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**PCT/WG/11/27**  
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## **Patent Cooperation Treaty (PCT) Working Group**

**Eleventh Session  
Geneva, June 18 to 22, 2018**

### **REPORT**

*adopted by the Working Group*

1. The Patent Cooperation Treaty Working Group held its eleventh session in Geneva from June 18 to 22, 2018.
2. The following members of the Working Group were represented at the session: (i) the following Member States of the International Patent Cooperation Union (PCT Union): Algeria, Australia, Austria, Belarus, Brazil, Bulgaria, Canada, Chile, China, Colombia, Côte d'Ivoire, Czech Republic, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, El Salvador, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kazakhstan, Kuwait, Lithuania, Malaysia, Malta, Mexico, Montenegro, Morocco, Nigeria, Norway, Oman, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uzbekistan, Viet Nam, Zimbabwe (69); and (ii) the following intergovernmental organizations: the European Patent Office (EPO), the Nordic Patent Institute (NPI), and the Visegrad Patent Institute (VPI) (3).
3. The following Member States of the International Union for the Protection of Industrial Property (Paris Union) participated in the session as an observer: Mauritius, Yemen (2).
4. The following intergovernmental organizations were represented by observers: African Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), African Union (AU), Eurasian Patent Organization (EAPO), European Union (EU), Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC Patent Office), South Centre (7).

5. The following international non-governmental organizations were represented by observers: Asian Patent Attorneys Association (APAA), Institute of Professional Representatives Before the European Patent Office (EPI), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Intellectual Property Attorneys (FICPI), International Institute for Intellectual Property Management (I3PM), Knowledge Ecology International Inc. (KEI), Union of European Practitioners in Industrial Property (UNION-IP) (7).

6. The following national non-governmental organizations were represented by observers: American Intellectual Property Law Association (AIPLA), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA) (3)

7. The list of participants is contained in the Annex.

### **OPENING OF THE SESSION**

8. Mr. Francis Gurry, Director General of WIPO opened the session and welcomed the participants. Mr. Michael Richardson (WIPO) acted as Secretary to the Working Group.

9. The Director General informed the Working Group that, at the beginning of June, the landmark of 40 years of operations under the PCT was reached. From the first international application filed on June 1, 1978, the total number of filings of international applications was now close to 3.5 million. This figure testified to the great success of the PCT System, which was a very successful example of international cooperation that relied on many different actors in order to make it functional.

10. The Director General reported on a few of the key developments in the PCT System since the tenth session of the Working Group. 2017 was another successful year for the PCT System. In terms of International Searching and Preliminary Examining Authorities, the Director General congratulated the Intellectual Property Office of the Philippines on its appointment by the Assembly in October 2017 as the twenty-third International Searching and Preliminary Examining Authority. In addition, the appointments of all other International Searching and Preliminary Examining Authorities were extended by a period of ten years until the end of 2026, and the Director General thanked all Authorities for their extraordinarily important work in the PCT System. In terms of results in 2017, the number of international applications filed rose by 4.5 per cent to 243,500 applications, recording the eighth consecutive year of growth in the PCT. It was pleasing that applications were received from applicants in 126 different countries, which was testimony to the international character of the PCT. The number of different applicants using the PCT passed 50,000 for the first time in 2016, and last year that number increased by 6.2 per cent to 55,000 different applicants throughout the world. On World Intellectual Property Day this year, WIPO celebrated the role of women in innovation and creativity. It was encouraging to see the statistics maintained by the Office of the WIPO Chief Economist in this regard. At least one woman was named among the inventors in 31 per cent of international applications published in 2017. While this was a relative low percentage, it marked a significant improvement compared to a decade earlier when 23 per cent of international applications included a woman inventor. The top country of origin of international applications under the PCT in 2017 was, again, the United States of America with 56,624 applications. China again recorded double digit growth, with the number of international applications of Chinese origin increasing by 13.4 per cent, becoming the second largest source of international applications under the PCT with 48,882 international applications, just ahead of Japan, which was the source of 48,208 applications, some 600 international applications fewer. In terms of top applicants, Huawei moved into first position with slightly more than 4,000 international applications published in 2017, taking the top spot from its compatriot ZTE Corporation which was the second highest applicant in terms published international applications with nearly 3,000 international applications for 2017. In terms of numbers of

national phase entries, there was a slight decline of 1.4 per cent in 2016 with 615,000 national phase entries. That represented the first drop since 2009 and reflected fewer designations from applications originating from the United States of America in 2016.

11. In addition to the PCT System reaching 40 years of operations, the Director General informed delegations that it was 10 years since the first session of the PCT Working Group. On this occasion, the Director General thanked all members of the Working Group for the extraordinary work done within the Working Group in keeping the PCT System up-to-date and for the extraordinary workload that had been accomplished by the Working Group. This session was no different, with 25 working documents to consider. In addition, two workshops would take place, one of PCT fee reductions and the other on correction of erroneously-filed elements and parts. The Director General thanked the two Chairs of the those workshops, Mr. John Sandage, Deputy Director General, and Mr. Paul Harrison, Co-Chair of the Patents Committee of the Asian Patent Attorneys Association (APAA) and a regular participant in the work of the PCT. Looking at the agenda, the Director General highlighted two items. The first was the document prepared by the International Bureau discussing appropriate action to be taken by WIPO and its Member States with regard to international patent applications related to persons or technologies that were the subject of United Nations Security Council Sanctions. The second was the document on future development of the PCT based on a Memorandum that was issued in 2017 on the occasion of the publication of the 3 millionth application under the PCT. Looking back over 40 years, the system had been an extremely successful example of international cooperation and the cornerstone of the patent system worldwide. The future of the PCT System was of fundamental importance, first of all, to this Organization since the PCT was the source of nearly 77 per cent of the income to WIPO, and also to the functioning of the patent system worldwide.

#### **ELECTION OF A CHAIR AND TWO VICE-CHAIRS**

12. The Working Group unanimously elected Mr. Victor Portelli (Australia) as Chair for the session. There were no nominations for Vice-Chairs.

#### **ADOPTION OF THE AGENDA**

13. The Working Group adopted the revised draft agenda as proposed in document PCT/WG/11/1 Prov. 3.

#### **PCT STATISTICS**

14. The Working Group noted a presentation by the International Bureau on the most recent PCT statistics<sup>1</sup>.

15. The Delegation of the United States of America informed the Working Group that the United States Patent and Trademark Office (USPTO) would issue U.S. patent number 10 million that day (June 19, 2018). This patent would also be the first to receive a new patent cover design.

#### **PCT USER SURVEY**

16. The Working Group noted a presentation by the International Bureau on the results of the PCT User Survey 2017<sup>2</sup>.

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<sup>1</sup> The presentation is available on the WIPO website at: [https://www.wipo.int/meetings/en/pct\\_wg\\_11\\_statistics](https://www.wipo.int/meetings/en/pct_wg_11_statistics).

<sup>2</sup> The presentation is available on the WIPO website at: [https://www.wipo.int/meetings/en/pct\\_wg\\_11\\_user\\_survey](https://www.wipo.int/meetings/en/pct_wg_11_user_survey).

## **MEETING OF INTERNATIONAL AUTHORITIES UNDER THE PCT: REPORT ON THE TWENTY-FIFTH SESSION**

17. Discussions were based on document PCT/WG/11/2.

18. The Delegation of the United Kingdom stated that it was vital that quality in the international phase was maintained and welcomed the continuing discussions by the Quality Subgroup of the Meeting of International Authorities. As an effective way of raising quality, information and best practices in quality management needed to be shared between Offices. The Delegation therefore supported the continuation of the paired review exercise. As the Meeting of International Authorities had concluded their work in the area of feedback mechanisms from designated Offices, the Delegation suggested that feedback on international work products should become a work stream taken forward together with designated Offices in the context of the “future development of the PCT”. The Delegation acknowledged the different approaches to the sharing of search strategies and supported efforts to share these strategies to the fullest extent, and added that the United Kingdom Intellectual Property Office (UKIPO) was working to overcome IT constraints to enable it to share its own search strategies in the future. Finally, the Delegation noted with interest the other ideas for quality improvement discussed in the Quality Subgroup, particularly the focus on standards such as ISO 9001, where the United Kingdom had held certification for its patent processes since 2003 and would be willing to share its own experiences with interested Offices.

19. The Representative of the Institute of Professional Representatives before the European Patent Office (EPI) agreed with a comment expressed at the meeting of the Quality Subgroup that a strict interpretation of unity of invention by International Authorities could make the PCT less attractive to users (see paragraph 59 of the Summary by the Chair of the Quality Subgroup in the Annex to the document). EPI had made comments on all the examples in Chapter 10 of the PCT International Search and Preliminary Examination Guidelines on unity of invention, and the Representative invited the Task Force led by IP Australia to consider these comments when reviewing these examples.

20. The Working Group noted the report of the twenty-fifth session of the Meeting of International Authorities, based on a Summary by the Chair of that session contained in document PCT/MIA/25/13 and reproduced in the Annex to document PCT/WG/11/2.

### **PCT ONLINE SERVICES**

21. Discussions were based on document PCT/WG/11/9.

22. The Secretariat introduced the document and provided an update on the latest release of ePCT deployed on May 23, 2018, which included new features for applicants and for Offices. For applicants, ePCT now provided for the possibility for an authorized signatory to apply a signature to draft documents without requiring access to the system. For Offices, the search and examination report functionality had been improved by incorporation of standardized clauses and lookup function of cited documents in search and examination reports, and a feature had been added for the distribution of international applications and related tasks to users within an Office.

23. The Delegation of Ecuador stated that internet services provided by the International Bureau for management of patents were important tools for optimal processing of requests. However, the provision of services depended on local technology and infrastructure and improving the capacity of local staff, where WIPO technical assistance was crucial. The National Service of Intellectual Rights (SENADI) in Ecuador was planning to introduce eSearchCopy soon, which together with ePCT, would allow for the transmission of requests in electronic format. In this regard, SENADI was identifying points that overlapped with its own system. Proposals to improve ePCT were beneficial for receiving Offices and facilitated access to the filing of international applications. However, there needed to be a channel of

communication between national Offices and the International Bureau on changes made and advantages provided so that this enabled the International Bureau to analyze the technical aspects of any proposals made.

24. The Delegation of the European Patent Office (EPO) thanked the International Bureau for the excellent bilateral cooperation on online services. In relation to ePCT, the Delegation supported use of the platform for receiving and processing international applications, as well as exchanging data among International Authorities and with the International Bureau with a view to streamlining administrative flows, which was also discussed in document PCT/WG/11/5. In relation to cooperation between the EPO and the International Bureau, the Delegation provided two examples. The first example was the integration of ePCT into the future online filing services at the EPO known as Online Filing 2.0, which the Delegation hoped would be piloted in autumn 2018. From a user perspective, users would be able to join the online platform and could select ePCT for filing an international application at the EPO, and this possibility would also be made available to national patent Offices of Contracting States of the European Patent Convention. Such a solution would have the advantage that the International Bureau would be responsible for development and maintenance of the embedded ePCT filing tool, with the EPO ensuring that connections between the ePCT and the EPO online filing systems were working properly. The second example of cooperation was the eSearchCopy service. More than 30 receiving Offices sent their search copies via the International Bureau in electronic form to the EPO. This service contributed to improving timeliness in issuing international search reports, as well as the traceability of applications, and the digitization of search copies. The service was working well following the methodology of receiving Offices joining in groups of about seven every quarter, initially for a trial period with transmission of paper and the electronic search copies to ensure that the service had been implemented effectively before ceasing paper transmission. This trial period had allowed issues to be identified and fixed before stopping paper transmissions, thereby ensuring that the EPO could rely on electronic copies sent from the International Bureau through the eSearchCopy service. The EPO planned to expand the eSearchCopy service further in 2019 with a view that the EPO would no longer accept paper search copies after 2020. The Delegation further highlighted the benefits of communication in electronic form to users in order to improve services. While the EPO was open to receiving documents in electronic form from users, many international search reports, written opinions, international preliminary reports on patentability, and other communications were dispatched in paper form. This had disadvantages where postal services were not always reliable, and even where this was not a problem, electronic transmission would be quicker and allow more time for applicants to take decisions where a quick reply was needed, for example, in the case of non-unity of invention procedures where the applicant only had one month to reply. The Delegation therefore requested that, in the future, the ePCT System could be used for these communications in a secure environment with any applicant who had an ePCT account being able to select an option to receive all notifications electronically. Furthermore, with regard to ePCT, the Delegation expressed hope that development of the Global IP Platform discussed in paragraphs 22 and 23 of the document would not create additional interoperability issues given that the main interest of the EPO was to have proper bridges between its systems and processes and those of ePCT. Turning to other WIPO online services, the EPO intended to join WIPO DAS in November 2018. As for the WIPO CASE (Centralized Access to Search and Examination) system, the Delegation encouraged all Offices, particularly International Searching and Preliminary Examining Authorities, to join the system, preferably as a providing as well as an accessing Office in the spirit of reciprocity. In addition, participating Offices should agree to provide public access to all published dossiers within a certain date range as well as to all published documents within a dossier given that the comprehensiveness of file wrapper data was key for Offices and end users, and it was therefore essential that providing Offices made sure that this data was complete and available 24/7. Finally, regarding the XML filing, this was one of the top priorities for the EPO in order to enhance efficient streamlining of processes. To this effect, the EPO was cooperating with the International Bureau to launch a second round of consultations with the Proposal for Change (PFC) to the Standard for the Filing and Processing

Electronic Form of International Applications (Annex F of the Administrative Instructions under the PCT) to make DOCX a valid electronic document format, which could lead to the launch this year of the second pilot which would apply to valid filings. Another aspect with XML was the issue of notifications and work products such as international search reports and written opinions, where the Delegation encouraged more International Searching Authorities to produce their international search reports in XML so that they could be re-used for search purposes in other Offices.

25. The Delegation of India expressed its support and appreciation for the recent initiatives and efforts introduced by the International Bureau with respect to PCT Online Services and updated the Working Group on use of these services by the Indian Patent Office. With respect to ePCT-Filing, more than 95 per cent of international applications were filed at the Indian Patent Office through ePCT. As a receiving Office, the Indian Patent Office was using eSearchCopy to transmit search copies electronically to all seven International Searching Authorities which it specified for international search, except for the USPTO. The Indian Patent Office was also using PCT Electronic Data Interchange (PCT-EDI) to transmit documents to the International Bureau as well as ePCT. As a receiving Office, the Indian Patent Office was participating in the netting pilot with the EPO as International Searching Authority, and had already transmitted three batches of payments from April 2018. The Indian Patent Office had also agreed to participate in the netting pilot with the Austrian Patent Office as International Searching Authority from August 2018. The Indian Patent Office became an accessing Office in WIPO CASE in 2017 and a providing Office as of January 2018. With respect to the WIPO DAS, the Indian Patent Office was one among the 18 participating Offices, having started sending priority documents through this service from May 2018. Regarding the current priorities in the proposal to use XML as a major format for filing applications as well as for international search reports and written opinions, the Delegation had no objection in agreeing to the proposals from the International Bureau, but envisaged that WIPO produced a standard format for XML filing. The Indian Patent Office, in its capacity as an International Searching and Preliminary Examining Authority, had already communicated its readiness to transmit XML of international search reports and written opinions to the International Bureau, which could be implemented once technical preparations were complete. The Delegation also noted and welcomed the further development of other PCT online services in the document such as the Global IP Platform, color drawings, the transmission of national phase entry data and developments in tools to support the forthcoming XML-based WIPO Standard ST.26 for sequence listings.

