States of America proposed to delete the words “Contracting Party” and to retain the words “requesting party” without the square brackets, as was agreed under Rule 18(3)(a). In response to a proposal by the Delegation of the Russian Federation that a provision be added to this paragraph in line with Rule 18(1)(b), new item (iii), the International Bureau suggested the addition of the words: “the request include information relating to the registration of the contract, where registration is compulsory under the applicable law of the Contracting Party, and” after “may require that”, and deletion of “the request.” This paragraph was adopted with the changes proposed, noting the reservations mentioned by the Delegations of Spain, Mexico, Cuba and Brazil during the discussion on draft Rule 18(3)(a).

216. *Paragraph (4)*. This paragraph was adopted, with the suggestion by the International Bureau, in consequence of the adoption of new Article 7(1*bis*), that it be amended to read as follows:

“(4) [*Translation*] A Contracting Party may require a translation of any document submitted under paragraph (3)(a)(i) or (ii), (b), (c) or (d) that is not in a language accepted by the Office.”

217. *Paragraph (5)*. This paragraph was adopted with the suggestion by the International Bureau, based on a proposal in the PLT-PCT Study, that it be amended as follows:

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

218. *Paragraph (6)*. The Delegation of the United States of America proposed to add the words “or by other means permitted by the Office” after “on paper”, consequential to the change adopted for Article 6(3)(b). This paragraph was adopted with the modification proposed.

219. *Paragraph (7)*. This paragraph was deleted as agreed during the discussion on draft Rule 18(7).

220. *Paragraph (8)*. In response to a suggestion by the Delegation of Senegal, supported by the Delegations of Greece and Australia, in order to provide for the case where the Office may reasonably doubt the accuracy of a translation, the International Bureau proposed to add the following language at the end of paragraph (8): “or the accuracy of any translation required under paragraph (4)”. The provision was adopted with this modification.

Draft Rule 18: Request for Recordal of a Licensing Agreement or Security Interest

221. *Paragraph (1)(a)*. Following a proposal by the Delegation of the United Kingdom to include an indication as to whether a license was exclusive or not in the request for the recordal of a licensing agreement, this provision was adopted with addition of the following new item (v):

“(v) an indication of whether the license is an exclusive license or a non-exclusive license.”

222. *Paragraph (1)(b)*. It was agreed that this provision would be modified to conform to the modifications adopted for Rule 17(1)(b), that is, the removal of square brackets and the retention of text in items (i) and (ii), and the insertion of the words “by that Contracting Party” after the words “government interest” in item (ii). Following a suggestion by the Delegation of the Russian Federation, it was also agreed to add the following new item (iii):

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

This provision was adopted with these modifications.

223. *Paragraph (2)*. This provision was adopted as proposed.

224. *Paragraph (3)(a), introductory words*: The Delegation of the United States of America, supported by the Delegations of Australia, Ireland, Portugal and the United Kingdom and the Representative of the EPO, suggested that, to promote user-friendliness, the phrase “, where the recordal is requested by the licensee, rather than by the licensor,” be retained without square brackets. The Delegation of the United Kingdom, supported by an intergovernmental organization indicated that the licensor would not be likely to request a false recordal of his licensing agreement. On the other hand, for the reliability and the stability of the records, the Delegation of Japan, supported by the Delegations of Belgium, Cuba, the Republic of Korea and the Russian Federation and the Representative of the EAPO, suggested that that phrase should be deleted. In view of the lack of consensus on this matter, it was agreed that the phrase in question should be maintained in square brackets.

225. As regards the party who could choose the option under item (i) or (ii), the Delegation of the United States of America, supported by the Delegations of Australia, Belgium, Ireland, the Russian Federation and the United Kingdom and the Representatives of the EPO, BDI, EPI and FICPI, suggested that the option of the requesting party be retained without associated square brackets. However, the Delegation of Mexico stated that it preferred to provide a Contracting Party with the choice between the options referred to in items (i) and (ii), and proposed the following introductory words: “A Contracting Party may require that this request be accompanied by one of the following documents:”. The Delegations of Brazil, Cuba, Israel, Portugal, the Republic of Korea and Spain and the Representative of the EAPO were also in favor of the choice being at the option of the Contracting Party. In conclusion, it was agreed that the words “requesting party” should be retained without associated square brackets and that the words “Contracting Party” should be deleted together with the square brackets. The introductory words were adopted with this modification, subject to reservations by the Delegations of Spain, Mexico, Cuba and Brazil.

