

Patent Cooperation Treaty

(PCT)

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Done at Washington on June 19, 1970,
amended on September 28, 1979,
and modified on February 3, 1984,

and

Regulations under the PCT

(as in force from January 1, 1993)

World Intellectual Property Organization

GENEVA 1993

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Patent Cooperation Treaty

**Done at Washington on June 19, 1970,
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The Contracting States,

Desiring to make a contribution to the progress of science and technology,

Desiring to perfect the legal protection of inventions,

Desiring to simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries,

Desiring to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions,

Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology,

Convinced that cooperation among nations will greatly facilitate the attainment of these aims,

Have concluded the present Treaty.

Introductory Provisions

Article 1

Establishment of a Union

(1) The States party to this Treaty (hereinafter called “the Contracting States”) constitute a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services. The Union shall be known as the International Patent Cooperation Union.

(2) No provision of this Treaty shall be interpreted as diminishing the rights under the Paris Convention for the Protection of Industrial Property of any national or resident of any country party to that Convention.

Article 2

Definitions

For the purposes of this Treaty and the Regulations and unless expressly stated otherwise:

(i) “application” means an application for the protection of an invention; references to an “application” shall be construed as references to applications for patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;

(ii) references to a “patent” shall be construed as references to patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;

(iii) “national patent” means a patent granted by a national authority;

(iv) “regional patent” means a patent granted by a national or an intergovernmental authority having the power to grant patents effective in more than one State;

(v) “regional application” means an application for a regional patent;

(vi) references to a “national application” shall be construed as references to applications for national patents and regional patents, other than applications filed under this Treaty;

(vii) “international application” means an application filed under this Treaty;

(viii) references to an “application” shall be construed as references to international applications and national applications:

(ix) references to a “patent” shall be construed as references to national patents and regional patents;

(x) references to “national law” shall be construed as references to the national law of a Contracting State or, where a regional application or a regional patent is involved, to the treaty providing for the filing of regional applications or the granting of regional patents;

(xi) “priority date,” for the purposes of computing time limits, means:

(a) where the international application contains a priority claim under Article 8, the filing date of the application whose priority is so claimed;

(b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;

(c) where the international application does not contain any priority claim under Article 8, the international filing date of such application;

(xii) “national Office” means the government authority of a Contracting State entrusted with the granting of patents; references to a “national Office” shall be construed as referring also to any intergovernmental authority which several States have entrusted with the task of granting regional patents, provided that at least one of those States is a Contracting State, and provided that the said States have authorized that authority to assume the obligations and exercise the powers which this Treaty and the Regulations provide for in respect of national Offices;

(xiii) “designated Office” means the national Office of or acting for the State designated by the applicant under Chapter 1 of this Treaty;

(xiv) “elected Office” means the national Office of or acting for the State elected by the applicant under Chapter II of this Treaty:

(xv) “receiving Office” means the national Office or the intergovernmental organization with which the- international application has been filed;

(xvi) “Union” means the International Patent Cooperation Union;

(xvii) “Assembly” means the Assembly of the Union;

(xviii) “Organization” means the World Intellectual Property Organization;

(xix) “International Bureau” means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(xx) “Director General” means the Director General of the Organization and, as long as BIRPI subsists, the Director of BIRPI.

CHAPTER I

International Application and International Search

Article 3

The International Application

(1) Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.

(2) An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.

(3) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.

(4) The international application shall:

- (i) be in a prescribed language;
- (ii) comply with the prescribed physical requirements;
- (iii) comply with the prescribed requirement of unity of invention;
- (iv) be subject to the payment of the prescribed fees.

Article 4

The Request

(1) The request shall contain:

(i) a petition to the effect that the international application be processed according to this Treaty;

(ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application (“designated States”); if for any designated State a regional patent is available and the applicant wishes to obtain a regional patent rather than a national patent, the request shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty; if, under the national law of the designated State, the designation of that State has the effect of an

application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent;

(iii) the name of and other prescribed data concerning the applicant and the agent (if any);

(iv) the title of the invention;

(v) the name of and other prescribed data concerning the inventor where the national law of at least one of the designated States requires that these indications be furnished at the time of filing a national application. Otherwise, the said indications may be furnished either in the request or in separate notices addressed to each designated Office whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application.

(2) Every designation shall be subject to the payment of the prescribed fee within the prescribed time limit.

(3) Unless the applicant asks for any of the other kinds of protection referred to in Article 43, designation shall mean that the desired protection consists of the grant of a patent by or for the designated State. For the purposes of this paragraph, Article 2(u) shall not apply.

(4) Failure to indicate in the request the name and other prescribed data concerning the inventor shall have no consequence in any designated State whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application. Failure to furnish the said indications in a separate notice shall have no consequence in any designated State whose national law does not require the furnishing of the said indications.

Article 5

The Description

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Article 6

The Claims

The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

Article 7

The Drawings

(1) Subject to the provisions of paragraph (2)(ii), drawings shall be required when they are necessary for the understanding of the invention.

(2) Where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings:

(i) the applicant may include such drawings in the international application when filed,

(ii) any designated Office may require that the applicant file such drawings with it within the prescribed time limit.