26. The Delegation of Mexico noted the evolution in PCT online services. Since July 2015, the Mexican Institute of Industrial Property (IMPI) had been receiving PCT requests in electronic format. Electronic processing had also been made available to users since April 2017, where IMPI was exploring the possibility of including ePCT in its own IT portal. IMPI was also using eSearchCopy to transmit search copies to the National Institute of Industrial Property of Chile, the SPTO and the EPO, which reduced costs and delays in transmission, as well as facilitating the processing of international applications. In relation to the Global IP Platform, the Delegation agreed on the importance of interoperability between account management and authentication systems of IP Offices and the Platform. IP Offices therefore needed to know the language that would be used on the Platform to be able to analyze how to ensure interoperability.

27. The Delegation of the Russian Federation stated that the Federal Service for Intellectual Property (Rospatent) used ePCT and eSearchCopy, and planned to join the WIPO CASE system and WIPO DAS. Most search copies arrived at Rospatent in electronic format through eSearchCopy, and the Delegation encouraged receiving Offices that still sent search copies in paper format to Rospatent to join the system. Overall, the Delegation supported the priorities for future development of PCT online services identified in the document, in particular the wider use of XML format for documents in the PCT, expanding the functions of the ePCT system

including using the system in the national phase, and the development of the Global IP Platform, especially the services that could be offered with respect to fees.

28. The Delegation of Israel welcomed the development of PCT online services and thanked the International Bureau for the continued efforts to further improve the system and provide an effective and efficient service for applicants and Offices. Regarding ePCT-Filing, the Israel Patent Office (ILPO) accepted international applications filed using ePCT and used the system regularly for its work as a receiving Office and International Searching and Preliminary Examining Authority for viewing and downloading all documents. The ILPO also widely used the eSearchCopy service, both as a receiving Office and as an International Searching Authority. The ILPO was also considering joining WIPO DAS later in 2018, where it intended to use the service for both Paris-route and PCT filings. As for WIPO CASE, the ILPO had been providing and accessing Office since 2014. Regarding the use of XML, the Delegation supported moving towards full text in a machine-readable format as an alternative to PDF. Moreover, the automated systems at the ILPO were able to transmit international work products in XML format. The ILPO had also begun providing the International Bureau with national phase entry data when the amendments to Rule 95 entered into force on July 1, 2017. Finally, the ILPO had ceased sending documents to the International Bureau by fax.

29. The Delegation of Chile informed the Working Group that the National Institute of Industrial Property of Chile (INAPI Chile) received 75 per cent of international applications through ePCT, and thanked the International Bureau for its support and recent developments to the system to optimize its use. The Delegation supported eSearchCopy and encouraged other Offices to use this service. In terms of WIPO CASE, INAPI Chile was holding discussions with the International Bureau on how to provide information in XML format and was undertaking tests in this regard.

30. The Delegation of Brazil expressed appreciation for the PCT online services provided by the International Bureau. The National Institute for Industrial Property of Brazil (INPI-Br) had been using the ePCT since 2014 with great acceptance by applicants. By the end of 2017, about 70 per cent of international applications and 85 per cent of the demands for international preliminary examination were submitted through the system. The Delegation therefore supported continued work on ePCT that related to potential improvements of the functionality for Offices. The eSearchCopy system was also very useful by facilitating the sending and receiving of search copies, where INPI-Br participated as a receiving Office for the Swedish Patent and Registration Office, the Austrian Patent Office and the EPO as International Searching Authorities, and as an International Searching Authority for the receiving Offices of Peru and Colombia. INPI-Br had also begun participating in WIPO DAS in December 2017, which had shown positive preliminary results. Finally, the Delegation recognized the importance of XML in the PCT System and informed the Working Group that the INPI-Br was preparing to use XML in the near future.

31. The Delegation of Denmark expressed gratitude for the services offered by WIPO. The Danish Patent and Trademark Office (DKPTO) had been in dialogue with the International Bureau regarding the possibility to prepare international search reports and written opinions using the ePCT system as a processing tool for all its PCT work. In relation to WIPO DAS, the DKPTO had notified the International Bureau that, as of June 1, 2018, the Office was participating as both an accessing and depositing Office.

32. The Delegation of the United States of America supported the priorities laid out in the document and indicated that the USPTO hoped to participate in future developments in these areas. Regarding WIPO CASE, currently Global Dossier was unable to retrieve citation data from WIPO CASE. The Delegation indicated the interest of the USPTO to work with the International Bureau to allow for retrieval of such information. The Delegation supported the proposals in paragraphs 16 to 21 of the document regarding the use of XML, and informed the

Working Group that the USPTO continued to work towards increasing its use of XML. With regard to the discussions in paragraphs 22 and 23 in the document on a Global IP Platform, the USPTO was interested in further exploring and discussing new APIs and services for exchanging data effectively. The Delegation noted that security needed to be an important part of that discussion, as any service had to be compliant with United States Federal Law Guidelines. Finally, the Delegation was pleased to hear that the interim solution for color drawings had been implemented, and looked forward to continuing to work with WIPO on its goal of offering full color processing of international applications throughout the international phase, with an effective legal framework to ensure that color drawings could be recognized in the national phase.

33. The Delegation of the Republic of Korea thanked the International Bureau for the development of PCT online services, which improved convenience for applicants and Member States, and enhanced transparency of information. The Korean Intellectual Property Office (KIPO) participated actively in WIPO DAS and WIPO CASE, and issued international search reports in XML format. In October 2017, KIPO launched the possibility for applicants to file using ePCT in collaboration with WIPO as national policy did not allow for the internal IT system at KIPO to be connected to ePCT over the Internet. Applicants could also file electronically using PCT-SAFE, but the uptake of ePCT remained low. However, the Delegation hoped that KIPO could cooperate with the International Bureau to improve the system and promote ePCT filing services to its users. A possible incentive in this regard could be a discount on the international filing fee for applications filed using ePCT. The Delegation also thanked the International Bureau for introducing the interim solution for the filing of color drawings, and encouraged other Member States and the International Bureau to offer full color processing of international applications and recognize color drawings in the national phase. Finally, the Delegation reported that users in the Republic of Korea found the submission of priority documents through WIPO DAS to be convenient, and hoped that more Offices would participate in this service.

34. The Delegation of Australia stated that all electronic filings at IP Australia were required to use PDF format. However, IP Australia was considering XML functionality and would be starting to investigate how this could be implemented into its IT systems.

35. The Delegation of Spain commended the International Bureau for developing the various online systems, which were generating great benefits to users. The Delegation stated that the Spanish Patent and Trademark Office (SPTO) was considering joining WIPO CASE, and, as an International Searching Authority, it was continuing to expand eSearchCopy services to more of its receiving Offices in Latin America.

36. The Delegation of Japan welcomed the progress made on PCT Online Services and supported the six priorities proposed in paragraph 2 of the document, which would improve user friendliness and the efficiency of PCT operations at Offices. In particular, the Delegation supported the wider and better use of XML for key documents and data. The Delegation informed the Working Group that the Japan Patent Office (JPO) was discussing with the International Bureau how to make more effective use of ePCT, taking into account perspectives such as user opinions, domestic laws and regulations in Japan, and interoperability with existing systems. Finally, the Delegation thanked the International Bureau and International Authorities for their cooperation in the survey from the JPO about national laws for according a filing date for applications filed through ePCT.

37. The Delegation of China appreciated the improvements in PCT online services and underlined the benefits to applicants and Offices. With regard to the future direction of work, the Delegation agreed with the proposals to improve the quality of XML and its use in application bodies, which could improve efficiency and data utilization.



38. The Delegation of Portugal expressed its satisfaction with all PCT online services and welcomed projects that would further improve online services and bring about paper-free procedures for the benefit of both applicants and Offices. The Portuguese Institute of Industrial Property (INPI Portugal) had been providing ePCT filing since 2016 and now received all online filings through ePCT. INPI Portugal, in its capacity as a receiving Office, was in the second month of the evaluation period for transmission of search copies to the EPO through eSearchCopy. INPI Portugal had also become an accessing Office in WIPO CASE in 2017. The Delegation supported the continuous development and upgrade of PCT services, especially improvements in ePCT and development in processing color drawings in international applications.

39. The Delegation of the United Kingdom stated that UKIPO was reviewing the handling of international applications. In this regard, ePCT could replace legacy IT systems used to process international applications. However, the UKIPO was about to embark upon a three-year transformational change program to introduce a fully end-to-end digital service, and it was necessary to consider how ePCT would fit into that program before committing to its implementation. Documents, including search copies, were currently transmitted to the EPO as competent International Searching Authority through PCT-EDI. The UKIPO was, however, looking into making the necessary changes to its IT systems to implement the eSearchCopy service during 2018-2019. The UKIPO was one of the first national IP Offices to adopt WIPO DAS for the exchange of priority documents, and the Delegation was therefore pleased that more Offices were signing up to use this service. The Delegation further stated its support for the work carried out the International Bureau, the USPTO and the EPO for the filing of applications in Office Open XML (DOCX) format as this would help facilitate the full end-to-end digital processing of applications and realize significant efficiencies in the process. The Delegation also noted with interest the implementation of the interim solution for handling color drawings and looked forward to future developments in this area, but at the same time, appreciated that the technical challenges involved were considerable and could be expensive to implement. In conclusion, the Delegation welcomed all of the proposed areas of further work in the document, but noted that the UKIPO would need time to plan and assess resource implications of any of the proposed developments before committing to their implementation.

40. The Delegation of Peru recognized the efforts of the International Bureau to make online services available to users, including ePCT, eSearchCopy, PCT-EDI and WIPO DAS. The National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOP) of Peru had used ePCT since October 2016 and WIPO CASE as an accessing Office since February 2018. The Delegation also indicated that INDECOP was considering joining eSearchCopy and WIPO DAS in the near future.

41. The Delegation of South Africa thanked the International Bureau for the PCT online services offered and stated that 99 per cent of PCT applicants at the Companies and Intellectual Property Commission in South Africa used these services. The Delegation welcomed all initiatives aimed at improving online filing services.

42. The Representative of the Institute of Professional Representatives Before the European Patent Office (EPI) appreciated the progress that had been made on improving PCT online services. However, the Representative indicated that a number of EPI members were opposed to the withdrawal of fax services at the International Bureau. The Representative therefore encouraged the International Bureau to seek technical solutions to maintain this option.

43. The Representative of Union of European Practitioners in Industrial Property (UNION-IP) echoed the comments made by the Representative of the EPI in relation to the withdrawal of fax services at the International Bureau.

44. The Working Group noted the contents of document PCT/WG/11/9.

### THIRD PARTY OBSERVATIONS

45. Discussions were based on document PCT/WG/11/11.

46. The Delegation of Israel noted that the third party observation system had been used for just 0.1 per cent of the total number of international applications since its introduction in July 2012. An analysis of applications filed from 2012 found that only 62 observations were received in relation to the PCT applications which had entered the national phase in Israel. Due to the low numbers, the ILPO did not have sufficient experience to provide an opinion regarding the usefulness of third party observations in improving the quality of national search and examination. Concerning the arrangements for making third party observations available to patent Office, the Delegation stated that it would be more efficient if only the specific observations relevant to applications that had entered the national phase at an Office were transmitted by the International Bureau rather than receiving a bulk transfer of all observations. The Delegation believed it would also be useful if copies of cited documents were made available through WIPO CASE in addition to PATENTSCOPE. Finally, the Delegation agreed with the International Bureau to leave the scope of the system unchanged for the present.

47. The Secretariat addressed the comment from the Delegation of Israel regarding sending of third party observation data to designated Offices. There were two options: a designated Office could retrieve the relevant documents itself; or it could receive data for all international applications with no discrimination over whether or not the application had entered the national phase, which would require an Office to select the relevant documents from about 250,000 published applications per year, of which very few had third party observations. While the Secretariat was not able to commit to provide services that pushed data to an Office upon national phase entry, this was becoming an option because the quality of data was improving to the point where that option was worth considering. The International Bureau also needed to consider the best option for Offices to receive information, whether this should be "pushed" through PCT-EDI or whether Offices wanted to use web services to retrieve documents automatically for their national phase entries. The facilities to retrieve documents automatically rather than manually were already in place should Offices wish to do so, but there needed to be further discussions regarding the services that should be supported by the International Bureau for the benefit of all Offices.

48. The Delegation of the United Kingdom believed that third party observations played an important part in the patent application process and supported the efforts by the International Bureau to improve and increase the use of this service. The United Kingdom Intellectual Property Office (UKIPO) would also continue to look at ways in which it could increase the use of the system by its stakeholders. The Delegation stated that the arrangement for making observations and applicants' subsequent comments available via PATENTSCOPE worked well. It was also convenient for all documents generated during the international phase, including third party observations, to be in one place so they could easily be imported into electronic patent files. The UKIPO was keen for more structured data to be offered through this format as this would assist with any future IT development work that required access to such information. With regard to evaluating the effectiveness of third party observations in the national phase, the UKIPO was not yet in a position to provide machine readable information concerning national phase citations in the required format. The UKIPO shared the republished PCT application image and supported XML data, including citations of the A publication with WIPO on the day of publication on PATENTSCOPE, and also shared the granted document image and any amendments filed during A and B publication. The B document included citations recorded at grant, which could be used by the International Bureau to analyze the difference from the A citations following third party observations. It was possible to supply this data in an XML format in the future, which might help to automate the analysis of the citations. Although applications for which third party observations had been filed could be manually evaluated, the Delegation was not certain of the value of this analysis given that there had only been 20 such cases at the UKIPO since the system was introduced. Finally, the Delegation supported extending the

scope of third party observations to cover issues such as clarity of claims and sufficiency of disclosure, but remained unconvinced on extending the scope to cover ownership or inventorship issues, as there were no resolutions for such matters under its national law without filing litigation proceedings.

49. The Delegation of United States of America thanked the International Bureau for its continued efforts with respect to the third party observation system under the PCT. The system seemed to be functioning as intended, which was positive. The Delegation was interested in the improved services set forth in paragraph 19 of the document, especially so that the services could be leveraged in the Access to Relevant Prior Art Initiative at the USPTO. The Delegation had two questions concerning the proposal in paragraph 19(a) to generate lists of citations in XML format: firstly, the time when the proposal was to be implemented; and secondly, whether the proposal covered citations from all international search reports or only those provided in XML format. Regarding paragraph 19(b), the Delegation noted that links to copies of the documents were provided for some non-patent literature, but requested clarification of the criteria to be used to determine whether or not a link was provided to a specific non-patent literature document. Finally, with regard to the request in paragraph 22 of the document for any information to be provided by designated Offices based on a manual evaluation of observations in the national phase, the USPTO had previously carried out a manual evaluation but did not have sufficient data to draw any statistically significant conclusions. However, the Delegation was willing to reconsider a manual evaluation if a list of international applications in which third party observations had been made could be provided by the International Bureau.

50. The Secretariat addressed the questions posed by the Delegation of the United States of America with regard to providing information in XML format and its content. The International Bureau did not intend to start manually entering citation information from search reports received in paper or image formats. Instead, the plan was to combine third party observation information with XML data received from International Searching Authorities. The International Bureau had considered this approach six years ago, which was why observations were captured as XML. International Searching Authorities were therefore encouraged to provide search reports in XML format, which would make the citation information easier to combine with third party observations. As for non-patent literature, the International Bureau had received URLs from applicants, which could be made available to Offices. However, there needed to be a discussion about whether artificial intelligence could be used in the future to identify non-patent literature with high probabilities. Furthermore, the Secretariat recognized that copyright and identification issues remained a difficulty, and that there was no definite plan as to what would be involved beyond relaying information that the third party had supplied.