226. *Paragraph (3)(a)(i) and (ii)*. In response to a suggestion by the Delegation of the Russian Federation, supported by the Delegation of Japan, that the licensed rights be identified in an extract of the licensing agreement under item (ii), the International Bureau proposed, and the Representative of the EAPO supported, the insertion of the words “the right transferred and” before the words “the territory.” In response, a representative of one non-governmental organization expressed the view that the indication of the transferred rights in detail could necessitate the submission of practically all of the licensing agreement, which often contains confidential business information.

227. Following a suggestion by the Delegation of the Russian Federation as to the use of general terms in order to describe the required contents of extracts of licensing agreements, it was agreed that the words “showing at least the territory, duration or any quantitative extent of the licensing agreement” be replaced by the words “consisting of those portions of that agreement which show the rights licensed and their extent.” It was also agreed that the Notes would clarify that those “portions” would include, in particular, information regarding the territory and duration of the licensing agreement, and whether there is a right to sub-license. This proposal was supported by the Delegations of Japan and the United Kingdom. These items were adopted with the modifications agreed.

228. *Paragraph (3)(b)*. A proposal by the Delegation of Japan that the consent of co-non-exclusive licensees could be required for the recordal of a license agreement and security interest, was not adopted following opposition by the Delegations of the Russian Federation, the United States of America and Australia. A proposal by the Delegation of the United States of America to add the words “, if known,” after the word “who” was not also adopted, following an observation by the Delegation of Australia that there were other situations in which consent could not be obtained and that the matter should be left to national law. In conclusion, the provision was adopted as proposed.

229. *Paragraph (4)*. The International Bureau introduced the proposal in the PLT-PCT Study, under which item (i) would be deleted in consequence of the adoption of new Article 7(1bis). In response to a proposal of the Delegation of Senegal to add the words “clear and explicit” before the word “translation,” the International Bureau suggested that this issue be dealt with under draft Rule 17(8), which was incorporated, mutatis mutandis, by draft Rule 18(8). In response to an intervention by the Delegation of Greece, the International Bureau further explained that Rule 17(8) had been amended to permit a Contracting Party to require evidence in respect of the accuracy of the translation only where a Contracting party had a reasonable doubt. The provision was adopted in the following form:

“(4) [*Translation*] A Contracting Party may require that, if the document referred to in paragraph (3) is not in a language accepted by the Office, that document be accompanied by a translation.”

230. *Paragraph (5)*. This paragraph was adopted as proposed in the PLT-PCT Study as follows:

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

231. *Paragraph (6)*. This paragraph was adopted as proposed.

232. *Paragraph (7)*. The International Bureau, suggested that, in view of Rule 20, this paragraph and the provisions contained in Rules 16(6), 17(7) and 19(6) could be deleted. Following support for the International Bureau's suggestion expressed by the Delegations of the United States of America and Tunisia, this proposal was adopted by the Committee.

233. *Paragraphs (8) to (10)*. These paragraphs were adopted as proposed.

234. *Paragraph (11)*. This paragraph was adopted with the deletion of the word "the" before the words "requests for." The Delegation of the Russian Federation asked the International Bureau for clarification as to how Rule 18(3) would be applied, *mutatis mutandis*, to paragraph (11)(ii) with respect to the cancellation of licensing agreements. The International Bureau responded that it believed that that situation was covered by the *mutatis mutandis* language, and stated that this issue would be clarified in the Notes.

Draft Rule 19: Request for Correction of a Mistake

235. *Paragraph (1)(a)*. This provision was adopted as proposed.

236. *Paragraph (1)(b)*. The Delegation of the United States of America, supported by the Delegations of Brazil and Zimbabwe, proposed to delete the word "replacement" in both instances in order to provide for both corrections by errata or replacement sheets. A proposal by the Delegation of Australia to add the words "or part" after each instance of the term "replacement part" was agreed. The provision was adopted with this modification.