Article 8

Claiming Priority

(1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property.

(2) (a) Subject to the provisions of subparagraph (b), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property.

(b) The international application for which the priority of one or more earlier applications filed in or for a Contracting State is claimed may contain the designation of that

State. Where, in the international application, the priority of one or more national applications filed in or for a designated State is claimed, or where the priority of an international application having designated only one State is claimed, the conditions for, and the effect of, the priority claim in that State shall be governed by the national law of that State.

Article 9

The Applicant

(1) Any resident or national of a Contracting State may file an international application.

(2) The Assembly may decide to allow the residents and the nationals of any country party to the Paris Convention for the Protection of Industrial Property which is not party to this Treaty to file international applications.

(3) The concepts of residence and nationality, and the application of those concepts in cases where there are several applicants or where the applicants are not the same for all the designated States, are defined in the Regulations.

Article 10

The Receiving Office

The international application shall be filed with the prescribed receiving Office, which will check and process it as provided in this Treaty and the Regulations.

Article 11

Filing Date and Effects of the International Application

(1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:

(i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office,

(ii) the international application is in the prescribed language,

(iii) the international application contains at least the following elements:

- (a) an indication that it is intended as an international application,
- (b) the designation of at least one Contracting States
- (c) the name of the applicant, as prescribed,
- (d) a part which on the face of it appears to be a description,
- (e) a part which on the face of it appears to be a claim or claims.

(2)(a) If the receiving Office finds that the international application did not, at the time of receipt, fulfill the requirements listed in paragraph (1), it shall, as provided in the Regulations, invite the applicant to file the required correction.

(b) If the applicant complies with the invitation, as provided in the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction.

(3) Subject to Article 64(4), any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) and accorded an international filing date shall have the effect of a regular national application in each designated State as of the international filing date, which date shall be considered to be the actual filing date in each designated State.

(4) Any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) shall be equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of Industrial Property.

Article 12

Transmittal of the International Application to the International Bureau and the International Searching Authority

(1) One copy of the international application shall be kept by the receiving office (“home copy”), one copy (record copy”) shall be transmitted to the International Bureau, and

another copy (“search copy”) shall be transmitted to the competent International Searching Authority referred to in Article 16, as provided in the Regulations.

(2) The record copy shall be considered the true copy of the international application.

(3) The international application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit.

Article 13

Availability of Copy of the International Application to Designated Offices

(1) Any designated Office may ask the International Bureau to transmit to it a copy of the international application prior to the communication provided for in Article 20, and the International Bureau shall transmit such copy to the designated Office as soon as possible after the expiration of one year from the priority date.

(2) (a) The applicant may, at any time, transmit a copy of his international application to any designated Office.

(b) The applicant may, at any time, ask the International Bureau to transmit a copy of his international application to any designated Office, and the International Bureau shall transmit such copy to the designated Office as soon as possible.

(c) Any national Office may notify the international Bureau that it does not wish to receive copies as provided for in subparagraph (b), in which case that subparagraph shall not be applicable in respect of that Office.

Article 14

Certain Defects in the International Application

(1) (a) The receiving Office shall check whether the international application contains any of the following defects, that is to say:

(i) it is not signed as provided in the Regulations;

(ii) it does not contain the prescribed indications concerning the applicant;

(iii) it does not contain a title;

(iv) it does not contain an abstract;

(v) it does not comply to the extent provided in the Regulations with the prescribed physical requirements.

(b) If the receiving Office finds any of the said defects, it shall invite the applicant to correct the international application within the prescribed time limit, failing which that application shall be considered withdrawn and the receiving Office shall so declare.

(2) If the international application refers to drawings which, in fact, are not included in that application, the receiving Office shall notify the applicant accordingly and he may furnish them within the prescribed time limit and, if he does, the international filing date shall be the date on which the drawings are received by the receiving Office. Otherwise, any reference to the said drawings shall be considered non-existent.

(3) (a) If the receiving Office finds that, within the prescribed time limits, the fees prescribed under Article 3(4)(iv) have not been paid, or not fee prescribed under Article 4(2) has been paid in respect of any of the designated States, the international application shall be considered withdrawn and the receiving Office shall so declare.

(b) If the receiving Office finds that the fee prescribed under article 4(2) has been paid in respect of one or more (but less than all) designated States within the prescribed time limit, the designation of those States in respect of which it has not been paid within the prescribed time limit shall be considered withdrawn and the receiving Office shall so declare.

(4) If, after having accorded an international filing date to the international application, the receiving Office finds, within the prescribed time limit, that any of the requirements listed in items (i) to (iii) of article 11(1) was not complied with at that date, the said application shall be considered withdrawn and the receiving Office shall so declare.