51. The Delegation of Denmark stated that the figures presented on the use of the third party observations system were not high, which was similar to its national experience. Although there were a limited number of third party observations, the Delegation believed that the success of the system should not be judged using a quantitative approach given that any third party observation could lead to higher-quality patents. The Delegation appreciated the proposed improved services described in the document. The DKPTO had not evaluated the effect of third party observations in the national phase, but stated that low numbers of observations were unlikely to produce definitive conclusions. As for the scope of the observations, the Delegation supported leaving this unchanged for the time being, since third party observations in its experience were almost entirely devoted to novelty or, in some cases inventive step. The Delegation also echoed the comment by the Delegation of the United Kingdom in that it remained unconvinced on extending the scope to cover inventorship, as this was a question outside the powers of the DKPTO and was left to the courts.

52. The Delegation of Japan expressed its appreciation to the International Bureau for the proposed improvements to the services of the PCT third party observations system, which aimed to enhance user-friendliness. The Delegation believed that the third party observations

system and the proposed services were useful for applicants, third parties and examiners, and therefore wished to encourage its users to use the observation system in the international phase.

53. The Delegation of Brazil recognized the value of third party observations in ensuring patents of high quality by bringing useful remarks to the attention of the examiners. The National Institute of Industrial Property of Brazil promoted awareness of the service through contact with individual users and included information about the system in its training course about the PCT, which was provided to interested parties. The Delegation recognized the contributions that extending the scope of observations might bring, but agreed with the International Bureau that the scope of the observation system should be left unchanged for the time being. The development of IT tools mentioned in the document, such as XML information and machine translation, would streamline the observation system and allow the Delegation to consider other additional measures.

54. The Delegation of the Republic of Korea acknowledged that the third party observations system was designed to promote high quality examination and stated that the KIPO also had a third party observation system for national patent applications. In April 2017, the Delegation hosted an ePCT user training program in cooperation with the International Bureau, where participants were informed about the third party observations system in the PCT. Based on a user survey, KIPO found that its users were not well informed of the third party observations system and asked whether observations needed to be submitted in English even though observations could be submitted in any language of publication. The Delegation, however, noted the possibility for machine translation of third party observations proposed in paragraph 19(c) of the document. Furthermore, users agreed that the third party observations system was a strong and effective way to prevent invalid patents from being granted by a patent Office. The Delegation concluded by stating that the proposals in the document offered an effective and efficient way to vitalize the third party observations system and therefore supported the International Bureau in improving the system.

55. The Secretariat, in response to the comments about the language of submission, stated that language issues were of importance, and that Circular C. PCT 1527 provided a breakdown on the use of the system by language, both in total and in comparison to the language of publication of the relevant document. The system was in principle set up to allow observations to be submitted in any of the ten languages of publication. However, since observations were not translated by the International Bureau, third parties making observations needed to consider the optimal language for submission, particularly taking into account the priority target audience. For example, the most appropriate language for an observation might be the language of publication if the intention was to affect whether an applicant would decide not to proceed with the application. On the other hand, a third party might select English for filing observations if the aim was to make them accessible to as many designated Offices as possible. The choice of language for filing observations remained with third parties. Although the International Bureau could not translate all submissions into the nine other PCT publication languages, the Secretariat hoped that machine translation services would allow users to understand the gist of the text. Machine translation was already available for use by manually entering the text or XML data from the observations. Furthermore, the International Bureau had requested for observations to be submitted in a structured format so that it was possible to find citations without understanding the content or relevant language, regardless of whether the citation was a patent document or non-patent literature. The Secretariat therefore intended to integrate machine translation so that third party observations would be useful to as many people as possible, subject to the cost constraints of translation work.

56. The Delegation of Canada agreed with other delegations regarding the value added to the patent system by the third party observations system, further assessment of its use during national phase examination would be useful before determining whether it would be beneficial

to extend the scope of permitted observations. The Canadian Intellectual Property Office (CIPO) did not have sufficient resources to review and analyze on a case by case basis all 260 international applications with third party observations that had entered the national phase in Canada in order to determine whether the observations were useful in improving the quality of national search and examination. However, for future analyses CIPO could consider tasking examiners with recording the information related to third party observation citations and search notes. The Delegation supported the International Bureau's proposal not to make changes to the period for making observations or the involvement of International Authorities. As was stated in response to Circular C. PCT 1527, the Delegation also supported leaving the scope of the system unchanged for the time being pending further evaluation of the effectiveness of existing observations in the national phase and the development of services to permit delivery of customized information based on effective processing of XML information.

57. The Delegation of China thanked the International Bureau for its work on improving the third party observations system over the past five years. Third party observations had increased sources of prior art and were important for enhancing the quality of examinations, which was demonstrated in national phase examination at the State Intellectual Property Office of the People's Republic of China (SIPO). The Delegation believed that the proposal by the International Bureau would help the dissemination and use of the third party observation system, but was unable to comment on the effectiveness of the system as it had not received many third party observations.

58. The Delegation of Greece considered third party observations to be an important feature of the PCT System, and supported the proposal in the document to keep the scope of observations unchanged, advising against extending the scope of observations to cover inventorship, as this was a matter of substantive law and should be left to Member States to determine.

59. The Delegation of Spain stated that the low number of third party observations could be expected as third parties might prefer to wait for the opportunity to launch an opposition against the a granted patent. The SPTO offered an opposition procedure where around 7 per cent of granted patents were opposed. In contrast, third party observations which were received on less than 1 per cent of national patent applications. Third party observations in the international phase were nevertheless a welcome addition to the PCT System, and could have an impact in the national phase because access for examiners could influence the decision of whether or not to grant a patent. The Delegation supported increasing publicity of the third party observation system and the measures to evaluate the effect in the national phase as proposed in the document.

60. The Delegation of France reported that the National Institute of Industrial Property of France (INPI France) had consulted its users, who were in favor of the principle of having third party observations within the PCT framework. However, there were diverging views among users over modifying the time period to submit observations and extending the scope of observations. Some users had concerns that shortening the time frame could reduce the use of the system, and certain users believed that the matters covered by third party observations could be extended beyond novelty and inventive step to cover sufficiency of disclosure. Finally, the Delegation indicated that INPI France would take the necessary measures to promote the third party observations service to users.

61. The Delegation of the Russian Federation stated that it had not witnessed any activity by users with regard to the third party observation system, but believed that the system would be useful. The Delegation noted two areas which it hoped could be developed. First, it supported having the opportunity to submit a list of cited documents in XML format as this would be useful and fully in line with the transition to this format for all documents. However, this should not replace the possibility of having links to documents in other suitable formats such as PDF given

that non-patent literature may not be accessible in XML format. The Delegation believed it would be useful to have machine translations available in order to make third party observations available in languages other than the language of submission. Furthermore, the Delegation agreed with the International Bureau's proposal not to make changes to the period for submission of observations.

62. The Delegation of the European Patent Office supported the efforts by the International Bureau to improve the third party observations system. Prior art could take different forms, for example, videos, that were difficult to search by examiners. Third party observations were therefore an essential element in the ongoing quest by patent Offices to improve quality. Although the third party observations system might not be widely used within the PCT, the observations that had been received were useful for search and examination work, be it within the framework of Chapter II or during the national phase. Furthermore, a third party observations system in the PCT was in line with best practices in place at national and regional levels. The EPO supported the proposal in paragraph 19 of the document regarding automated machine translation of third party observations into any PCT language of publication as this would facilitate the use of these observations if these were received within the deadline. With regard to changes to administrative processes outlined in paragraph 23 of the document, the Delegation supported the recommendation made by the International Bureau to keep the time period for making observations unchanged in order to make full use of the international phase. Finally, the Delegation echoed the statement made by the Delegation of France regarding the permitted scope of observations mentioned in paragraph 24 of the document, and supported extending the scope to observations regarding industrial applicability, as well as the clarity and sufficiency of the description under Article 5. Within the framework of the European Patent Convention, Article 115 allowed for a third party to submit observations on these matters for European patent applications, and the Delegation therefore suggested that the International Bureau could look into expanding the possibilities under the PCT.

63. The Representative of the Japan Intellectual Property Association (JIPA) hoped that the utilization of the third party observation would increase and stated that communication between the International Bureau and designated Offices needed to be more active in order to achieve this goal. As mentioned in paragraph 3 of the document, 11 designated Offices had chosen to have all observations transmitted to them. The Representative believed that the system would become more efficient for PCT users, especially third parties, if more Offices chose this form of communication. It would also be beneficial to those making observations if the results were more reliably pushed to the relevant designated Offices and to applicants if the transmission of the observations by the International Bureau relieved the applicant of the obligation to notify the cited documents to designated Offices in disclosure statements. Finally, it would be helpful for users if the International Bureau disclosed which Offices had chosen to have all observations actively transmitted to them and which Offices received observations only on request.

64. The Working Group endorsed the proposed further work set out in paragraphs 19 to 24 of document PCT/WG/11/11.

#### **SYSTEMS TO ASSIST NATIONAL PHASE ENTRY**

65. Discussions were based on document PCT/WG/11/25.

66. The Delegation of the United States of America thanked the International Bureau for its work to improve systems for national stage entry. In terms of the two options presented in paragraphs 11 and 12 of the document, the Delegation stated that the USPTO was willing to discuss both options with the International Bureau. However, there were significant IT and legal issues which needed to be addressed in development of the functionality of the first option, as outlined in paragraph 11, which might limit the ability of the USPTO to participate in that effort. By contrast, as indicated in paragraph 13 of the document, most of the centralized work for the second option, as outlined in paragraph 12, had already been done, which suggested that this

option should be pursued foremost. In this case, it could be questioned whether further resources should be allocated to the first option. Furthermore, discussions with users over practical applications for development of active components in the Global Dossier system suggested aligning with the second option. In this regard, the Delegation suggested coordinating efforts between this option and the development of the Global Dossier.

67. The Delegation of Australia supported the development of systems in further aiding national phase entry. The Delegation considered that the two potential options were a welcome step forward in diminishing unnecessary transcription of existing information to and from national forms. Between the two options, the Delegation supported the second option, as outlined in paragraph 12 for two main reasons. First, this option would provide an opportunity for IP Australia to enhance its systems while not being limited by the applicant being unable to pay fees through ePCT, bearing in mind that it was mandatory to pay the fees when entering the national phase in Australia. Second, the Delegation saw benefits of this option in implementing streamlined processes for all Offices, noting that, with more and more Offices transmitting XML data, it was necessary to develop common systems for providing necessary bibliographic data.

68. The Delegation of the United Kingdom welcomed both options in the document to develop systems for applicants in the preparation and filing of national phase entries. While the Delegation supported the principle of reusing existing data wherever possible and the general direction of the work, it was nevertheless important for the International Bureau to continue to have the concerns of patent agents in mind when developing these systems.

69. The Delegation of Canada welcomed the document and agreed with the concept of the applicants not having to re-enter the data when entering the national phase. CIPO was able to avoid data re-entry by importing all of the application data and documents from PATENTSCOPE using PCT-EDI. For this reason the Delegation supported the second option outlined in paragraph 12 of the document, which would improve the solution available in PATENTSCOPE.

70. The Delegation of the European Patent Office supported the facilitation of entry into the national phase. The EPO was interested in participating in any pilot if and when one was offered, and supported the continuation of the work aimed at finding a system to assist national phase entry. As to the two options in paragraphs 11 and 12 of the document, the Delegation believed that there were advantages of continuing to address both options. The first option to use ePCT offered users the advantage of having one system as a universal tool to deal with international applications from their filing until entry into the national phase. However, the second option had advantages in that not all applicants would be using ePCT and that designated Offices would use their own tools for entry into the national phase. The simplest implementation option was likely to be an export/import function since this would keep the filing systems unlinked, noting that where filing systems interacted with one another, there was more maintenance work which would add complexities to their management. Furthermore, given that the two options presented were not mutually exclusive, the EPO was in favor of developing both options further. This would give Offices a broader basis for assessing costs and benefits of both options for Offices and users.

71. The Delegation of the Russian Federation stated that Rospatent and Russian applicants made active use of the ePCT system and it supported the further development of the system to facilitate entry into the national phase. The Delegation suggested that further work should explore both the options in paragraphs 11 and 12 of the document, but with priority being given to the former option at the initial stage.

72. The Delegation of Japan believed that the development of systems to assist national phase entry would help applicants and Offices improve efficiency in dealing with filings. The Delegation therefore generally supported the proposal. When considering the direction for the

development of the systems, as discussed in the previous sessions of the Working Group, many issues in the areas of laws and systems would arise in each country, depending on functions to be developed. One option might be to advance development of both options in paragraphs 11 and 12 of the document, so that Offices could select the system depending on the individual circumstances in each country, such as domestic laws and regulations and any ongoing progress in developing systems. In order to harmonize the functions of any systems that were developed based on the laws and systems of every country, the Delegation advised that discussions should be advanced very carefully.

73. The Delegation of Israel supported the interventions made by the Delegations of Australia and Canada in support of the second option, as outlined in paragraph 12 of the document.

74. The Delegation of China suggested that feasibility studies be conducted from a legal, technical and operational perspective with regard to the first option outlined in paragraph 11 of the document. In addition, the Delegation raised the question of how the timing of national phase entry could be determined and how secure and effective working between the ePCT system and national systems could be realized. As for the second option in paragraph 12 of the document, the Delegation believed that it was necessary to conduct a comprehensive analysis of data formats and transmission standards in order to justify the availability of this option. Furthermore, the Delegation informed the Working Group that SIPO had participated in a pilot project with machine-to-machine real time interworking where the data received was used to help applicants to reduce errors in the application form. This work had been helpful and could enable transmission of more consistent and machine readable information.

75. The Delegation of Germany supported the second option, as outlined in paragraph 12 of the document, and expressed willingness to provide input to the process of standardization of exchange of machine readable data. This option also gave applicants greater flexibility for applying for PCT applications using tools that they were familiar with.

76. The Representative of the Japan Patent Attorneys Association (JPAA) believed that the second option in paragraph 12 of the document, which concentrated more on providing services for export of data into the patent management software of users, would be beneficial for users. As many applicants prepared the filing and submission of documents without submitting printed documents, the second option could be simple and useful. The Representative understood that the first option in paragraph 11 of the document could also help applicants, but detailed specifications were not clearly shown in the document. The JPAA nevertheless had an interest in the work that could be achieved from the first option and hoped that any system offered would be safe and secure for applicants.

77. The Representative of the Asian Patent Attorneys Association (APAA) was gratified that the International Bureau had noted the concerns of user groups on national phase entry systems expressed at previous sessions of the Working Group and had confirmed the recommendation that local agents should be used to effect national phase entry. The APAA was ready to assist the International Bureau in determining which of the proposed options would bring about greater efficiencies and eliminate errors in the national phase entry process while maintaining quality. While the Representative suspected most users would prefer the second option, as outlined in paragraph 12 of the document, APAA proposed to bring this matter to the attention of its members again and revert back to future sessions of the Working Group after a more comprehensive analysis of the views of its members and impact on their various IT platforms had been completed.

78. The Delegation of Colombia supported the proposal to assist national phase entry. The Delegation referred to the Meeting of Intellectual Property Offices (IPOs) on ICT Strategies and Artificial Intelligence (AI) for IP Administration that had taken place in May 2018, and emphasized the importance of information handling between the systems of IP Offices and the



PATENTSCOPE database for displaying information on national phase entry. In terms of technical assistance for handling such information, the Delegation requested more permanent support given that systems developers often did not have direct contact with technical people who would be using the systems.