237. *Paragraph (1)(c)*. This provision was adopted with the modification of replacing the word "from" with "by" as suggested by the International Bureau.

238. *Paragraph (1)(d)*. A proposal by the International Bureau that the words "as a condition of acceptance of a request for correction of a mistake that the said request" be deleted and be replaced by the words "that the request be subject to a declaration by the requesting party stating that the said request" in order to be in line with subparagraph (c) was agreed. The provision was adopted with this modification.

239. *Paragraph (2)*. This paragraph was adopted as proposed.

240. *Paragraph (3)*. This paragraph was deleted as suggested by the International Bureau, since the substance of this provision was incorporated into new Article 7(1*bis*).

241. *Paragraphs (4) and (9)*. The Delegation of Cuba suggested that, in Rule 19(9) of the Spanish text, the word "solicitud" should be replaced by the word "petición." It was agreed that, as suggested in the PLT-PCT Study, paragraphs (4) and (9) be combined in a modified paragraph (4) with deletion of paragraph (9). The following text was adopted:

"(4) [*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."

242. *Paragraph (5)*. This provision was adopted as proposed.

243. *Paragraph (6)*. This provision was deleted as a consequence of the deletion of draft Rule 18(7).

244. *Paragraphs (7), (8) and (10)*. These provisions were adopted as proposed.

245. *Paragraph (11)*. In response to a suggestion by the Delegation of the United States of America that this Rule be limited to formal mistakes or, at least, that Contracting Parties having reissue procedures be able to exclude the application of this Rule, a proposal by the International Bureau, supported by the Delegation of Canada, was agreed and a new subparagraph (b) was adopted as follows:

“(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.”

In consequence, the title of the paragraph was modified to “Exclusion,” and the original text was renumbered as subparagraph (a). The International Bureau indicated that the Notes would include examples of the types of errors that must be corrected under a reissue procedure. The provision was adopted with these modifications.

Draft Rule 21: Establishment of Model International Forms and Formats

246. *Paragraph (1)(a)*. A suggestion by one delegation that a new item (*ibis*), “a revocation of a power of attorney” be included in this subparagraph was not adopted following an observation by the International Bureau that the details concerning a request for that procedure were not covered by the draft PLT. The Delegation of Australia suggested that, in the spirit of harmonization, Model International Forms should also be provided for other procedures under the Treaty.

247. In response to a question by the Delegation of Australia, the International Bureau explained that, since Model International Forms constituted an important aspect of the draft Treaty, it was considered desirable to specify the procedure for the establishment of such Forms by the Assembly. Following this discussion, paragraph (1)(a) was adopted as proposed.

248. *New Paragraph (1)(abis)*. A proposal by the International Bureau to add the following new subparagraph (*abis*) to specify the procedure for modifications to the Patent Cooperation Treaty request Form referred to in Article 5(2)(b) was adopted in the following form:

“(abis) The Assembly shall establish the modifications of the Patent Cooperation Treaty request Form referred to in Article 5(2)(b).”

249. *Paragraph (1)(b)*. This provision was adopted with the following text, following the proposal by the International Bureau to add a new item (ii), as a consequence of the adoption of subparagraph (*abis*):

“(b) 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 (*abis*).”

250. *Paragraph (2)*. A proposal by the International Bureau for a new text for paragraph (2) concerning the establishment of Model International Formats was adopted in the following form:

“(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 Article 5(2)(c) and the items referred to in paragraph (1)(a).

(b) The International Bureau shall present proposals to the Assembly concerning any request Format referred to in Article 5(2)(c) and the establishment of Model International Formats referred to in subparagraph (a).”

Draft Rule 22: Requirement of Unanimity for Amending Certain Rules Under Article 14(3)

251. In response to a query from the Delegation of Australia regarding the possible use of numbered items, the International Bureau proposed the following text:

“Amendment of the present Rule and of the following provision shall require that no Contracting Party having the right to vote in the Assembly vote against the proposed amendment:

(i) Rule 8(1).”

252. The Delegation of the United States of America, supported by the Delegations of Japan and Korea and the Representative of JPAA, opposed the application of unanimity to Rule 8(1), since the likely effect would be to hinder the development of automation of the Offices. However, the Delegations recognized that social and economic conditions could not be ignored.