Article 15

The international Search

- (1) Each international application shall be the subject of international search.
- (2) The objective of the international search is to discover relevant prior art.
- (3) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any).
- (4) The International Searching Authority referred to in Article 16 shall endeavor to discover as much of the relevant prior art as its facilities permit, and shall, in any case, consult the documentation specified in the Regulations.
- (5)
 - (a) If the national law of the Contracting State so permits, the applicant who files a national application with the national Office of or acting for such State may, subject to the conditions provided for in such law, request that a search similar to an international search (“international-type search”) be carried out on such application.
 - (b) If the national law of the Contracting State so permits, the national Office of or acting for such State may subject any national application filed with it to an international-type search.
 - (c) The international-type search shall be carried out by the International Searching Authority referred to in article 16 which would be competent for an international search if the national application were an international application and were filed with the Office referred to in subparagraphs (a) and (b). If the national application is in a language which the International Searching Authority considers it is not equipped to handle, the international-type search shall be carried out on a translation prepared by the applicant in a language prescribed for international applications and which the International Searching Authority has undertaken to accept for international applications. The national application and the translation, when required, shall be presented in the form prescribed for international applications.

Article 16

The International Searching Authority

(1) International search shall be carried out by an International Searching Authority, which may be either a national Office or an **inter**governmental organization, such as the International Patent Institute, whose tasks include the establishing of documentary search reports on prior art with respect to inventions which are the subject of applications.

(2) If, pending the establishment of a single International Searching Authority, there are several International Searching Authorities, each receiving Office shall, in accordance with the provisions of the applicable agreement referred to in paragraph (3)(b), specify the International Searching Authority or Authorities competent for the searching of international applications filed with such Office.

(3) (a) International Searching Authorities shall be appointed by the Assembly. Any national Office and any intergovernmental organization satisfying the requirements referred to in subparagraph (c) may be appointed as International Searching Authority.

(b) Appointment shall be conditional on the consent of the national Office or intergovernmental organization to be appointed and the conclusion of an agreement, subject to approval by the Assembly, between such Office or organization and the International Bureau. The agreement shall specify the rights and obligations of the parties, in particular, the formal undertaking by the said Office or organization to apply and observe all the common rules of international search.

(c) The Regulations prescribe the minimum requirements, particularly as to manpower and documentation, which any Office or organization must satisfy before it can be appointed and must continue to satisfy while it remains appointed.

(d) Appointment shall be for a fixed period of time and may be extended for further periods.

(e) Before the Assembly makes a decision on the appointment of any national Office or intergovernmental organization, or on the extension of its appointment, or before it allows any such appointment to lapse, the Assembly shall hear the interested Office or organization and seek the advice of the Committee for Technical Cooperation referred to in Article 56 once that Committee has been established.

Article 17

Procedure before the International Searching Authority

(1) Procedure before the International Searching Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2) (a) If the International Searching Authority considers

(i) that the international application relates to a subject matter which the International Searching Authority is not required, under the Regulations, to search, and in the particular case decides not to search, or

(ii) that the description, the claims, or the drawings, fail to comply with the prescribed requirements to such an extent that a meaningful search could not be carried out,

the said Authority shall so declare and shall notify the applicant and the International Bureau that no international search report will be established.

(b) If any of the situations referred to in subparagraph (a) is found to exist in connection with certain claims only, the international search report shall so indicate in respect of such claims, whereas, for the other claims, the said report shall be established as provided in Article 18.

(3) (a) If the International Searching Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the

Regulations, it shall invite the applicant to pay additional fees. The International Searching Authority shall establish the international search report on those parts of the international application which relate to the invention first mentioned in the claims (“main invention”) and, provided the required additional fees have been paid within the prescribed time limit, on those parts of the international application which relate to inventions in respect of which the said fees were paid.

(b) The national law of any designated State may provide that, where the national Office of that State finds the invitation, referred to in subparagraph (a), of the International Searching Authority justified and where the applicant has not paid all additional fees, those parts of the international application which consequently have not been searched shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

Article 18

The International Search Report

(1) The international search report shall be established within the prescribed time limit and in the prescribed form.

(2) The international search report shall, as soon as it has been established, be transmitted by the International Searching Authority to the applicant and the International Bureau.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be translated as provided in the Regulations. The translations shall be prepared by or under the responsibility of the International Bureau.

Article 19

Amendment of the Claims before the International Bureau

(1) The applicant shall, after having received the international search report, be entitled to one opportunity to amend the claims of the international application by tiling amendments with the International Bureau within the prescribed time limit. He may, at the same time, file a brief statement, as provided in the Regulations, explaining the amendments and indicating any impact that such amendments might have on the description and the drawings.

(2) The amendments shall not go beyond the disclosure in the international application as tiled.

(3) If the national law of any designated State permits amendments to go beyond the said disclosure, failure to comply with paragraph (2) shall have no consequence in that State.

Article 20

Communication to Designated Offices

(1) (a) The international application, together with the international search report (including any indication referred to in Article 17(2)(b)) or the declaration referred to in Article 17(2)(a), shall be communicated to each designated Office, as provided in the Regulations, unless the designated Office waives such requirement in its entirety or in part.

(b) The communication shall include the translation (as prescribed) of the said report or declaration.

(2) If the claims have been amended by virtue of Article 19(1), the communication shall either contain the full text of the claims both as filed and as amended or shall contain the full text of the claims as filed and specify the amendments, and shall include the statement, if any, referred to in 'Article 19(1).