79. The Working Group invited the International Bureau to work together with designated Offices and other interested parties towards developing requirements and proposals for systems to assist national phase entry by the more effective use of documents and data from the international phase.

#### **INFORMATION CONCERNING NATIONAL PHASE ENTRY**

80. Discussions were based on document PCT/WG/11/10.

81. The Secretariat gave an update on the status of the delivery and making available of national phase entry information. The availability of national phase data was not perfect, but had significantly improved. Data was available for 63 national Offices, of which 36 were within one year of being up to date, and 10 within one month of being up to date. A number of other Offices were supplying data regularly, but needed to wait until national publication had taken place before transmitting the data. More importantly, effective cooperation was underway with numerous Offices to further improve the quality and timeliness of the data.

82. The Delegation of Japan observed that since Rule 95 contributed to improving access to information for users, it was desirable for designated Offices to provide in a timely manner the information on international applications that had entered the national phase in their countries. The Delegation advised that the JPO was continuing to provide the required information on national phase entry to the International Bureau in the standardized XML format. Furthermore the Delegation advised that it was not aware of any discrepancies between information that could be viewed by using the browse menu in PATENTSCOPE and the information provided by the JPO to the International Bureau.

83. The Delegation of the Republic of Korea stated that the transmission of national phase information to the International Bureau was a welcome development of the PCT System, improving transparency of information and preventing duplication of work. Consequently, KIPO had been sending national phase information to the International Bureau on a monthly basis in XML format through PCT EDI before the amendment to Rule 95.1 had entered into force. The Delegation reported that KIPO had reviewed the availability of information in its databases and compared this information with the information published through PATENTSCOPE, as had been requested in the document. This review had demonstrated that all relevant information had been published.

84. The Delegation of China supported the work of the International Bureau to improve access to information concerning national phase entry. The Delegation reported that the SIPO had been able to resolve the issues regarding accessing information in PATENTSCOPE that it had found following testing the transmission to the International Bureau of information on national phase entry held at SIPO. With regard to data provided by other Offices, the Delegation hoped that the International Bureau would be able to clarify the usage of the data and issues related to the calculation of URLs linking the international application to the applications in the national phase from PATENTSCOPE in order to improve the technical implementation. In this regard, the Delegation expressed a willingness to exchange further with the International Bureau.

85. The Delegation of the European Patent Office reported that the EPO was providing weekly data in the new format mentioned in the prescribed specification. In view of the system being based on PATENTSCOPE where Offices had to retrieve national phase entry data rather

than automatically receiving the data, the Delegation looked forward to the implementation of the improvements indicated in paragraph 8 of the document regarding the download of incremental data sets.

86. The Delegation of Mexico advised that since June 14, 2017, when the first transfer of national phase entry data in compliance with the guidelines provided by WIPO was sent by IMPI, national phase information had been updated in an incremental way on the first Monday of every month. The Delegation emphasized the importance of transmission of information on national phase entry. For example, the Delegation was interested in determining where international applications that had been filed at IMPI as a receiving Office eventually entered the national phase, which required Offices to transmit up-to-date national phase entry data to the International Bureau.

87. The Delegation of Canada reported that CIPO was exporting bulk data to the International Bureau on a weekly basis, which included the national phase entry information. As requested in the document, CIPO had checked the PATENTSCOPE dataset with respect to the exported data. This check had identified discrepancies which CIPO would investigate further with the International Bureau.

88. The Delegation of Chile underlined the importance of being able to access information on national phase entry through PATENTSCOPE. Given that INAPI Chile managed national patents through the WIPO Industrial Property Administration System (IPAS), the Delegation hoped that the process to automate the provision of data relating to the national phase from within this system would be configured in the near future.

89. The Delegation of Israel advised that the ILPO provided the required information on a monthly basis in XML format via the PCT-EDI service.

90. The Representative of the Asian Patent Attorneys Association supported and agreed with the interventions made, particularly those made by the Delegations of Japan, the Republic of Korea and China. The Representative noted that members of user groups were regularly tasked with monitoring national phase entry for various reasons, not the least of which was to provide freedom-to-operate analyses. APAA therefore supported the efforts to improve the accuracy and timeliness of national phase entry information from national Offices.

91. The Working Group noted the developments in PCT national phase entry set out in document PCT/WG/11/10.

## **FUTURE DEVELOPMENT OF THE PCT SYSTEM**

92. Discussions were based on document PCT/WG/11/5.

93. The Secretariat, in introducing the document, underlined that many of the key areas of further work in paragraph 25 depended on better IT cooperation. One of the messages that had emerged from the Meeting of Intellectual Property Offices (IPOs) on ICT Strategies and Artificial Intelligence (AI) for IP Administration that had taken place in Geneva in May 2018, was that Offices could not compartmentalize issues into categories such as IT or legal, nor could major IT projects be focused on a limited set of issues which could not evolve to adapt to changing needs or points which may have been overlooked in the preparatory stages. In addition, it was important that IP Offices were able to understand and make use of documents and data from other Offices and that data was shared between different IP Offices in order for Offices to take opportunities to deliver better services at a lower cost.

94. The Delegation of Switzerland, speaking on behalf of Group B, stated that it appreciated the efforts and willingness of the International Bureau to set priorities for future work in order to improve the PCT System. Group B supported the idea of the International Bureau to divide the

areas of work into four different categories, namely, legal and institutional issues, technical (IT) environment, financial issues, and quality. The improvement of quality and its efforts to attain this goal was a key issue for Group B. This should also be a shared goal towards which all PCT members worked together. As mentioned by the International Bureau, confidence in work products of other Offices was essential for a successful PCT System. The efforts to improve the linkage between national first filings, international applications, and national phase processing were therefore a welcome priority set by the International Bureau. This included the effective use of systems in order to share relevant information. Group B fully supported work to identify mechanisms and metrics to help measure quality of international work products. Openness and quality issues were crucial and Group B supported the introduction of measures to enable feedback on international phase work, particularly as work on user feedback in the Meeting of International Authorities under the PCT had now been concluded. The International Bureau could play an important coordinating role in this area by providing a mechanism for gathering feedback from a wide range of stakeholders, including designated Offices and applicants as customers of international phase work. Group B strongly supported work to consider how this could be done in the most useful and efficient way. Group B shared the International Bureau's opinion on the importance of necessary skills at national Offices to assist in an effective use of the system. In this regard, coordination of specific training tools was relevant. Work also needed to focus on helping national Offices to make best use of work performed elsewhere. This included improving and promoting systems and platforms such as WIPO CASE. Group B also supported work on technical mechanisms, along with incentives for applicants to facilitate the exchange of data and work products between offices. Group B further supported the ideas outlined in the document to encourage greater use of the international phase, such as incentivizing applicants to amend applications in light of international reports. Integrating the Patent Prosecution Highway (PPH) into the PCT was another mechanism that would help to achieve this aim. While the document noted that development of the international framework was "more or less complete", it was important that the PCT members were open to change in order to ensure the PCT System remained fit for purpose and continued to fulfill the needs of users. Regarding financial issues, Group B noted that PCT fees provided over 75 per cent of the income of the Organization and that the PCT Union had consistently generated a biennial surplus of over 70 million Swiss francs. Group B therefore believed that a reduction in PCT fees needed to be carefully reviewed. With regard to centralized payment of PCT fees, Group B welcomed further information from the International Bureau. The netting pilot was a welcome initiative to simplify and improve the exchange of fees between Offices. Group B appreciated efforts undertaken by the International Bureau concerning these areas of work and offered all necessary assistance to achieve these objectives.

95. The Delegation of the United Kingdom appreciated the considerable progress that had been made in implementing the PCT Roadmap recommendations. On legal and institutional issues, the Delegation agreed that work should focus on ensuring national Offices could make the best use of work done elsewhere, and that promoting systems and platforms such as WIPO CASE was one way of achieving this aim. In this area, the Delegation was keen for work to continue on the development of technical mechanisms, along with providing incentives for applicants to help encourage the exchange of data between Offices. It was important that PCT membership remained open to change in order to ensure the PCT System remained fit for purpose and continued to fulfill the needs of users. On the technical environment, the Delegation supported the proposals to consolidate and increase the consistency of IT systems and agreed that there was a need for national and international efforts in this area to be joined up. For this reason, the Delegation had been pleased to provide the facilitator for the Meeting of Intellectual Property Offices (IPOs) on ICT Strategies and Artificial Intelligence (AI) for IP Administration that had taken place in May 2018. At this meeting, the Delegation had been encouraged by the openness and willingness of countries to further this agenda. On financial issues, the Delegation appreciated the importance of PCT fee income to both the PCT System and the Organization more widely. The Delegation recognized the need to re-evaluate fee levels from time to time and considered that discounts might provide useful mechanisms for

incentivizing filing using the most appropriate electronic format. The United Kingdom Intellectual Property Office was also pleased to be participating in the netting pilot and looked forward to seeing the results of the pilot. With regard to quality, the Delegation firmly believed that all PCT Contracting States needed to work together to increase the quality of international work products, and supported efforts to develop mechanisms and metrics to help measure the effectiveness of the work produced. Allowing applicants and the national Offices the opportunity to give feedback on the products that they had received was a key way of improving quality within the PCT System. The Delegation therefore supported any work that the International Bureau was planning in this area. Finally, the Delegation supported the ideas outlined in the document to encourage use of the international phase to its maximum potential. Integrating the PPH into the PCT was one such mechanism for achieving this aim.

96. The Delegation of Japan expressed its appreciation to the International Bureau for its efforts and suggested possible future directions and practices to further develop the PCT System. In its understanding, thanks to the continuous efforts by the International Bureau and all Offices, the PCT System had been significantly improved and recognized as the global application system. Therefore, if the PCT System was further improved to enhance efficiency and user-friendliness, such improvements would be meaningful in terms of further increasing the value of the PCT System and promoting innovations. To achieve this, the Delegation supported the idea of advancing discussions in accordance with the four areas of future work, as proposed as priorities in the document. With regard to these priorities, the main areas of interest of the Delegation included: (1) the formal integration of the PPH into the PCT system; (2) the wider use of ePCT filing and processing services and XML formats; (3) the introduction of the netting arrangement for remitting PCT fees; and (4) the strengthening and implementing of measures for Offices to enhance their quality management frameworks to meet requirements described in Chapter 21 of the International Search and Preliminary Examination Guidelines. Going forward, the Delegation indicated Japan would make efforts, as in the past, to effectively fulfill its roles and responsibilities that were required under the PCT System. Furthermore, in order to advance specific discussions to further develop the PCT System, the JPO would continue cooperating with the International Bureau and other Offices.

97. The Delegation of Brazil stated that many positive measures, including sharing of search strategies, and quality feedback mechanisms had either been introduced since the Working Group had agreed on the PCT Roadmap recommendations or were under development as a result of those recommendations. The Delegation supported the idea of continuing to address possible administrative improvements and increased use of information technology and improvements in the reports issued by International Authorities. Referring to the document, regarding legal institutional matters, the Delegation agreed that major reforms of the PCT were not necessary, but targeted improvements might be useful to the activities of International Authorities or during the national phase. In this regard, the Delegation shared the goal of ensuring that the international phase worked effectively to support national phase processing. The reports published by other International Authorities were used during the national phase in Brazil in an optional manner, assisting the increase of productivity by examiners at INPI-Br. Turning to IT matters, INPI-Br had successfully adopted the ePCT system and had recently begun to use the WIPO Digital Access Service (DAS) for priority documents. As for XML, there was very low use of XML-filing in Brazil, although filing in DOCX with conversion to XML was now available through ePCT. The Delegation therefore suggested that additional awareness-raising activities in this area could be undertaken by the International Bureau and IP Offices. The Delegation further agreed with the need for IT systems to share information with other Offices more effectively and to develop common standards. In this regard, INPI-Br had experienced difficulties in sharing platforms with partner Offices, which underlined the need for streamlining. Quality was also a paramount issue to the future of the PCT. Quality metrics were being discussed at the Meeting of International Authorities under the PCT, where INPI-Br was a participant. The importance of feedback between the international and national phases when INPI-Br was the competent International Authority provided useful inputs for improving

activities. The tools and platforms offered by the International Bureau such as ePCT and IPAS Office Suite could also provide better access to the PCT System. Overall, the PCT System was established as a quality service provided to stakeholders and Offices, and it was the duty of the PCT members to preserve that status. The Delegation would therefore carefully examine proposals in that sense.

98. The Delegation of the European Patent Office supported the proposals in the document and saw great potential in the synergies that could be achieved by more effective use of IT systems, particular of ePCT. The Delegation therefore supported a reasonable adjustment of the PCT legal framework that would facilitate further development in that regard. More intensive use of XML formats would be welcome in the coming years. In addition, reporting could be strengthened by extending the link between the eSearchCopy service and netting of PCT fees. Turning to financial issues, the Delegation considered it appropriate to provide incentives to applicants to use XML standards by increasing the amount of fee reductions available. In addition, in order to support efforts towards reducing fees for applicants from certain States, particularly developing countries, fee reductions could be offered not only by the International Bureau, but also by International Searching and Preliminary Examining Authorities. The EPO already offered a 75 per cent reduction to such applicants. This issue could be explored further, along with putting in place practical measures to limit possible abuses, acknowledging the recent initiatives taken by the International Bureau that had been discussed by the Working Group. There were, however, other possible ways of limiting abuses, which the Delegation believed should merit further investigation. If the ways of preventing abuses from applicants claiming fee reductions were more solid, fee reductions could be extended to other applicants not presently entitled to reductions. Finally, on quality, this was essential if the PCT was going to be successful over the long term, and particularly in order to ensure consideration and recognition of international work products by designated Offices. Where a designated Office had acted as the International Searching Authority, it was essential that the Office recognized its own PCT work products. Moreover, the Delegation supported the work within the Meeting of International Authorities to support the harmonization of practices of International Searching Authorities and ensure a high quality of international work products. In this area, the Delegation highlighted three examples towards improving quality within the PCT System: (1) the updating of the PCT minimum documentation defined by Rule 34; (2) the implementation of WIPO Standard ST.26, which would improve search quality in the biotechnology field; and (3) greater use of the Rule 23*bis* under which Offices could transmit the result of prior searches to International Searching Authorities. In relation to the final example, the Delegation noted that this provision had not been widely used since its implementation, and the Delegation encouraged those Offices with incompatibility provisions in relation to the transmission of earlier search and classification results to withdraw them as soon as practically possible.

99. The Delegation of the United States of America associated itself with the statements made by the Delegations of the United Kingdom and Japan. The Delegation of the United States of America had been active in PCT reform and improvement for a long time, and looked forward to participating in the proposed activity. Concerning the legal institutional issues, the Delegation believed that Offices and applicants had seen tremendous benefits through work sharing and the USPTO intended to continue backing projects such as the PCT Collaborative Search and Examination pilot, the Global Dossier and the PPH. Concerning the IT environment, the USPTO had sent representatives to the Meeting of Intellectual Property Offices (IPOs) on ICT Strategies and Artificial Intelligence (AI) for IP Administration that had taken place in Geneva in May 2018 referred to in paragraph 16 of the document. The Delegation supported the goals of making data available and standardizing the data format and mechanisms of providing data, as set forth at that meeting. Concerning financial issues, the Delegation supported the netting pilot and looked forward to examining the fee structure. Regarding quality, the Delegation strongly supported the activities of the Quality Subgroup of the Meeting of International Authorities. Finally, the Delegation noted that the present document focused on the PCT Roadmap endorsed in 2010 and the Director General's

Memorandum issued in 2017, but suggested that all proposals which had been presented on improving the PCT System needed to be considered. In that regard, the USPTO had prepared a document for the twenty-second session of the Meeting of International Authorities in 2015 titled "Review of PCT Improvement Plans" (document PCT/MIA/22/19). That document compared the various PCT improvement plans which had been presented as of that date, such as the PCT Roadmap, the joint United Kingdom/United States of America "PCT 20/20" plan, the "Proposals for Further Improvement of PCT Services and Products" from the EPO, the "PCT Kaizen" proposal from the JPO and the "PCT 3.0" proposal from the Korean Intellectual Property Office. That document evaluated the various plans and tried to identify specific proposals within the plans that shared the support of a plurality of the plans. The Delegation therefore urged the International Bureau to consider that document and the specific proposals that shared support between more than one plan as it moved forward in examining improvement of the PCT System.