253. The Delegation of Australia, while acknowledging the desire to create a paperless Office, noted that the refusal to accept paper communications could disadvantage applicants from less developed countries, and urged that such a step should only be taken when all Contracting Parties could agree. The Delegations of Brazil, Greece, the Russian Federation, Argentina, Mexico and Denmark and the Representatives of the EAPO and FICPI supported the comments of the Delegation of Australia. The Delegation of Australia agreed that such a change should not be able to be blocked by one Contracting Party for non-substantive reasons.

254. As an alternative to requiring unanimity, the Delegation of Japan proposed that some lesser standard be inserted in Rule 22, e.g., a four-fifths majority. The Representative of the

EPO proposed that unanimity could be required for a limited time period of ten years from entry into force of the Treaty.

255. The Chair noted that, since Rule 8(1) was in square brackets, Rule 22 should be placed in square brackets, but the reservations would be noted. However, the Delegations of Argentina and the Russian Federation and the Representative of the EAPO opposed the insertion of square brackets. In response to a query from the Delegation of the United States as to the effect of a reservation on Rule 8(1), the International Bureau confirmed that, if in an article on reservations, a reservation was made against a specific rule, that rule would not have effect in the Contracting Party that had made the reservation.

256. The Delegation of the United States of America proposed to delete any reference to Rule 8(1) in Rule 22, so that amendments to that Rule could be made by a majority of three-fourths of the votes. The Delegation further proposed to subject the validity of Rule 8(1) itself to a time limit, which might be determined in consultation with the Standing Committee on Information Technology, taking into account the probable pace of technological progress. The Delegation pointed out that, even when an Office did not accept applications on paper, Article 4 contained the obligation to grant a filing date to such applications. The Delegation of Japan indicated that it could support the proposal by the Delegation of the United States of America. The Delegation of Mexico supported the proposal to subject the validity of Rule 8(1) to a time limit.

257. The statements of the Delegation of the United States of America were supported by the Representative of the EPO, who explained that the risk for applicants would be limited since they would obtain a filing date even for applications filed on paper, and would, for the subsequent procedure, have in most cases to appoint a local representative. The Representative suggested to make Rule 8(1) subject to a majority of four-fifths of the votes for a period of ten years, and to require, after that period, a majority of three-fourths of the votes.

258. The Delegation of India, supported by the Delegations of Argentina, Brazil, Russia, Cuba, Turkmenistan, Armenia, Senegal, China and the representative of the EAPO proposed to make Rule 22(1) subject to a review after a certain period of time, since the vast majority of countries were not yet ready for electronic filing. Changes of Rule 8(1) should therefore require unanimity as provided for in draft Rule 22.

259. In the course of the discussions, the International Bureau pointed out that the issue to be discussed was not whether Offices would be required to adopt electronic filing, but whether individual Offices could exclude the filing of applications on paper. It explained that the issues that had to be accommodated were to ensure that the draft PLT neither inhibited technological progress, nor precluded individual inventors from using the international patent system. The International Bureau made it clear that, under the Articles of the draft PLT, no Contracting Party could be required to accept electronic filing, or to exclude the filing on paper.

260. The Delegation of Brazil, supported by the Delegations of Mexico, Argentina, India, Senegal and Mali, proposed to add, after “Rule 8(1)”, the words “within a time limit of ten years”. The Delegation explained that this would give Offices in developing countries and countries in transition sufficient time to take the necessary measures. After 10 years, the Assembly would be ready to amend Rule 8(1) by a majority of three-fourths of the votes,

estimating that a significant number of countries could accept electronic filing. The Delegations of the Russian Federation and Cuba stated that, although they preferred to keep the current text of Rule 22, they would support the proposal of the Delegation of Brazil by way of compromise. The Delegation of the Russian Federation explained that applicants should be able to decide by what means they submit the relevant material. The International Bureau observed that the time limit of ten years would be calculated as from the date of the entry into force of the draft Treaty.

261. The Representative of the EAPO reiterated his position that any amendments to Rule 8(1) should not be possible before a period of ten years and should require the convocation of a Diplomatic Conference.