(3) At the request of the designated Office or the applicant, the International Searching Authority shall send to the said Office or the applicant, respectively, copies of the documents cited in the international search report, as provided in the Regulations.

Article 21

International Publication

(1) The International Bureau shall publish international applications

(2) (a) Subject to the exceptions provided for in subparagraph (b) and in Article 64(3), the international publication of the international application shall be effected promptly after the expiration of 18 months from the priority date of that application.

(b) The applicant may ask the International Bureau to publish international application any time before the expiration of the time limit referred to in subparagraph (a). The International Bureau shall proceed accordingly, as provided in the Regulations.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be published as prescribed in the Regulations.

(4) The language and form of the international publication and other details are governed by the Regulations.

(5) There shall be no international publication if the international application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.

(6) If the international application contains expressions or drawings which, in the opinion of the International Bureau, are contrary to morality or public order, or if, in its opinion, the international application contains disparaging statements as defined in the Regulations, it may omit such expressions, drawings, and statements, from its publications, indicating the place and number of words or drawings omitted, and furnishing, upon request, individual copies of the passages omitted.

Article 22

Copy, Translation, and Fee, to Designated Offices

(1) The applicant shall furnish a copy of the international application (unless the communication provided for in Article 20 has already taken place) and a translation thereof

(as prescribed), and pay the national fee (if any), to each designated Office not later than at the expiration of 20 months from the priority date. Where the national law of the designated State requires the indication of the name of and other prescribed data concerning the inventor but allows that these indications be furnished at a time later than that of the filing of a national application, the applicant shall, unless they were contained in the request, furnish the said indications to the national Office of or acting for the State not later than at the expiration of 20 months from the priority date.

(2) Where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be the same as that provided for in paragraph (1).

(3) Any national law may, for performing the acts referred to in paragraphs (1) or (2), fix time limits which expire later than the time limit provided for in those paragraphs.

Article 23

Delaying of National Procedure

(1) No designated Office shall process or examine the international application prior to the expiration of the applicable time limit under Article 22.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may, on the express request of the applicant, process or examine the international application at any time.

Article 24

Possible Loss of Effect in Designated States

(1) Subject, in case (ii) below, to the provisions of Article 25, the effect of the international application provided for in Article 11(3) shall cease in any designated State with the same consequences as the withdrawal of any national application in that State:

(i) if the applicant withdraws his international application or the designation of that State;

(ii) if the international application is considered withdrawn by virtue of Articles 12(3), 14(1)(b), 14(3)(a), or 14(4), or if the designation of that State is considered withdrawn by virtue of Article 14(3)(b);

(iii) if the applicant fails to perform the acts referred to in Article 22 within the applicable time limit.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may maintain the effect provided for in Article 11(3) even where such effect is not required to be maintained by virtue of Article 25(2).

Article 25

Review by Designated Offices

(1) (a) Where the receiving Office has refused to accord an international filing date or has declared that the international application is considered withdrawn, or where the International Bureau has made a finding under Article 12(3), the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to any of the designated Offices named by the applicant.

(b) Where the receiving Office has declared that the designation of any given State is considered withdrawn, the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to the national Office of such State.

(c) The request under subparagraphs (a) or (b) shall be presented within the prescribed time limit.

(2) (a) Subject to the provisions of subparagraph (b), each designated Office shall, provided that the national fee (if any) has been paid and the appropriate translation (as prescribed) has been furnished within the prescribed time limit, decide whether the refusal,

declaration, or finding, referred to in paragraph (1) was justified under the provisions of this Treaty and the Regulations, and, if it finds that the refusal or declaration was the result of an error or omission on the part of the receiving Office or that the finding was the result of an error or omission on the part of the International Bureau, it shall, as far as effects in the State of the designated Office are concerned, treat the international application as if such error or omission had not occurred.

(b) Where the record copy has reached the International Bureau after the expiration of the time limit prescribed under Article 12(3) on account of any error or omission on the part of the applicant, the provisions of subparagraph (a) shall apply only under the circumstances referred to in Article 48(2).

Article 26

Opportunity to Correct before Designated Offices

No designated Office shall reject an international application on the grounds of non-compliance with the requirements of this Treaty and the Regulations without first giving the applicant the opportunity to correct the said application to the extent and according to the procedure provided by the national law for the same or comparable situations in respect of national applications.

Article 27

National Requirements

(1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

(2) The provisions of paragraph (1) neither affect the application of the provisions of Article 7(2) nor preclude any national law from requiring, once the processing of the international application has started in the designated Office, the furnishing:

(i) when the applicant is a legal entity, of the name of an officer entitled to represent such legal entity,

(ii) of documents, not part of the international application but which constitute proof of allegations or statements made in that application, including the confirmation of the international application by the signature of the applicant when that application, as filed, was signed by his representative or agent.

(3) Where the applicant, for the purposes of any designated State, is not qualified according to the national law of that State to file a national application because he is not the inventor, the international application may be rejected by the designated Office.