100. The Delegation of Denmark stated that the PCT system had been an incredible success since its inception and the Memorandum from the Director General testified the prominent role of the PCT System in the patent system as a whole. Users in Denmark much appreciated the PCT System and used it to large extent. Turning to the PCT Roadmap recommendations outlined in Annex II to the document, the Delegation noted that many of these recommendations had either been implemented or they had at least raised awareness on specific challenges which the Working Group had tried to address. Some of the key issues for Denmark were to raise the perceived quality of PCT work products while keeping the system fit for purpose in becoming a more efficient and simplified way of obtaining patent protection in civil countries. All the recommendations that touched upon these key issues had been more or less implemented, focusing on quality management systems, better availability of examinations, improved search tools and reports, the third party observation system, PATENTSCOPE and translations, etc. The PCT membership had come a long way in improving the PCT System, but the Delegation agreed with the International Bureau that there was an ongoing need for improvement to the benefit of users and Offices. The Delegation also concurred with other delegations that had pointed out the opportunities that remained to be exploited in work sharing along the lines that had been suggested by the International Bureau, for example in integrating the PPH into the PCT System. In this regard, the Delegation continued to believe that work sharing would not only lead to higher quality, but also make patent granting processes more efficient. The Delegation also agreed with the International Bureau in developing IT tools and systems to support this objective, where the WIPO CASE database and ePCT tools were a useful effort in that direction. The Delegation also shared the same thoughts in relation to the discussions of the other two areas of work proposed in the document covering financial issues and quality. The Delegation concluded by endorsing the four proposed areas of work and underlined that future work should be targeted at technical and administrative improvement of the PCT System.

101. The Delegation of India expressed appreciation for the spirit of the Memorandum from the Director General. In October 2017, the Indian Patent Office had signed a cooperation agreement with WIPO to facilitate the exchange of data. In order to create trust from applicants, other IP Offices and the public at large, the Indian Patent Office was committed to cooperate in the establishment of transparent mechanisms for public scrutiny to improve the quality of the output of Offices. The Indian Patent Office had started sharing search strategies of international applications on the PATENTSCOPE database from January 1, 2018. The idea of establishing a centralized feedback system by the International Bureau for feedback from designated Offices could be important future work. The Indian Patent Office provided incentives for electronic filing and close to 90 per cent of national applications were now received online, which could further increase in future. The Indian Patent Office believed that there was enormous scope for Offices worldwide to join hands to improve examiner training. Cooperation could be effective only if all Offices were well-equipped to handle search and examination to a certain perceived quality. Numerous training programs were already conducted globally. The need now could be to develop and agree on a single organized pattern for training, which could be followed by all,

wherein the trainees had to complete successfully each level to be eligible for the next level. The Indian Patent Office had already conveyed the concerns on formal integration of the PPH into the PCT during meetings held between the Director General and select IP Offices in October 2016 and 2017. The Delegation was of the view that the integration of the PPH into the PCT would hinder the recommendations for future work acknowledged in the PCT Roadmap, which were aimed at technical assistance to offices in eliminating differences in search and examination capacities, skills and access to information and thus fail to implement WIPO's Development Agenda. Moreover, India had always expressed its concerns about harmonization of patent procedures as this would impede development of examination capabilities of developing countries. Accordingly, focus should be on providing technical assistance in accordance with PCT Article 51. Further work in this regard might be enhancing the capabilities of Offices by providing training, where care should be taken to ensure that such trainings were provided with the emphasis on the provisions of respective domestic laws so as to prevent a situation where the training was on something which was inconsistent with the national laws and regulations of the country.

102. The Delegation of Norway welcomed the continued work to further improve the quality of patents and the functioning of the PCT System. The Delegation believed that all the proposed key areas listed in paragraph 25 of the document were important areas where further work could be beneficial to all parties. The Norwegian Industrial Property Office (NIPO) had a strong and continuous focus on quality. Regarding paragraph 25(a) of the document, the Delegation pointed out that despite being legally obliged to make an independent assessment of the patentability of all patent applications, NIPO had always, to the extent possible, reused the results of work products of the International Authorities to achieve faster processing and improved quality.

103. The Delegation of the Russian Federation supported the concepts in the document and believed that the PCT Roadmap recommendations were being successfully implemented. As to the work proposed for the future development of the PCT Roadmap, the Delegation underlined the importance of information and communication technology in ensuring a more effective exchange of information on the basis of harmonized standards. Further development of ePCT and other systems like the WIPO CASE system would be beneficial in this regard. On search and examination, the Delegation drew attention to the strong link between the consideration of national priority applications, applications in the international phase and procedures in the national phase for consideration of applications. The Delegation stated that the exchange of information from international search was essential, particularly when the designated Office was the same Office as the International Searching Authority. Moreover, it was also important to increase access to national search reports for International Authorities and other Offices. Turning to financial issues, the Delegation supported the further improvement of the payment of fees to make it simpler and more accessible for applicants and also to minimize expenditure, particularly losses due currency exchanges. With the setting of fees and making the system more accessible, the Delegation believed that the Working Group should consider reducing fees for certain applicants. Moreover, the netting pilot was a useful project, where the Delegation looked forward to further discussions.

104. The Delegation of China expressed appreciation for the document, which provided a comprehensive review of the priorities in the future development of the PCT System. After years of effort, the PCT was becoming more user-friendly, convenient and fast, as well as producing improved quality. Following the priorities in the document, the future system could become more popular and even more widely used worldwide. The development of the PCT System should be able to meet economic trends, advances in science and technology and global innovation, as well as address common concerns of users. Consideration should also be given to the interests of Member States at different stages of economic development so that the future of the system would be more balanced and efficient. The Delegation was of the view that the future work directions proposed by the International Bureau were proactive and practical,

focusing on effectiveness, and were also pertinent and implementable. The Delegation agreed to further refining the existing PCT Rules within the framework of the system to promote work sharing in Offices and improve the efficiency of mechanisms and procedures. In this process, the Delegation would actively participate in the discussions on the future development of PCT System and it looked forward to working together with other Member States, IP Offices, and the International Bureau on key areas such as legal aspects, technology, fees and quality of patents, so that the PCT members could explore and experiment in a meaningful manner to further improve the PCT System.

105. The Delegation of Australia thanked the International Bureau for the continuous development of the PCT System. With regard to the technical environment, IP Australia embraced the XML functionality offered by the International Bureau and would be looking at how to implement XML in its IT systems. IP Australia was particularly interested in the efficiencies from using XML in its operations as a receiving Office using enhanced functionality in ePCT. IP Australia would also be investigating adopting the ePCT functionality that would allow XML to be implemented in the international search report and written opinion forms. The Delegation supported the changes to Annex F of the PCT Administrative Instructions to allow for filing using the DOCX format as the original source document, and would be able to make the necessary changes to be in line with the schemas provided by WIPO and the EPO. Looking towards the future, IP Australia believed that certain fees should be reassessed. For example, the handling fee appeared to be largely irrelevant in a digital environment. The Delegation therefore suggested that there might be merit looking into changing the fees to suit a more modern environment. The Delegation noted that this session of the Working Group would be discussing documents related to cooperation, which it believed could be the beginning of a process where improved efficiencies could be gained and concrete changes made to the PCT System. In this regard, the Delegation believed that the future of the PCT System being driven by cooperation could make the system the best that it could be.

106. The Delegation of Chile stated that it was committed to the future development of the PCT, and in delivering quality services and in seeking cooperation among Offices. Since the previous month, all national processes at INAPI Chile had been in line with the relevant standards. The Delegation expressed interest in all of the initiatives that were being promoted, such as fee reductions and promoting the use of the WIPO CASE system, which would lead to further development of the PCT System as a whole. The Delegation affirmed its agreement to continue the debate on the four main areas of work outlined in the document.

107. The Delegation of Morocco supported the four main areas of work proposed in the document covering legal and institutional issues, the technical (IT) environment, financial issues and quality, as set out the Memorandum from the Director General issued in 2017, noting that this Memorandum had been based on the PCT Roadmap recommendations adopted by the Working Group in 2010 and added to these recommendations. The Delegation was also favorable to the strengthening of the cooperation, work sharing, and streamlining of processes with respect to the PCT System.

108. The Delegation of the Republic of Korea acknowledged that the PCT System had undergone rapid and considerable developments since the first international application was filed in 1978. The number of PCT Contracting States had risen from 18 founding members to 152 States. In addition, the cumulative number of PCT applications had passed 3 million. This demonstrated that the PCT System was an effective way to obtain and protect intellectual property rights around the globe. However, while the number of filings of international patent applications had increased, the Delegation drew attention to the decrease in the number of demands under Chapter II. KIPO had always appreciated the efforts of WIPO since the first international application had been filed at KIPO as a receiving Office in 1984. For better utilization of the PCT, the Delegation agreed that the proposals in the areas of the IT environment to allow for color drawings and improve the quality of international search reports



were important. The Delegation further acknowledged the pilots in Collaborative Search and Examination and netting of PCT fees, which could help improve the PCT System. The Delegation concluded by indicating that the KIPO intended to produce further proposals for improvement of the PCT System based on results of a user survey, as well as cooperation with PCT Contracting States and the International Bureau. The intention was to bring these results to the following session of the Working Group after the proposals had been discussed by the IP5 Offices.

109. The Chair stated that IP Australia was exploring the reasons behind the decline in the number of demands for international preliminary examination under Chapter II against the overall growth in filings of international applications that had been raised by the Delegation of the Republic of Korea. One explanation for the fall could be the work of the Meeting of International Authorities and its Quality Subgroup in improving the quality of the work products under Chapter I with the greater provision of information on searches which increased transparency for users, and more information in written opinions to accompany the international search reports. By improving the quality and usefulness of international search reports and written opinions under Chapter I, the benefit of international preliminary examination under Chapter II could be diminished.

110. The Delegation of France associated itself with the statement made by the Delegation of Switzerland on behalf of Group B. The Delegation was favorable to the proposals in the document for further work on the future development of the PCT System, highlighting that the quality of the work of International Searching Authorities was essential to improve confidence in international search reports. Likewise, it was important to improve coordination among Offices. The Delegation informed the Working Group that INPI France was in the process of changing its IT systems in order to be able to integrate the DOCX format. The Delegation also thanked the International Bureau for its support in the area of artificial intelligence which it believed had a great future, in particular, the utilization of artificial intelligence in the development of IT tools of IP Offices. With regard to fees and possible reductions, this was a sensitive matter, which needed to be examined in a broader framework than the PCT System, noting that the PCT System contributed significantly to the funding of activities by WIPO. Furthermore, possible fee reductions in the PCT should not have an impact on fee levels in other global IP systems, such as the Madrid System or the Lisbon System for the International Registration of Appellations of Origin.

111. The Delegation of Greece associated itself with the remarks made by the Delegation of Switzerland on behalf of Group B and offered its support to all efforts towards improving the PCT System and making it more responsive to the needs of users and Offices. The Delegation endorsed the directions and areas of work proposed by the International Bureau in the document. From the perspective of the receiving Office of the Industrial Property Organization (OBI), the Delegation stressed the importance of the following areas. First, the management and the production of reliable data was a core feature in providing information that was easily accessible to all applicants as well as Offices. Second, the collection and the dissemination of data in suitable formats, as well as interoperability, were equally important. Third, the Delegation was in favor of providing targeted incentives to applicants that would facilitate entry to the PCT System. And finally, training of officials at receiving Offices to advise and assist applicants effectively on all available options was important to enable easy access to the system.

112. The Delegation of Colombia emphasized the great success of the use of the PCT, with national phase entries making up more than 55 per cent of non-resident patent applications worldwide. The Delegation also underlined the benefits that stemmed from use of the ePCT system. Concerning the four areas of work for the future development of the PCT System identified in the document, the Delegation drew the attention of the Working Group to two of these areas. First, in relation to the technical (IT) environment, increasing numbers of Offices

were using different systems for more efficient management of patent applications. Second, in relation to financial issues, the Delegation expressed its support for the proposal for fee reductions for universities made by Brazil. Finally, with regard to the drop in the use of Chapter II, the Delegation suggested that this could be due to great progress with regard to written opinions under Chapter I, as well as significant improvement in the administration of the PCT System.

113. The Delegation of Spain aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B, and in particular, emphasized the importance of quality in the international phase of the PCT. The SPTO was actively involved in this area in cooperation with other International Searching and Preliminary Examining Authorities. Another important aspect of cooperation was in providing technical assistance and training to developing countries to guarantee that all Offices of PCT Contracting States were able to deal with patent applications effectively and efficiently.

114. The Chair summarized the discussions by stating that there was strong support for the quality initiatives that were outlined in paragraph 25 of the document, underlining that quality was the foundation stone on which the PCT System was built. There was also support for exchange of data in consistent formats, which could reduce transcription errors, improve efficiency and allow systems to interoperate to transmit timely information to IP Offices and the International Bureau. The significant improvement in timeliness was not only due to prioritization of PCT work by Offices, but also largely due to the systems such as eSearchCopy that provided documents much earlier than had been possible five to 10 years ago. This had enabled Offices to provide high-quality products earlier than before, thereby improving the information for customers needing to make business decisions based on likely patentability of inventions. There was also very strong support for cooperation and coordination on ICT projects. In the past, Offices had developed computer systems to meet their own needs without fully considering the international context, but the meetings taking place outside of the Working Group were helping to improve this situation. As for the netting pilot, the Chair acknowledged the willingness among Offices participating in the pilot for it to be a success, and the interest of other Offices in understanding how netting could assist in their work.

115. The Working Group noted the priorities and directions for the major lines of work proposed in document PCT/WG/11/5.

## **INTERNATIONAL APPLICATIONS LINKED TO UNITED NATIONS SECURITY COUNCIL SANCTIONS**

116. Discussions were based on document PCT/WG/11/14.

117. The Director General introduced the document by explaining the various bodies that were concerned with United Nations (UN) Security Council sanctions with respect to the Democratic People's Republic of Korea (DPRK). UN Security Council resolution 1718 (2006) had established a Committee consisting of all the members of the Security Council ("the 1718 Committee"). Paragraph 12 of resolution 1718 (2006) set out the tasks of the 1718 Committee, which included, in paragraph 12(b), "to examine and take appropriate action on information regarding alleged violations of measures imposed by paragraph 8 of this resolution". The other body referred to in the document was the Panel of Experts established pursuant to Security Council Resolution 1874 (2009) ("the Panel of Experts"). Paragraph 26 of resolution 1874 (2009) set out the terms of reference of the Panel of Experts, which was composed of seven experts. The most relevant of these terms for the discussions was paragraph 26(c), which provided for the Panel of Experts to "make recommendations on actions the Council, or the Committee or Member States, may consider to improve implementation of the measures imposed in resolution 1718 (2006) and in this resolution". In the case of the report of the Panel

of Experts submitted on March 5, 2018 to the 1718 Committee (document S/2018/171), it was the task of the 1718 Committee to examine the report and take appropriate action under the overall responsibility of the UN Security Council.