262. The Delegation of the United States of America opposed the proposal put forward by the Delegation of Brazil and proposed instead to adopt a provision which would allow modifications of Rule 8(1) by a four-fifths majority of the votes, and to adopt a “sunset provision” under which Rule 8(1) would cease to be applicable after a period of ten years. It explained that applicants would be protected since they would be granted a filing date even if they had filed their application on paper, and since the subsequent procedure would, in most cases, be carried out by a local representative who would be capable of communicating with the Office by electronic means. The adoption of a new technology by an Office would lead to a more efficient administration of patent applications, reduce costs, and would, therefore, be beneficial both to applicants and Offices. This proposal was supported by the Delegations of Japan, Canada, the Republic of Korea and Germany and by the Representative of JPAA. The Delegation of the United Kingdom observed that, since no appointment of local agents was required under its legislation, the ability of applicants from developing countries to communicate with an Office had to be examined.

263. The Delegation of Australia, supported by the Representative of the EPO, stated that, while it agreed in principle with the proposal made by the Delegation of the United States of America, it was concerned that, once Rule 8(1) disappeared, applicants might fail to meet a time limit as a consequence of their filing on paper, which might lead to an unwanted and unwarranted loss of rights. The Delegation therefore proposed to adopt a provision stating that communications on paper would be sufficient for meeting a time limit, and the conversion into an electronic communication would be accepted by an Office requiring electronic communication as a correction of a formal requirement. The inclusion of such a provision in the draft Treaty was supported by the Delegation of the United States of America. The Delegation of Brazil observed that such a provision constituted an interesting approach and that it should be further explored.

264. In conclusion, the question was referred to the International Bureau for further study.

Agenda Item 7: Information concerning fee reductions by the Offices

265. The discussion was based on documents SCP/2/6 (Information Concerning Fee Reductions by the Offices), SCP/2/10 (Proposal by the Delegation of Sudan) and SCP/2/12 (Proposal by the Delegation of the Republic of Moldova).

266. The proposal by the Delegation of Sudan was supported by the Delegations of Egypt, Mexico, China, Zimbabwe, India, Madagascar, Cuba and Sri Lanka, and by the

Representatives of WASME and IFIA. The Delegations of Mali and the Philippines voiced general support for fee reductions proposed by the Delegations of Sudan and the Republic of Moldova. The Delegation of Mexico stated that, since only a minor percentage of patent applications would be eligible for a fee reduction, it would not be a burden for the Offices. The Representative of IFIA pointed out that there was a general trend towards fee reductions for individual inventors throughout the world, which had expressly been recognized by the European Parliament and the European Economic and Social Council. The Representative drew attention to the benefits that individual inventors, particularly in developing countries, might derive from such fee reductions, as high fees continued to present a major obstacle for use of the international patent system by individual inventors.

267. The Delegations of Egypt and Tunisia pointed out that, while all proposals for fee reductions deserved interest to the extent that they encouraged inventors to apply for patents abroad, the financial situation of Offices in developing countries, which already charged low fees and had, in certain cases, to finance themselves, had to be taken into account. This view was supported by the Delegations of Madagascar and Cuba.

268. The Delegations of Canada, Côte d'Ivoire and Brazil limited their support to paragraph 2 of the proposal put forward by the Delegation of Sudan. The Delegation of Canada, supported by the Delegation of Sri Lanka, was in favor of providing a definition for the term "natural person". With regard to paragraph 3 of the proposal by the Delegation of Sudan and the proposal by the Delegation of the Republic of Moldova, the Delegation of Canada observed that it was unclear whether fee reductions for applicants from particular countries were consistent with the most-favoured-nation treatment requirement under Article 4 of the TRIPS Agreement. The Delegation of Brazil, supported by the Delegation of Cuba, expressed the view that this proposal would only be covered by the exclusion under Article 5 of the TRIPS Agreement if the proposed recommendation applied to Contracting Parties of the PLT exclusively.