(4) Where the national law provides, in respect of the form or contents of national applications, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for by this Treaty and the Regulations in respect of international applications, the national Office, the courts and any other competent organs of or acting for the designated State may apply the former requirements, instead of the latter requirements, to international applications, except where the applicant insists that the requirements provided for by this Treaty and the Regulations be applied to his international application.

(5) Nothing in this Treaty and the Regulations is intended to be construed as prescribing anything that would limit the freedom of each Contracting State to prescribe such substantive conditions of patentability as it desires. In particular, any provision in this Treaty and the Regulations concerning the definition of prior art is exclusively for the purposes of the international procedure and, consequently, any Contracting State is free to apply, when determining the patentability of an invention claimed in an international application, the criteria of its national law in respect of prior art and other conditions of patentability not constituting requirements as to the form and contents of applications.

(6) The national law may require that the applicant furnish evidence in respect of any substantive condition of patentability prescribed by such law.

(7) Any receiving Office or, once the processing of the international application has started in the designated Office, that Office may apply the national law as far as it relates to any requirement that the applicant be represented by an agent having the right to represent applicants before the said Office and/or that the applicant have an address in the designated State for the purpose of receiving notifications.

(8) Nothing in this Treaty and the Regulations is intended to be construed as limiting the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security or to limit, for the protection of the general economic interests of that State, the right of its own residents or nationals to file international applications.

Article 28

Amendment of the Claims, the Description, and the Drawings, before Designated Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit. No designated Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed unless the national law of the designated State permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the designated State in all respects not provided for in this Treaty and the Regulations.

(4) Where the designated Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 29

Effects of the International Publication

(1) As far as the protection of any rights of the applicant in a designated State is concerned, the effects, in that State, of the international publication of an international application shall, subject to the provisions of paragraphs (2) to (4), be the same as those which the national law of the designated State provides for the compulsory national publication of unexamined national applications as such.

(2) If the language in which the international publication has been effected is different from the language in which publications under the national law are effected in the designated State, the said national law may provide that the effects provided for in paragraph (1) shall be applicable only from such time as:

(i) a translation into the latter language has been published as provided by the national law, or

(ii) a translation into the latter language has been made available to the public, by laying open for public inspection as provided by the national law, or

(iii) a translation into the latter language has been transmitted by the applicant to the actual or prospective unauthorized user of the invention claimed in the international application, or

(iv) both the acts described in (i) and (iii), or both the acts described in (ii) and (iii), have taken place.

(3) The national law of any designated State may provide that, where the international publication has been effected, on the request of the applicant, before the expiration of 18 months from the priority date, the effects provided for in paragraph (1) shall be applicable only from the expiration of 18 months from the priority date.

(4) The national law of any designated State may provide that the effects provided for in paragraph (1) shall be applicable only from the date on which a copy of the international application as published under Article 21 has been received in the national Office of or acting

for such State. The said Office shall publish the date of receipt in its gazette as soon as possible.

Article 30

Confidential Nature of the International Application

(1) (a) Subject to the provisions of subparagraph (b), the International Bureau and the International Searching Authorities shall not allow access by any person or authority to the international application before the international publication of that application, unless requested or authorized by the applicant.

(b) The provisions of subparagraph (a) shall not apply to any transmittal to the competent International Searching Authority, to transmittals provided for under Article 13, and to communications provided for under Article 20.

(2) (a) No national Office shall allow access to the international application by third parties, unless requested or authorized by the applicant, before the earliest of the following dates:

(i) date of the international publication of the international application,

(ii) date of the receipt of the communication of the international application under Article 20,

(iii) date of the receipt of a copy of the international application under Article 22.

(b) The provisions of subparagraph (a) shall not prevent any national Office from informing third parties that it has been designated, or from publishing that fact. Such information or publication may, however, contain only the following data: identification of the receiving Office, name of the applicant, international filing date, international application number, and title of the invention.

(c) The provisions of subparagraph (a) shall not prevent any designated Office from allowing access to the international application for the purposes of the judicial authorities.

(3) The provisions of paragraph (2)(a) shall apply to any receiving Office except as far as transmittals provided for under Article 12(1) are concerned.

(4) For the purposes of this Article, the term “access” covers any means by which third parties may acquire cognizance, including individual communication and general publication, provided, however, that no national Office shall generally publish an international application or its translation before the international publication or, if international publication has not taken place by the expiration of 20 months from the priority date, before the expiration of 20 months from the said priority date.

CHAPTER II

International Preliminary Examination

Article 31

Demand for International Preliminary Examination

(1) On the demand of the applicant, his international application shall be the subject of an international preliminary examination as provided in the following provisions and the Regulations.

(2) (a) Any applicant who is a resident or national, as defined in the Regulations, of a Contracting State bound by Chapter II, and whose international application has been filed with the receiving Office of or acting for such State, may make a demand for international preliminary examination.

(b) The Assembly may decide to allow persons entitled to file international applications to make a demand for international preliminary examination even if they are residents or nationals of a State not party to this Treaty or not bound by Chapter II.

(3) The demand for international preliminary examination shall be made separately from the international application. The demand shall contain the prescribed particulars and shall be in the prescribed language and form.