118. The Director General continued by explaining that the matter considered by the Panel of Experts in its report to the 1718 Committee related to the publication by the International Bureau of an international application filed under the PCT concerning the manufacture of a dual use substance. In this case, the substance, on the one hand, had widespread civilian applications, notably in the mining industry, but, on the other hand, was one of a large number of substances that are precursor chemicals for the manufacture of certain classes of chemical and biological weapons. In accordance with the PCT, the International Bureau had published the international application 18 months after the priority date. The Director General emphasized that the International Bureau had extensive interaction with the Panel of Experts during its considerations, including visiting the Panel of Experts in New York and supplying an extensive brief on the background of the patent system, and on the interaction of the patent system, in particular, with UN sanctions.

119. The Director General stated that the first thing to note from the report of the Panel of Experts was that the International Bureau had acted in accordance with PCT in the publication of the international application. In the view of the International Bureau, this finding was consistent with the law that governed this matter. Referring to document S/2006/853, which included a list established by the 1718 Committee of items, materials, equipment, goods and technologies related to weapons of mass destruction programs, in part III of the section "Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology", it was stipulated that "controls on 'technology' transfer, including 'technical assistance', do not apply to information 'in the public domain' or to 'basic scientific research' or the minimum necessary information for patent application". That particular provision, which in short, exempted the publication of patent applications from the prohibitions on technology transfer, was also replicated in laws in many countries, for example, the United States of America, the European Union including Germany and the United Kingdom, Japan, the Republic of Korea, and China, thereby covering all the IP5 Offices. The mere publication of a patent application that might contain a substance that was prohibited under UN sanctions was therefore exempted from the prohibitions.

120. The Director General continued by stating that the report of the Panel of Experts nevertheless made three recommendations, two of which were addressed to the International Bureau, and one of which was addressed to Member States. Defining an international patent application as any patent application filed in more than one country, the Director General recalled that approximately 55 per cent of international patent applications passed through the PCT, whereas approximately 45 per cent were filed through the Paris Convention route. Any measures linked to sanctions that could be taken by Member States in the PCT would therefore also need to apply to patent applications under the Paris Convention. Otherwise, any measures applied to the PCT could be bypassed by an applicant using the Paris Convention route. Recalling that the mandate of the Panel of Experts was to make recommendations to the Security Council, the 1718 Committee or to the Member States, the Director General explained the three recommendations. The first recommendation was that WIPO should "inform the [1718] Committee of future patent applications by the Democratic People's Republic of Korea relating to any items, substances or technologies prohibited under the resolutions". The International Bureau therefore requested the opinion and advice of PCT Member States on whether it needed to adjust its practices. There were various questions that arose in relation to the three recommendations that were set out in the document. With respect to the first recommendation, the most relevant question was when the 1718 Committee should be informed of a patent application. On this question, there was a body of law and practice in the patent system. Most notably, as there was an obligation of confidentiality on receiving authorities until such time as the application was published, if this recommendation were

adopted on the advice of Member States, the question necessarily followed as to when the International Bureau should inform the Committee of an application – before publication following receipt of the international application, or after publication. This lay at the crux of the recommendation. However, there was no guidance from the Panel of Experts on this question. If Member States were to advise that the International Bureau should inform the 1718 Committee of any relevant international patent application before publication, there would be two consequences. First, the PCT Regulations would require amendment, which would constitute a significant departure from practice that had prevailed with regard to the patent system to date. Second, Member States should take similar action in their national laws as approximately 45 per cent of international patent applications were not filed through the PCT. The second recommendation addressed to WIPO was that it should “introduce in its application form a mandatory field for the affiliation of inventors from the Democratic People’s Republic of Korea, including the relevant addresses, telephone and fax numbers and government ministry or agency under which they fall”. Logically, for the same reasons as the first recommendation, this should apply not just to WIPO, but also to all Member States. As for the third recommendation, which was directed to Member States, the Panel of Experts recommended that they should “have their patent office check whether any of the listed applicants and inventors are designated to ensure that the fees received for the patent application process do not violate the relevant financial provisions of the resolutions”. In this context, the Director General recalled that the International Bureau already performed these checks, and the recommendation was addressed to Member States to follow a similar practice.

121. The Director General concluded by explaining the status of the three recommendations in the report of the Panel of Experts, underlining that the Panel of Experts had an advisory function. The 1718 Committee had considered the report, which contained many different matters and had acted upon a number of other items. However, the Committee had not commented or acted upon the three recommendations to WIPO and Member States. So at this stage, the recommendations had not been adopted by the body with responsibility for taking action on them.

122. The Delegation of Switzerland, speaking on behalf of Group B, stated that it appreciated the efforts of WIPO to inform Member States of recent developments and to engage in the discussion with Member States on this important topic. Group B members were aware that the primary objective of the UN sanctions regime was to ensure that certain substances, materials, equipment and technologies did not reach countries subject to sanctions. The patent system, on the other hand, dealt with technology-related information, the publication of which was a fundamental pillar of the patent system. Group B recognized and appreciated the steps that the International Bureau had already taken to develop detailed and thorough explanations for the Panel of Experts, regarding the purpose and the mechanics of the PCT and the international intellectual property system. Group B also appreciated that the International Bureau was consulting with and seeking the advice of the PCT Working Group in order to determine how best, where appropriate, to provide relevant information to the UN Sanctions Committee while respecting the PCT. The Delegation concluded that Group B would appreciate if the Secretariat could continue to update Member States on its support for sanctions implementation, as appropriate, in future sessions of the PCT Working Group.

123. The Delegation of the United States of America stated that it appreciated the efforts of the Secretariat to inform the Member States about this issue and to provide the opportunity to help find a way to address the matters raised. The United States of America wanted to see all United Nations Security Council sanctions regimes fully implemented. Therefore, the Delegation believed that it was both necessary and appropriate for WIPO to report to the relevant UN Sanctions Committee on activities that might have consequences under UN Security Council sanctions regimes. The overall issue was more about improving the cooperation and coordination between two UN bodies, WIPO and the UN Security Council, which both had important mandates that contributed to the overall success of the UN system.

The Delegation expressed pleasure that the WIPO Chief Compliance Officer already reported to the UN Sanctions Committee on such activities at WIPO at least every year, but more often as needed. In response to the question raised in paragraph 15 of the document, the Delegation noted that some aspects of both international and national patent applications might have consequences under UN sanctions regimes, for example, the prohibitions that applied to designated persons, where WIPO already monitored international applications to check for activities by those persons. The Delegation looked forward to the International Bureau continuing to improve its reporting on these issues. Therefore, the Delegation was pleased to be engaged in this discussion, which it hoped could help determine the most effective and feasible way for WIPO to provide relevant information to the UN Sanctions Committee. As noted in the document, the International Bureau currently reviewed the names of PCT applicants against the consolidated list of designated individuals and entities from the Sanctions Committee, but so far only false positives had been identified. With regard to the questions in paragraph 20 of the document concerning what the International Bureau should do if they came across an applicant whose name was on the consolidated list, and the requests for guidance in paragraphs 22 and 23 of the document, the Delegation was still considering these important questions. The Delegation recognized the steps that the International Bureau had already taken to develop detailed and thorough explanations to the Panel of Experts regarding the purpose and the mechanics of the PCT and the international IP system. The Delegation also appreciated that the International Bureau was seeking advice of the PCT Working Group in order how to best provide information to the UN Sanctions Committee while respecting the PCT. The Delegation further hoped that during future sessions of the Working Group, the Secretariat could continue to provide updates regarding its ongoing efforts to provide relevant information and to be responsive to the Sanctions Committee.

124. The Delegation of Japan stated that it appreciated the efforts of the Secretariat to invite Member States to discuss this matter. The Delegation was aware of the importance of UN resolutions. At the same time, from a technical perspective, it was important to avoid having any significant impact on the overall PCT System. To elaborate on the technical perspective, no one could question that WIPO had made significant progress and obtained concrete results in terms of global IP services. The Delegation understood that the stable growth in the number of PCT applications and increase in membership had been thanks to WIPO properly responding to the ever evolving demands from industry. Although WIPO was a member of the UN family, any measures to be taken needed to be implemented in compliance with the principles of WIPO, based on the objective of the Organization to promote the protection of IP. To achieve this objective, WIPO had been taking into account and responding to the demands of the real world, which were made by innovators, creators, users of the IP system, and IP information services, and so on. In general, under the patent system, exclusive rights as patented inventions were granted to applicants and inventors for disclosing their inventions. Therefore, the publication of the patent applications was very important in terms of encouraging innovation. Based on these factors, the Delegation did not support any measures that might have a negative impact on the current overall patent system. For example, if inventions claimed in the patent applications could be applied for certain military use, the patent applications would not be allowed or any patent rights could not be granted to such patents. Based on the fact that patent filing procedures were clearly excluded from the scope of the UN sanctions, the Delegation believed that WIPO should continue implementing normal PCT procedures in principle. It was also important to maintain the confidentiality of international applications before publication as stipulated under Article 30. To meet this requirement, the Delegation believed that it was necessary to have careful discussions on any potential revisions to the PCT which might have a significant impact on the overall patent system itself. Moreover, when considering the addition of Rule 4.8*bis*, as discussed in paragraphs 28 and 29 of the document, the Delegation had doubts over the extent to which the addition would be effective, even if it would have little impact on the overall PCT System.

125. The Delegation of the Republic of Korea hoped that the discussion among Member States during this session would be guided by a shared vision for a peaceful world without weapons of mass destruction. From this perspective, the Delegation emphasized the need for WIPO to continue to maintain close and transparent communication with the UN Security Council taking into account the objectives of the relevant UN Security Council resolutions.

126. The Delegation of Germany stated that it was determined to give full and comprehensive effect to UN sanctions regimes, and more than ever in the case of the Democratic People's Republic of Korea. The report and recommendations of the Panel of Experts were crucial for implementing the sanctions regime and taking appropriate action, be it with respect to implementation, or for the UN Security Council or its committees to take appropriate action. The Delegation therefore lauded the efforts of WIPO to follow up on the recommendations of the Panel and welcomed the debate in the Working Group. In this regard, the Delegation invited the PCT Working Group and WIPO to reflect first on the following two questions. The first question was whether sanctions related to the Democratic People's Republic of Korea and other United Nations Security Council national sanctions included the patent applicant process. If this was not the case, and if the sanctions – on the contrary – specifically excluded the patent application process from their scope, the question arose as to why the Working Group needed to consider consequences which had never been intended by the UN Security Council. The second question concerned the precise information obligations existing between WIPO bodies and bodies of the UN Security Council and/or Committees of the UN Security Council. Only after these two questions had been answered could the Working Group and WIPO consider if any information obligations were in accordance with the requirements under the PCT, in particular, with Article 30. And if the answer to this final question was no, the question arose as to what changes to the PCT were necessary.

127. The Delegation of China highlighted that the 1718 Committee was responsible for action in relation to sanctions against the Democratic People's Republic of Korea under the mandate of the UN Security Council. The Delegation therefore suggested that the Director General of WIPO could write to the Chairman of the 1718 Committee to draw his attention to the recommendations of the Panel of Experts and to seek an opinion on how WIPO should implement the UN sanctions against the Democratic People's Republic of Korea. In the meantime, with regards to the question on whether technology in a patent application fell within the scope of the sanctions, the Delegation believed that the responsibility of an International Searching Authority was to comply with the PCT and its Regulations when conducting international search on an application. This task involved identifying existing prior art to determine whether or not the international application and the protection sought had novelty and inventiveness. The determination of whether or not the technical content of an international patent application fell within the scope of UN sanctions exceeded the mandate of International Searching Authorities.

128. The Delegation of Iran (Islamic Republic of) underlined the importance of compliance by WIPO with obligations contained in resolutions of the UN Security Council, as well as the significance of remaining committed to its mandate and legal obligations arising from the PCT. The Delegation concurred with the International Bureau that controls on technology transfer, including technical assistance, did not apply to information in the public domain, to basic scientific research or to the minimum necessary information for patent application, as was stated in part III of the section "Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology" in document S/2006/853. In other words, the patent application process was specifically excluded from the scope of the resolutions. Meanwhile, the Panel of Experts, while recognizing that WIPO had acted in accordance with the PCT, recommended to WIPO to inform the 1718 Committee on future patent applications by the Democratic People's Republic of Korea relating to any items, substances or technologies prohibited under the resolution. It also recommended that WIPO introduce in the application form a mandatory field for the affiliation of inventors from Democratic People's Republic of Korea. In this regard, the

Delegation believed that, as a first step, the Working Group should consider whether the recommendations made by the Panel of Experts went beyond the scope of resolution or not. The Delegation believed that the question of whether or not the recommendations were in line with resolution deserved due consideration and an in-depth discussion. The Delegation recognized that the International Bureau performed two layers of checks to maintain compliance with obligations from UN Security Council resolutions, and as indicated in the document, neither of these checks had resulted in the finding of any international application connected to a designated individual or entity. Accordingly, any discovery of a connection between an international application and a designated individual or entity would happen very rarely and maybe exceptionally. The proposal to amend the PCT Regulations based on exceptional circumstances therefore needed to be analyzed by the Working Group before any decision in this regard. With regard to the Panel of Experts and its recommendations and the language of resolution 1847 (2009), these were principled discussions that needed to be discussed before any conclusion could be drawn. In the view of the Delegation, the measures implemented by the International Bureau were accordingly sufficient to guarantee compliance by WIPO of the UN Security Council resolutions relating to the Democratic People's Republic of Korea.

129. The Delegation of the Russian Federation stressed the need to comply with UN Security Council sanctions. At the same time, the situation within the PCT legal framework was a complex issue and needed to be thoroughly analyzed at all levels, not only at WIPO, but individually by all Contracting States to the PCT. The Delegation therefore suggested that consideration of this question could be deferred to the next session of the Working Group.

130. The Delegation of Brazil acknowledged that the 1718 Committee that had been established to undertake actions in relation to UN sanctions applied to the Democratic People's Republic of Korea was a subsidiary body of the United Nations Security Council. This Committee had a broad scope of action in its mandate to monitor nuclear and missile activities of the Democratic People's Republic of Korea in accordance with its working guidelines. The recommendations of the Panel of Experts to WIPO related mainly to the subject of the sanctions regime, which was nuclear missile activities and to respective subjects, designated individuals and entities, as indicated in paragraphs 28 and 30 of the document S/2018/171. Even if the patent application process was expressly excluded from the sanctions regime, the scope of the restrictions could ultimately exceptionally involve patents that might contribute to prohibited activities. In this regard, the Delegation did not, preliminarily, object to the understanding in document PCT/WG/11/14, which recognized the creation of obligations relating to WIPO, especially in the case of monitoring designated individuals and entities in relation to international patent applications under the PCT. The Delegation recognized the efforts that had been undertaken by WIPO and the International Bureau regarding the monitoring and compliance with Security Council sanctions. In addition, the Delegation agreed with the recommendations of the Panel of Experts that WIPO should inform the 1718 Committee of any applications for patents originating in the Democratic People's Republic of Korea involving items, substances or technology prohibited by UN Security Council resolutions, that WIPO should include in PCT forms a detailed affiliation of inventors in the Democratic People's Republic of Korea, including address, telephone and ministry or agency of the Government of the Democratic People's Republic of Korea to which they were subordinate, and that Member States advised patent Offices to verify the names of applicants and inventors in patent applications and advise that fees paid for patents did not violate the relevant financial provisions relating to United Nations Security Council resolutions. Referring to paragraph 15 of the document, the Delegation did not think it was necessary for the International Bureau to report to the 1718 Committee on international applications related to the Democratic People's Republic of Korea that were explicitly excluded from the sanctions regime, and it was under that logic that Article 30 had to be applied. It was understood that, in the absence of an obligation of the Security Council, rules of confidentiality in Article 30 precluded the provision of information to the 1718 Committee. In this light, the Delegation had no objection to the amendment of the PCT Regulations so that the International Bureau could request additional data when receiving

an international patent application from the Democratic People's Republic of Korea that contained subject matter relating to sanctions regimes. The Delegation concluded by underscoring that Brazil, in complying with sanctions related to the Democratic People's Republic of Korea, required all competent institutions, both public and private, to provide updates on their restrictions, including to those related to patents involving prohibited activities and their financial aspects. This position was in strict fulfillment of UN Security Council resolutions without favoring maximalist interpretations or additional unilateral sanctions not approved by the Security Council.