269. The Delegation of the United States of America preferred, in general, that the SCP not make any recommendation regarding fee reductions to the General Assembly of WIPO or the Paris Union Assembly. Mandatory fee reductions may pose a burden on Patent Offices which relied on fees for their financing, resulting in a fee increase for other applicants. Nevertheless, the Delegation considered paragraph 2 of the proposal by the Delegation of Sudan to be a basis for further discussion, and proposed to include the words "and an inventor" after the words "natural person". It also observed that it would be necessary to limit reductions to certain classes of fees, such as statutory fees. The Delegation further opposed any reduction based on licensing. The Delegation of Lithuania supported the Delegation of the United States of America in principle.

270. The Delegation of the Russian Federation and the Representatives of the EAPO and ABPI supported the proposal by the Delegation of Moldova because it also included certain categories of legal persons. That proposal was opposed by the Delegations of Canada and the United States of America as well as by the Representative of WASME on other grounds.

271. The Delegation of Armenia expressed a preference for Alternative B of the proposal by the International Bureau as contained in document SCP/2/6, paragraph 16, and for the proposal of the Delegation of the Republic of Moldova, in principle. The Delegation of Hungary supported Alternative B with only item (i), while the Delegation of Argentina supported Alternative B excluding item (ii).

272. The Delegation of Japan stated that, considering the importance of fee reductions to stimulate the use of the patent system and the proper operation of Offices, this issue would need further reflection. Supported by the Delegation of the Republic of Korea, the Delegation was of the view that such reduction schemes should be left to each country. The Representative of CIPA opposed any fee reductions limited to a particular class of applicants and resulting in an additional burden on other applicants.

273. The Delegation of Greece reserved its position pending consideration of the TRIPS consistency of any fee reduction schemes.

274. The Delegation of Senegal favored the proposal of the Delegation of Sudan in principle, but reserved its position pending further consultation with OAPI, of which it is a member.

275. After some discussion, it was agreed that the International Bureau should further study the issues relating to the reduction of fees by national Offices, taking as a starting point the proposal by the Delegation of Sudan as contained in paragraph 2 of document SCP/2/10, while considering in particular whether the reduction should affect all or only a certain type of fees, whether the notion of "natural person" needed further definition, and whether legal entities should also profit from such reductions. The study of the International Bureau would be submitted to the next meeting of the SCP for further consideration. Following the request by the Delegation of Cuba, it was also agreed that the International Bureau should consider the impact of the current fee reduction practice under the PCT on its administration.

CONCLUSION OF THE MEETING

Agenda Item 8: Future work

276. The International Bureau raised the question whether additional items, in particularly central recording, disclosure of technical information on the Internet and its effect on patentability, or certain aspects of biotechnology, should be included in the Agenda of the next meeting of the SCP or postponed until after the Diplomatic Conference. The Delegations of Australia and the United States of America, while recognizing the importance of other issues, supported the second alternative, while the Delegation of Japan suggested that the possibility of holding a short meeting in the first quarter of 2000 be explored. It was agreed that the question should be decided at the next meeting of the SCP.

277. With respect to the preparation of documents for the next meeting of the SCP, it was agreed that the International Bureau should circulate a document containing all changes agreed upon during the present meeting, plus the revised provisions that were referred to the International Bureau by the end of June 1999. In order to avoid a proliferation of documents, the International Bureau would also prepare a Working Document containing the modifications suggested by the International Bureau by the second half of July 1999. This document would be divided into two parts, one containing the Articles and the other the Regulations. A revised version would be prepared for the meeting itself, if necessary. The Delegation of the United States of America expressed a preference for receiving the latter document by the middle of July 1999.

278. As far as the Electronic Forum is concerned, the Committee agreed that, in the future, all SCP documents would be posted on the forum, and that proposals submitted to the Forum by Delegations would, at their express request, be formally distributed to the Committee. The International Bureau further announced that the URL of the Forum would be modified from “http://wipo2.wipo.int/scp/” to read “http://scp.wipo.int”. During a transitional period, both the new and the present URL would remain valid. Finally, all participants at the present meeting who indicated their e-mail addresses would be added to the Electronic Forum.

279. It was agreed that the next meeting of the SCP be held beginning Monday, September 6, 1999, but that the question as to whether it should be a one or a two week meeting would be left to the International Bureau.

280. This report was unanimously adopted by the Standing Committee on April 23, 1999.

[Annex follows]

ANNEXE/ANNEX

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