(4) (a) The demand shall indicate the Contracting State or States in which the applicant intends to use the results of the international preliminary examination (“elected States”). Additional Contracting States may be elected later. Election may relate only to Contracting States already designated under Article 4.

(b) Applicants referred to in paragraph (2)(a) may elect any Contracting State bound by Chapter II. Applicants referred to in paragraph (2)(b) may elect only such Contracting States bound by Chapter II as have declared that they are prepared to be elected by such applicants.

(5) The demand shall be subject to the payment of the prescribed fees within the prescribed time limit.

(6) (a) The demand shall be submitted to the competent International Preliminary Examining Authority referred to in Article 32.

(b) Any later election shall be submitted to the International Bureau.

(7) Each elected Office shall be notified of its election.

Article 32

The International Preliminary Examining Authority

(1) International preliminary examination shall be carried out by the International Preliminary Examining Authority.

(2) In the case of demands referred to in Article 31(2)(a), the receiving Office, and, in the case of demands referred to in Article 31(2)(b), the Assembly, shall, in accordance with

the applicable agreement between the interested International Preliminary Examining Authority or Authorities and the International Bureau, specify the International Preliminary Examining Authority or Authorities competent for the preliminary examination.

(3) The provisions of Article 16(3) shall apply, *mutatis mutandis*, in respect of International Preliminary Examining Authorities.

Article 33

The International Preliminary Examination

(1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.

(2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.

(3) For the purpose of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it is not, at the prescribed relevant date, obvious to a person skilled in the art.

(4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.

(5) The criteria described above merely serve the purposes of international preliminary examination. Any contracting State may apply additional or different criteria for the purpose of deciding whether, in that State, the claimed invention is patentable or not.

(6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

Article 34

Procedure before the international Preliminary Examining Authority

(1) Procedure before the International Preliminary Examining Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2) (a) The applicant shall have a right to communicate orally and in writing with the International Preliminary Examining Authority.

(b) The applicant shall have a right to amend the claims, the description, and the drawings, in the prescribed manner and within the prescribed time limit, before the international preliminary examination report is established. The amendment shall not go beyond the disclosure in the international application as filed.

(c) The applicant shall receive at least one written opinion from the International Preliminary Examining Authority unless such Authority considers that all of the following conditions are fulfilled:

(i) the invention satisfies the criteria set forth in Article 33(1),

(ii) the international application complies with the requirements of this Treaty and the Regulations in so far as checked by that Authority,

(iii) no observations are intended to be made under Article 35(2), last sentence.

(d) The applicant may respond to the written opinion.

(3) (a) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it may invite the applicant, at his option, to restrict the claims so as to comply with the requirement or to pay additional fees.

(b) The national law of any elected State may provide that, where the applicant chooses to restrict the claims under subparagraph (a), those parts of the international application which, as a consequence of the restriction, are not to be the subject of international preliminary examination shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

(c) If the applicant does not comply with the invitation referred to in subparagraph (a) within the prescribed time the limit, the International Preliminary Examining Authority shall establish an international preliminary examination report on those parts of the international application which relate to what appears to be the main invention and shall indicate the relevant facts in the said report. The national law of any elected State may provide that, where its national Office finds the invitation of the International Preliminary Examining Authority justified, those parts of the international application which do not relate to the main invention shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to that Office.

(4) (a) If the International Preliminary Examining Authority considers

(i) that the international application relates to a subject matter on which the International Preliminary Examining Authority is not required, under the Regulations, to carry out an international preliminary examination, and in the particular case decides not to carry out such examination, or

(ii) that the description, the claims, or the drawings, are so unclear, or the claims are so inadequately supported by the description, that no meaningful opinion can be formed

on the novelty, inventive step (non-obviousness), or industrial applicability, of the claimed invention,

the said Authority shall not go into the questions referred to in Article 33(1) and shall inform the applicant of this opinion and the reasons therefor.

(b) If any of the situations referred to in subparagraph (a) is found to exist in, or in connection with, certain claims only, the provisions of that subparagraph shall apply only to the said claims.

Article 35

The International Preliminary Examination Report

(1) The international preliminary examination report shall be established within the prescribed time limit and in the prescribed form.

(2) The international preliminary examination report shall not contain any statement on the question whether the claimed invention is or seems to be patentable or unpatentable according to any national law. It shall state, subject to the provisions of paragraph (3), in relation to each claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purpose of the international preliminary examination in Article 33(1) to (4). The statement shall be accompanied by the citation of the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require. The statement shall also be accompanied by such other observations as the Regulations provide for.

(3) (a) If, at the time of establishing the international preliminary examination report, the International Preliminary Examining Authority considers that any of the situations referred to in Article 34(4)(a) exists, that report shall state this opinion and the reasons therefor. It shall not contain any statement as provided in paragraph (2).

(b) If situation under Article 34(4)(b) is found to exist, the international preliminary examination report shall, in relation to the claims in question, contain the

statement as provide in subparagraph (a), whereas, in relation to the other claims, it shall contain the statement as provide in paragraph (2).

Article 36

Transmittal, Translation, and Communication, of the International Preliminary Examination Report

(1) The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.

(2) (a) The international preliminary examination report and its annexes shall be translated into the prescribed languages.