131. The Delegation of the European Patent Office supported the proposal by the Delegation of Germany relating to the methodology that should be followed in dealing with the subject of international applications linked to UN Security Council sanctions. The EPO carefully monitored applications made by nationals or inventors from the Democratic People's Republic of Korea. In 2017, just one application entered the European phase, with only 14 in total over the past decade. None of these applications, as far as the EPO was aware, involved a person or an entity subject to United Nations Security Council sanctions. From this analysis, it could be concluded that the situation had little practical effect on the patent system. The Delegation also pointed out that certain Offices applied regional treaties, which added further complexity to the situation of adapting national legislation. Given the principle of proportionality on one hand and the respect of the legal obligations of patent Offices on the other hand, the Delegation considered that it would be desirable for any measures that might be taken within the PCT to be operational in nature and to be managed on a case-by-case basis, rather than changing the legal framework. The latter would require Offices to adapt their IT Office systems, and would impose additional obligations on applicants at the time of filing an application, contrary to efforts to reform the PCT, which had the goal to simplify procedures and requirements.

132. The Representative of the Union of European Practitioners in Industrial Property (UNION-IP) raised three questions. As background to the first question, it was clear in Article 30 that an international patent application was confidential and could not be revealed to any person or authority before international publication, unless requested or authorized by the applicant, and the PCT could not be easily amended. The Representative therefore enquired about the consequences for the PCT if the application of the articles of the PCT would no longer be "cast in stone". Second, as there were ways that an inventor could have an invention patented without appearing as an applicant or inventor on the patent application, the Representative asked how an Office could know whether an application stemmed from the Democratic People's Republic of Korea. And third, as Article 21(6) allowed the International Bureau to omit from publication expressions or drawings that were contrary to morality or public order, the Representative enquired about possibilities to exclude weapons of mass destruction from publication.

133. The Director General, in response to the first question from the Delegation of Germany, stated that, in the view of the International Bureau, UN Security Council sanctions did not include the patent application process. This opinion was based on the explicit, direct and clear wording in document S/2006/85 (2006) from the 1718 Committee that "controls on 'technology' transfer, including 'technical assistance', do not apply to information 'in the public domain' or to 'basic scientific research' or the minimum necessary information for patent application". Moreover, this wording had been adopted in the laws of other countries and practice at the International Bureau. The International Bureau had also made inquiries with those involved in the drafting of the UN Security Council resolution. Although anecdotal, as there were no *travaux préparatoires*, the accounts of those involved in the drafting supported the view that patent applications were excluded from sanctions. With this in mind, the International Bureau considered two reasons in support of this view. First, sanctions were intended to apply to commerce and trade, such as the transfer of technology that might take place with respect to inventions, not the information in itself. For example, the sanctions regime did not include information about a prohibited item, but would capture any such item when traded with a



country subject to sanctions. And in this process, information could be involved, whether in a patent application for the invention, or in the public domain. Second, a patent application originating from a country that was subject to sanctions would provide transparency on what was happening in that country with respect to a particular item; it did not transfer technology to the country. On the contrary, the publication of patent applications including prohibited substances by non-sanctioned countries would transfer technology passively to a country subject to sanctions. Furthermore, a search on the Internet for one of the prohibited items would yield examples of many universities that had published scientific information about prohibited substances and their methods of manufacture.

134. The Deputy Legal Counsel, in response to the second question from the Delegation of Germany on the relationship between WIPO and other UN bodies, stated that WIPO had an obligation to cooperate with the Security Council in the context of measures related to sanctions. In this regard, the International Bureau had fulfilled and continued to fulfill this obligation scrupulously, with ongoing and robust communication taking place with the 1718 Committee. It was also an established and fundamental principle of international law, as enshrined in the UN Charter, that actions required to carry out the decisions of the Security Council for the maintenance of international peace and security should be taken by the members of the United Nations, both directly and through their action in the appropriate international agencies of which they were members. As a general matter, therefore, the obligation to carry out decisions of the UN Security Council ran to Member States. In the specific context of patent applications, as has been discussed, there was an explicit exclusion from the sanctions regime that had been endorsed by the UN Security Council. Having reviewed many implementation reports, to the best understanding of the International Bureau, no Member State had notified the UN Security Council of a patent application as potentially subject to UN sanctions. Therefore, in this particular context, there was a specific legal exclusion for patent applications from UN sanctions, which, as the Director General noted, had also been included in the domestic export control laws of the main patent filing countries. This has been further reflected in the practice of Member States, which has not been to notify the UN Security Council of any patent applications.

135. The Director General, in response to the second question from the Delegation of Germany, added that the exclusion of patent applications from the sanctions regime did not suggest that WIPO should not be cooperating, as all Member States have been, with the UN Security Council. Nor did the exclusion extend to reporting on appropriate matters, which the International Bureau performed at present, and would continue to do in the future. Addressing the questions of the Representative of the Union of European Practitioners in Industrial Property (UNION-IP), the Director General first acknowledged that ratification of an amendment to the PCT was an extremely complex process. With 152 Contracting States, any amendment to the articles in the PCT would take many years before ratification by all members. This would lead to a long interim period with two regimes applied by Contracting States. This was a problem with which the Working Group was aware, which limited amendments to the Regulations, provided they were compliant with and did not contradict the Treaty. The second question from the Representative of UNION-IP had been implied by the Delegation of Japan in questioning the effectiveness of the options to amend Rule 4.8*bis* discussed in the document. While the International Bureau monitored international applications to verify that they did not involve designated individuals or entities, only the information contained in an application could be verified, making it exceptionally difficult to uncover any deliberate attempt to mislead Offices or the public over the proprietors or inventors in a patent application. As for the third question from the Representative of UNION-IP, the Director General stated that, in general, exclusions on morality and public order related primarily to social conduct rather than military conduct.

136. The Delegation of France underlined that it would be difficult to identify applications that might be concerned by potential sanctions. Issues related to sanctions in the granting of a patent would not only be complex under the legal framework, but also redundant with respect to

any commercial activities that might already exist relating to the technology in the patent application. Where economic sanctions prohibited all commercial activities from an individual or entity, there was no interest to apply for a patent. Furthermore, it was important to bear in mind that there was no requirement to apply for a patent before bringing the technology to production. The Delegation also added that there was no legal basis under its national law for performing checks on individuals or entities applying for patents.

137. The Delegation of Iran (Islamic Republic of) referred to the mandate of the Panel of Experts. According to UN Security Council resolution 1874 (2009), among the tasks of the Panel of Experts in paragraph 26 of document S/RES/1874 (2009), acting under the direction of the 1718 Committee, was to “(c) make recommendations on actions the Council, or the Committee or Member States, may consider to improve implementation of measures imposed in resolution 1718 (2006) and this resolution”. This wording did not explicitly include other UN bodies. The Delegation therefore asked whether the International Bureau had any communication with the Panel of Experts about the reasons for making recommendations to WIPO, which appeared to extend beyond the scope of the wording which had been restricted to the Security Council, the 1718 Committee and Member States.

138. The Deputy Legal Counsel, in response to the question raised by the Delegation of Iran (Islamic Republic of), acknowledged the mandate of the Panel of Experts. The Panel, which had been seized of the question of the particular patent application at issue, had made inquiries with the International Bureau, to which the International Bureau had responded comprehensively, providing the additional information that had been requested. The final report of the Panel of Experts, which contained the recommendations that were the subject of this discussion, had been thereafter submitted to the 1718 Committee and the Security Council, and circulated on March 5, 2018 as document S/2018/171. It was therefore up to the Member States, in their discretion, to decide whether to take any actions in relation to the recommendations. The exclusion of the patent application process from the applicable sanctions measures could explain why the 1718 Committee had not done so. The International Bureau nevertheless sought to bring to the attention of WIPO Member States the recommendations by the Panel of Experts. The recommendations were not binding, and it was for Member States, should they choose to do so, to consider taking any action on them, noting the context of the applicable laws and practices that, in the view of the International Bureau, excluded patent applications from sanctions measures.

139. The Delegation of Spain aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B, and agreed with the interventions from the Delegations of France and Germany. The Delegation added that Article 27(1) did not limit the freedom of Contracting States to apply measures deemed necessary for the preservation of national security. Many Contracting States, including Spain, had patent laws that concerned applications in defense, which were subject to national security laws.

140. The Chair concluded that:

- (a) There was no support for amending the PCT Regulations to change the processing of applications in the international phase. Information contained in patent applications was technical in nature, distinct from any later use to potentially develop and manufacture the materials that were the subject of sanctions. With regard to the question of the technological content of applications, the International Bureau and Offices in their functions under the PCT should therefore process the information in accordance with the provisions of the Treaty, including maintaining the confidentiality of the contents of international applications in accordance with PCT Article 30.

(b) Delegations noted both the International Bureau's extensive contacts with the relevant UN bodies in recent months and its ongoing efforts in monitoring PCT filings for compliance with UN financial sanctions on designated individuals or entities, and welcomed continued coordination and communication between the International Bureau and the United Nations bodies responsible for sanctions in order to ensure an effective and timely dialogue on relevant events.

(c) Delegations supported the subject of UN sanctions remaining on the agenda of the PCT Working Group, with the International Bureau providing a report to Member States of any relevant events at the next session of the Working Group. Such reports should not include details of applications that were not open to public inspection, which would be contrary to PCT Article 30 concerning the confidential nature of an international application before international publication.

(d) Delegations also supported the notion that the legal framework should remain coordinated between the PCT and national and regional patent systems.

141. The Delegation of the Democratic People's Republic of Korea made a statement that was read into the record after discussions on the matter had been closed. First, the Delegation reminded the Working Group that the Democratic People's Republic of Korea had been consistently rejecting United Nations Security Council resolutions on sanctions against the Democratic People's Republic of Korea, as they had no legal grounds and lacked impartiality. In this connection, the Delegation drew the attention of the Working Group to the illogicality of the recommendations by the Panel of Experts. Second, at present, as the international environment had been greatly improving in achieving peace on the Korean peninsula, the voices to stop the United Nations sanctions against the Democratic People's Republic of Korea had been increasing among many countries, organizations and people of the world. Given this peaceful environment, the Government of the Democratic People's Republic of Korea found it surprising that such illegal and illogical recommendations had been on the agenda of the Working Group, the aim of which was to strengthen cooperation in patent protection. Finally, patents were not themselves materials or services, but were solely intended to protect the intellectual property of human beings. From this perspective, the Delegation strongly urged that United Nations sanctions should not be applied in the area of intellectual property, including patent protection, under any circumstances.

#### **PROGRESS REPORT: POSSIBLE MEASURES TO REDUCE EXPOSURE OF PCT FEE INCOME TO MOVEMENTS IN CURRENCY EXCHANGE RATES THROUGH NETTING**

142. Discussions were based on document PCT/WG/11/4 and a presentation given by the Secretariat<sup>3</sup>.

143. The Delegation of Israel supported the general concept of proposal to introduce a netting structure for the transfer of fees and continued to see benefits in netting. While the main purpose of netting was to improve cash flow management by the International Bureau and the participating Offices by reducing the risk to exchange rate fluctuations, the Delegation highlighted the benefit from improved transfer of data between receiving Offices and International Authorities as the International Bureau would be reviewing all the data received from the receiving Office to ensure completeness and accuracy before being transferred to the International Searching Authority. In view of the necessary modifications to IT systems and in order to synchronize transactions, in the initial stage, the ILPO had joined the pilot as a receiving Office only. With effect from May 1, 2018, search fees collected by the ILPO, in its capacity as a receiving Office, for the EPO as the International Searching Authority, were sent via the International Bureau. Under this scheme, fees collected in May 2018 were transferred at the beginning of June. In the coming months, the ILPO planned to join the pilot as an

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<sup>3</sup> The presentation is available on the WIPO website at [https://www.wipo.int/meetings/en/pct\\_wg\\_11\\_netting](https://www.wipo.int/meetings/en/pct_wg_11_netting).

International Searching Authority. With regard to expanding the netting project, since the ILPO had separate bank accounts and accounting systems for patents and for trademarks, the ILPO would not be able to expand the netting process to include all transfers of different funds to and from the International Bureau. Participation by the ILPO in the netting pilot would therefore be limited to PCT fees.

144. The Delegation of the United States of America expressed general support for possible approaches to reduce the losses in income incurred by WIPO due to exchange rate fluctuations and was pleased with the participation of the USPTO in the netting scheme pilot as the receiving Office for transferring search fees to the EPO as the International Searching Authority via the International Bureau. The Delegation also hoped that it would soon be able to confirm participation of the USPTO in a similar pilot involving the JPO as the International Searching Authority, which it had recently been invited to join. The Delegation expressed interest in learning more about the participation in the netting pilot from the perspective of an International Searching Authority, where it wished to review the Memorandum of Understanding and other information for participating International Searching Authorities prepared by the International Bureau. The Delegation nevertheless had some concerns about expanding the netting structure to include all transactions involving the International Bureau, including the Madrid and Hague Systems. It was also essential to ensure transparency of all transactions with participation in any netting scheme proposed by the International Bureau needing to be voluntary given that financial and IT systems at some Offices might not be compatible with conducting the required operations and could require considerable time to implement any necessary changes.

145. The Delegation of the European Patent Office stated that the netting pilot was working well with the EPO receiving reliable data from the International Bureau concerning search fees that had been received at the 10 receiving Offices that had joined the pilot with the EPO as the International Searching Authority. The Delegation therefore encouraged other Offices to participate in the netting system and was pleased that the International Bureau had planned to invite all receiving Offices that specify the EPO as a competent International Searching Authority to join the pilot by February 2019, including those whose prescribed currency was euros. The Delegation enquired whether it would be possible in the future for all receiving Offices to use the same file format and file type for their search information, and if the International Bureau could send the EPO only one file for all participating receiving Offices, instead of separate files for each Office. In addition, the EPO looked forward to the pilot being linked with the eSearchCopy service, which would ensure that search fees related to search copies sent through the eSearchCopy service would be transferred to the International Searching Authority through this service, irrespective of whether the International Bureau had yet received the payment from the receiving Office.

146. The Delegation of Denmark stated that the DKTPO was one of the receiving Offices participating in the netting pilot involving the EPO as the International Searching Authority. The Delegation considered that the pilot was straightforward to manage and it hoped it would prove useful and enable it to be rolled out to more Offices given that it simplified the handling of translations to the benefit of International Authorities.