(b) Any translation of the said report shall be prepared by or under the responsibility of the International Bureau, whereas any translation of the said annexes shall be prepared by the applicant.

(3) (a) The international preliminary examination report, together with its translation (as prescribed) and its annexes (in the original language), shall be communicated by the International Bureau to each elected Office.

(b) The prescribed translation of the annexes shall be transmitted within the prescribed time limit by the applicant to the elected Offices.

(4) The provisions of Article 20(3) shall apply, *mutatis mutandis*, to copies of any document which is cited in the international preliminary examination report and which was not cited in the international search report.

Article 37

Withdrawal of Demand or Election

(1) The applicant may withdraw any or all elections.

(2) If the election of all elected States is withdrawn, the demand shall be considered withdrawn.

(3) (a) Any withdrawal shall be notified to the International Bureau.

(b) The elected Offices concerned and the International Preliminary Examining Authority concerned shall be notified accordingly by the International Bureau.

(4) (a) Subject to the provisions of subparagraph (b), withdrawal of the demand or of the election of a Contracting State shall, unless the national law of that State provides otherwise, be considered to be withdrawal of the international application as far as that State is concerned.

(b) Withdrawal of the demand or of the election shall not be considered to be withdrawal of the international application if such withdrawal is effected prior to the expiration of the applicable time limit under Article 22; however, any Contracting State may provide in its national law that the aforesaid shall apply only if its national Office has received, within the said time limit, a copy of the international application, together with a translation (as prescribed), and the national fee.

Article 38

Confidential Nature of the International Preliminary Examination

(1) Neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, allow access within the meaning, and with the proviso, of Article 30(4) to the file of the international preliminary examination by any person or authority at any time, except by the elected Offices once the international preliminary examination report has been established.

(2) Subject to the provisions of paragraph (1) and Articles 36(1) and (3) and 37(3)(b), neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, give information on the issuance or

nonissuance of an international preliminary examination report and on the withdrawal or nonwithdrawal of the demand or of any election.

Article 39

Copy, Translation, and Fee, to Elected Offices

(1) (a) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 22 shall not apply to such State and the applicant shall furnish a copy of the international application (unless the communication under Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each elected Office not later than at the expiration of 30 months from the priority date.

(b) Any national law may, for performing the acts referred to in subparagraph (a), fix time limits which expire later than the time limit provided for in that subparagraph.

(2) The effect provided for in Article 11(3) shall cease in the elected State with the same consequences as the withdrawal of any national application in that State if the applicant fails to perform the acts referred to in paragraph (1)(a) within the time limit applicable under paragraph (1)(a) or (b).

(3) Any elected Office may maintain the effect provided for in Article 11(3) even where the applicant does not comply with the requirements provided for in paragraph (1)(a) or (b).

Article 40

Delaying of National Examination and Other Processing

(1) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 23 shall not apply to such State and the national Office of or acting for that State shall not proceed, subject to the provi-

sions of paragraph (2), to the examination and other processing of the international application prior to the expiration of the applicable time limit under Article 39.

(2) Notwithstanding the provisions of paragraph (1), any elected Office may, on the express request of the applicant, proceed to the examination and other processing of the international application at any time.

Article 41

Amendment of the Claims, the Description, and the Drawings, before Elected Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each elected Office within the prescribed time limit. No elected Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired, except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed, unless the national law of the elected State- permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the elected State in all respects not provided for in this Treaty and the Regulations.

(4) Where an elected Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 42

Results of National Examination in Elected Offices

No elected Office receiving the international preliminary examination report may require that the applicant furnish copies, or information on the contents, of any papers connected with the examination relating to the same international application in any other elected Office.

CHAPTER III

Common Provisions

Article 43

Seeking Certain Kinds of Protection

In respect of any designated or elected State whose law provides for the grant of inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, or utility certificates of addition, the applicant may indicate, as prescribed in the Regulations, that his international application is for the grant, as far as that State is concerned; of an inventor's certificate, a utility certificate, or a utility model, rather than a patent, or that it is for the grant of a patent or certificate of addition, an inventor's certificate of addition, or a utility certificate of addition, and the ensuing effect shall be governed by the applicant's choice. For the purposes of this Article and any Rule thereunder, Article 2(ii) shall not apply.

Article 44

Seeking Two Kinds of Protection

In respect of any designated or elected State whose law permits an application, while being for the grant of a patent or one of the other kinds of protection referred to in Article 43, to be also for the grant of another of the said kinds of protection, the applicant may indicate, as prescribed in the Regulations, the two kinds of protection he is seeking, and the ensuing effect shall be governed by the applicant's indications. For the purposes of this Article, Article 2(11) shall not apply.

Article 45

Regional Patent Treaties

(1) Any treaty providing for the grant of regional patents ("regional patent treaty"), and giving to all persons who, according to Article 9, are entitled to file international

applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents.

(2) The national law of the said designated or elected State may provide that any designation or election of such State in the international application shall have the effect of an indication of the wish to obtain a regional patent under the regional patent treaty.

Article 46

Incorrect Translation of the International Application

If, because of an incorrect translation of the international application, the scope of any patent granted on that application exceeds the scope of the international application in its original language, the competent authorities of the Contracting State concerned may accordingly and retroactively limit the scope of the patent, and declare it null and void to the extent that its scope has exceeded the scope of the international application in its original language.

Article 47

Time Limits

(1) The details for computing time limits referred to in this Treaty are governed by the Regulations.

(2) (a) All time limits fixed in Chapters I and II of this-Treaty may, outside any revision under Article 60, be modified by a decision of the Contracting States.

(b) Such decisions shall be made in the Assembly or through voting by correspondence and must be unanimous.

(c) The details of the procedure are governed by the Regulations.

Article 48

Delay in Meeting Certain Time Limits

(1) Where any time limit fixed in this Treaty or the Regulations is not met because of interruption in the mail service or unavoidable loss or delay in the mail, the time limit shall be deemed to be met in the cases and subject to the proof and other conditions prescribed in the Regulations.

(2)(a) Any Contracting State shall, as far as that State is concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit.

(b) Any Contracting State may, as far as that State is concerned, excuse, for reasons other than those referred to in subparagraph (a), any delay in meeting any time limit.

Article 49

Right to Practice before International Authorities

Any attorney, patent agent, or other person, having the right to practice before the national Office with which the international application was filed, shall be entitled to practice before the International Bureau and the competent International Searching Authority and, competent International Preliminary Examining Authority in respect of that application.

CHAPTER IV

Technical Services

Article 50

Patent Information Services

(1) The International Bureau may furnish services by providing technical and any other pertinent information available to it on the basis of published documents, primarily patents and published applications (referred to in this Article as “the information services”).

(2) The International Bureau may provide these information services either directly or through one or more International Searching Authorities or other national or international specialized institutions, with which the International Bureau may reach agreement.

(3) The information services shall be operated in a way particularly facilitating the acquisition by Contracting States which are developing countries of technical knowledge and technology, including available published know-how.

(4) The information services shall be available to Governments of Contracting States and their nationals and residents. The Assembly may decide to make these services available also to others.

(5) (a) Any service to Governments of Contracting States shall be furnished at cost, provided that, when the Government is that of a Contracting State which is a developing country, the service shall be furnished below cost if the difference can be covered from profit made on services furnished to others than Governments of Contracting States or from the sources referred to in Article 51(4).

(b) The cost referred to in subparagraph (a) is to be understood as cost over and above costs normally incident to the performance of the services of a national Office or the obligations of an International Searching Authority.

(6) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

(7) The Assembly shall, when it considers it necessary, recommend methods of providing financing supplementary to those referred to in paragraph (5).

Article 51

Technical Assistance -

(1) The Assembly shall establish a Committee for Technical Assistance (referred to in this Article as “the Committee”).

(2) (a) The members of the Committee shall be elected among the Contracting States, with due regard to the representation of developing countries.

(b) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.

(3) (a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries in developing their patent systems individually or on a regional basis.

(b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

(4) The International Bureau shall seek to enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly the United Nations, the agencies of the United Nations, and the Specialized Agencies connected with the United Nations concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.

(5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

Article 52

Relations with Other Provisions of the Treaty

Nothing in this Chapter shall affect the financial provisions contained in any other Chapter of this Treaty. Such provisions are not applicable to the present Chapter or to its implementation.

CHAPTER V

Administrative Provisions

Article 53

Assembly

(1) (a) The Assembly shall, subject to Article 57(8), consist of the Contracting States.

(b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(2) (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) perform such tasks as are specifically assigned to it under other provisions of this Treaty;

(iii) give directions to the International Bureau concerning the preparation for revision conferences;

(iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(v) review and approve the reports and activities of the Executive Committee established under paragraph (9), and give instructions to such Committee;

(vi) determine the program and adopt the triennial * budget of the Union, and approve its -final accounts;

** Editor's Note: Since 1980, the budget of the Union has been biennial.*

(vii) adopt the financial regulations of the Union;

(viii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;

(ix) determine which States other than Contracting States and, subject to the provisions of paragraph (8), which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the-Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) A delegate may represent, and vote in the name of, one State only. -

(4) Each Contracting State shall have one vote.

(5) (a) One-half of the Contracting States shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.

(6) (a) Subject to the provisions of Articles 47(2)(b), 58(2)(b), 58(3) and 61(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) In connection with matters of exclusive interest to States bound by Chapter II, any reference to Contracting States in paragraphs (4), (5), and (6), shall be considered as applying only to States bound by Chapter II.

(8) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to the Assembly.

(9) When the number of Contracting States exceeds forty, the Assembly shall establish an Executive Committee. Any reference to the Executive Committee in this Treaty and the Regulations shall be construed as references to such Committee once it has been established.

(10) Until the Executive Committee has been established, the Assembly shall approve, within the limits of the program and triennial budget, the annual programs and budgets prepared by the Director General. *

(11) (a) The Assembly shall meet in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee, or at the request of one-fourth of the Contracting States.

(12) The Assembly shall adopt its own rules of procedure.

Editor's Note: Since 1980, the program and budget of the Union have been biennial.