147. The Delegation of Japan expressed its appreciation to the International Bureau for its continued efforts in implementing the netting arrangement for PCT fee transactions in order to reduce the risks from fluctuating exchange rates and the transaction costs under the PCT System. As stated in paragraph 16 of the document, the JPO had started a pilot program for netting of PCT Fees on April 1, 2018, and the Delegation looked forward to sharing its experience with the pilot. The Delegation also looked forward to expanding the netting

arrangements and establishing a framework for netting. Furthermore, the Delegation hoped that all receiving Offices for which the JPO served as a competent International Searching Authority would participate in the netting pilot.

148. The Delegation of Singapore welcomed the netting framework as it reduced the inherent risk of International Searching and Preliminary Examining Authorities to the exposure to PCT fee income due to fluctuations in currency exchange rates. The efforts of the International Bureau establish the pilot along with the implementation of the software to manage translations would serve to facilitate the transition for Offices that decided to embark on netting. On that note, the Delegation supported the centralization of fee payments in the future and looked forward to the envisaged benefits it would bring.

149. The Delegation of the United Kingdom supported the netting pilot and had participated as a receiving Office since April 1, 2018. The Delegation underscored the importance of Offices doing all they could to help mitigate the potential risks that movements in exchange rates could pose to the finances of the International Bureau. However, before taking any decisions about expanding the pilot to the Madrid and Hague Systems, the Delegation believed that a full review of its effectiveness should take place. Furthermore, the Delegation would also require time to assess the effect on its IT and finance systems of extending the pilot.

150. The Delegation of China was pleased that the beginning of the netting pilot had been successful and it supported the further rolling out of the pilot to other Offices and expansion to different transactions and additional currencies. As a result of the netting structure, fee transactions would be more straightforward, faster and more cost efficient for Offices. However, the Delegation highlighted that individual Offices had financial policies that would need to be taken into account in the netting pilot. SIPO acted as both a receiving Office as well as an International Searching Authority for other receiving Offices so under the netting arrangements, it would make payments and receive monies from the International Bureau. However, currency management policy in China prevented parallel payments being crossed.

151. The Delegation of India supported and appreciated measures adopted by WIPO to reduce exposure of PCT fee income to exchange rate fluctuations through netting. As a receiving Office, the Indian Patent Office was participating in the netting pilot with the EPO from April 1, 2018. The Indian Patent Office, in its capacity as a receiving Office, had also agreed to join the pilot with the Austrian Patent Office which was expected to start in August 2018.

152. The Delegation of Australia thanked the International Bureau for the detailed information and the invitation to join the pilot, where it saw potential for participation by IP Australia. As well as the netting pilot, the Delegation believed that there was merit in investigating improvements to ePCT in this area. For example, ePCT could be used to collect the fee with the customer paying directly to the beneficiary Office in the required currency and amount at the time of the action before the Office, for example for lack of unity fees. This would remove the risk to the International Bureau between the action and the time of making the payment to the International Searching Authority.

153. The Chair summarized that there was strong support from delegations for the netting pilot and for more Offices to join the pilot, but some reservations about expanding netting to cover fees from other global IP systems at WIPO such as Madrid and Hague Systems.

154. The Working Group noted the contents of document PCT/WG/11/4.

## **FEE REDUCTIONS FOR CERTAIN APPLICANTS FROM CERTAIN COUNTRIES, NOTABLY DEVELOPING AND LEAST DEVELOPED COUNTRIES**

### **(A) PCT FEE POLICY TO STIMULATE PATENT FILING BY UNIVERSITIES**

#### (i) Report from Workshop

155. Mr. John Sandage, Deputy Director General, Chair of the Workshop on PCT Fee Reductions for Universities which had been held on June 18, 2018, recalled the rich discussion which had been had in the workshop, including eight eminent speakers from a wide variety of backgrounds<sup>4</sup>. These speakers had mirrored the diversity of views among delegations on the issue, expressing a variety of views on the likely benefits of a fee reduction, which had not been split on simple developing country–developed country lines. The speakers had emphasized a variety of different issues concerning national strategies for supporting and benefitting from the use of the patent system by universities. All had emphasized that this was a situation where a “one-size fits-all” solution did not work. Delegations had come away from the workshop with a fuller, more sophisticated understanding of the challenges to be faced in encouraging universities and national research institutions to expand their national innovation ecosystems.

#### (ii) Proposal on PCT Fee Policy to Stimulate Patent Filing by Universities from Certain Countries, Notably Developing and Least Developed Countries

156. Discussions were based on document PCT/WG/11/18 Rev. (in English) and PCT/WG/11/18 (all other languages).

157. The Delegation of Brazil introduced the document by explaining that the proposal was the logical next step of the work on the overall fee elasticity of PCT applications, and that approval of the proposal would be fully in line with the mission of WIPO, where the preamble to the WIPO Convention stated the desire of its Contracting Parties “in order to encourage creative activity, to promote the protection of intellectual property throughout the world”. The document referred to the well-established positive role of universities to productivity growth in national economies, where studies had consistently found that the knowledge generated by universities enhanced industrial output, with a strong and positive spillover effect on innovation across the economy. This was particularly so in the field of pharmaceuticals, underlining the fact that universities were significant sources of scientific and technical knowledge that could be harnessed for innovation. Given this evidence, it was not surprising that countries had adopted numerous policies aimed at encouraging R&D efforts by universities. These policies included the facilitation of the commercialization of the intellectual property resulting from university innovation, such as the United States Bayh-Dole Act, which had had a dramatic effect on university-industry technology transfer and research collaboration. Over the following years and decades, many other developed and developing countries had implemented legislative reforms and policies to bolster the role of universities in the development of IP. Measures targeting fee reductions to filings by universities were currently in place among the largest PCT members, including the European Patent Office (EPO), the United States Patent and Trademark Office (USPTO), the Canadian Intellectual Property Office (CIPO), the Japan Patent Office (JPO) and the Brazilian National Institute of Industrial Property (INPI-Br). All these IP Offices provided fee reductions ranging from 30 to 50 per cent. Other programs, such as Australia's "Accelerating Commercialisation", reimbursed universities' expenditures necessary to obtain patent protection, including filing fees, patent search and examination fees, and annual maintenance fees. Notwithstanding these efforts, the share of universities in total PCT applications remained low (4.5 per cent in 2016). The Delegation stated that this share indicated that universities faced many challenges in the process of patent filings in all countries, whether developing or developed. In fact, a study recently published by the European Commission, entitled “Patent costs and impact on innovation”, highlighted that patent costs were the main barrier for

<sup>4</sup> The presentations from the workshop are available from the WIPO website at [https://www.wipo.int/meetings/en/pct\\_wg\\_11\\_university\\_fees\\_workshop](https://www.wipo.int/meetings/en/pct_wg_11_university_fees_workshop).

patenting by universities in the United States of America, the United Kingdom, Germany, France, Spain, Sweden, Poland, India, the Republic of Korea, Japan and China. This being the case in some of the most developed countries in the world, it was even more so in countries with less resources. Based on this evidence, and to complement the policies adopted at the domestic level, Brazil had tabled the proposal in the document to facilitate access of universities to the PCT System.

158. The Delegation of Brazil continued by explaining that discussions in WIPO on a PCT fee policy to stimulate patent filings by universities dated back to the second session of the Working Group held in 2009, when Members “agreed that the relevant PCT bodies should prepare proposals, including fee reductions and capacity building measures, to increase access to the PCT for ... universities ..., in particular from developing and least developed countries” (see paragraph 97 of document PCT/WG/2/14). The International Bureau had then presented a study to the third session, recognizing that “initial fees remain a significant barrier to entry to the system for some applicants”, and stating that “an international application gives time before the greater costs need to be paid and may give assistance in finding such partners. Consequently, while a relatively small part of the total cost, accessibility to this stage of the patent procedure may be particularly important for some innovators” (see paragraphs 187 and 188 of document PCT/WG/3/2). The Delegation stated that those views were confirmed by participants of the Workshop on PCT Fee Reductions for Universities, held on June 18, 2018, where representatives of universities from both developed and developing countries mentioned that patent costs might entail a barrier to accessing the system. At the workshop, the WIPO Chief Economist had presented the result of the studies by the International Bureau regarding fee elasticity. These studies provided the first ever estimate of the overall fee elasticity of PCT applications, that is, how an applicant’s choice on whether to use the PCT or the Paris route for filing patent applications abroad was affected by changes in the international filing fee. The findings showed that universities from developing countries were eight times more sensitive to variations of PCT fees compared to an ordinary applicant. This signified that the most effective fee reduction was one that applied to those applicants. At the tenth session of the Working Group, the International Bureau had circulated simulations of foregone income for various levels of discounts for universities from developed and developing countries (see document PCT/WG/10/2). This document also contained scenarios of the effects of different annual ceilings with regard to additional applications and their financial cost to WIPO. Based on those studies, Brazil had tabled proposals in 2016 and 2017 for the creation a fee reduction for universities. Benefiting countries expressed their support to those documents. Specifically, members of four Regional Groups declared their approval of the proposed fee reduction, raising the number of supporting Member States to 109 countries, or more than two thirds of the 152 PCT Contracting States. Moreover, other delegations showed openness for discussing a broader fee reduction that included developed countries.

159. The Delegation of Brazil continued by providing an update on activity since the tenth session of the Working Group, where it had engaged in informal discussions with interested delegations to share ideas on PCT fee policy. Having carefully heard the views expressed by other delegations, the document contained a revised proposal on fee reductions for universities following a tiered approach. The document proposed a fee reduction of 50 per cent for universities from countries listed under item 5(a) of the Schedule of Fees, which were notably developing countries, taking advantage of the current country-based criteria used for fee reductions. Taking into account comments received from some Member States regarding financial sustainability, and based on the findings of the study circulated by the International Bureau, the document proposed a ceiling of 20 applications per university per year for universities in States listed under item 5(a). Under these conditions, the fee reduction was expected to generate 102 additional applications, corresponding to 6 per cent of total applications from universities from developing countries in 2016, a robust result in view of the reduced number of applications from this cohort of applicants currently observed. In the case of developed countries, a fee reduction of 25 per cent was proposed for their universities. The

smaller discount was due to the different fee elasticity for developed countries. Further, the document proposed a ceiling of five applications for universities from developed countries, considering the larger cost of fee reductions to developed countries, thereby reducing the financial impact to WIPO in view of legitimate concerns raised by some Members regarding overall financial balance. Estimates by the Secretariat indicated that total income loss of a 50 per cent fee reduction for universities from developing countries would amount to 660,000 Swiss francs if a ceiling of 20 applications were applied. The cost of a 25 per cent reduction for universities from developed countries was estimated to be 780,000 Swiss francs in the case a ceiling of five applications were applied. The total cost of both reductions would thus amount to 1.44 million Swiss francs. To put this number into perspective, the document explained that in March 2018, the Director General had announced a surplus of 80 million Swiss francs for WIPO in the 2016/2017 biennium. The Program and Budget for the 2018/2019 biennium approved by Member States estimated income from fees collected by the PCT System in 2018 to be 312.2 million Swiss francs. Thus, the estimated impact of both proposed reductions amounted to 0.46 per cent of PCT income for 2018. The possible annual loss of revenue therefore represented a very small fraction of the surplus while contributing towards concrete and positive effects for filings by universities. In this sense, the Delegation believed that the reduction should be considered as resources well-allocated, not as foregone income or revenue loss. In terms of the definition of beneficiary institutions, the Delegation considered that all universities, whether public or private, should be eligible to receive the reduction. This would therefore avoid undue discrimination and unnecessary complexity to the work of the International Bureau and receiving Offices. Universities benefitting from the reduction would be only those accredited with the competent authority of each Member State. To the best of the knowledge of the Delegation, all Member States had a governmental mechanism for the recognition of higher education institutions, usually under the purview of a Ministry of Education or similar body. Through Circulars, the International Bureau could request yearly updates of the list of universities to receiving Offices. Alternatively, the UNESCO-based International Universities Bureau made an annual compilation of universities available at the "World Higher Education Database" from information presented by the national competent bodies in each country. On this matter, the Delegation indicated flexibility, but during informal consultations, some Member States had expressed the view that it would be appropriate if receiving Offices could transmit their national lists of accredited universities to the International Bureau. With regard to the countries enjoying the 50 per cent reduction, the proposed amendment in Annex I to the document used the same criteria applied in item 5(a) of the PCT Schedule of Fees, which the Delegation understood to have been established after careful discussions by Member States that had reached a balanced and effective consensus. The Delegation therefore did not think it would be advisable to modify that definition as this would risk generating unwanted burden on the activities of receiving Offices and the International Bureau. Furthermore, as all applicants from least developed countries, including universities, already benefited from a 90 per cent fee reduction under item 5(b) of the Schedule of Fees, the document did not propose any additional reduction for universities in these countries. As a country graduated from least-developed country status, that country would fall under the category of item 5(a), allowing any university to benefit from the 50 per cent reduction. Furthermore, in the ninth session of the Working Group, the introduction of an evaluation period for the fee reduction had been suggested. This was provided for in the final sentence of the proposed amendments to the Schedule of Fees in Annexes I and II to the document, which required the criteria to be reviewed every five years by the PCT Assembly. As a reasonable period of time would be required to observe any change in filings in response to a fee reduction, five years was considered appropriate for a review of the initial implementation of the proposal.

160. The Delegation of Brazil concluded by underlining that the proposal aimed at making full use of PCT fees as a regulatory tool, positively influencing the filing behavior of universities, but without substantially affecting the cost-recovery function of PCT fees. The implementation of such a fee policy would enable the use of a large pool of scientific and technological talent in those universities. There was a genuine need to tap this knowledge source and to create



additional incentives for the production of innovative products and services. The proposed fee reduction would encourage the use of the PCT System and increase the diversity in the geographical composition of applications, generating additional demand in the medium term for PCT services. This was fully in line with WIPO's mission and was carefully formulated so as not to endanger WIPO's financial health. The Delegation therefore called on all Member States to support and approve the proposal.

161. The Delegation of Switzerland, speaking on behalf of Group B, thanked the Delegation of Brazil for preparing the document and the Secretariat for organizing the workshop, which had been a good opportunity to share ideas on how to assist universities in order to increase patent filings. Group B appreciated the amendments made by the Delegation of Brazil since the previous Working Group session, but the Delegation requested clarification on some issues in order to assess the feasibility of the proposal properly. First, it was necessary to have a full understanding of how receiving Offices would implement the required changes and the projected costs of doing so. Proposed item 6 in the Schedule of Fees in Annex I to the document applied a 50 per cent fee reduction for filings by universities from States listed under item 5(a), "provided that the applicant has filed fewer than 20 international applications in the year". However, it was difficult to understand how this could be implemented since the International Bureau or a receiving Office could not know whether an applicant had reached the ceiling of 20 filings until the end of a calendar year. The same remark applied by analogy to proposed item 7 in the Schedule of Fees in Annex II to the document, which applied a 25 per cent fee reduction for universities from countries not listed under item 5, "provided that the applicant has filed fewer than five international applications in the year". Group B supported the equal treatment of all applicants regardless of the location of a university. While there was a benefit to fostering innovation in developing countries, that there were several ways to achieve this objective, with fee reductions targeted at universities being only one among others. Moreover, it was important to have clear definitions regarding: (i) a university; (ii) the eligibility for reductions in the case of multiple applicants; and (iii) what action should be taken in the case of an applicant exceeding the quotas. Regarding the definition of a university, Group B believed that the proposal that each country would submit its own list of accredited universities to the International Bureau could be too subjective and might favor countries with a wide definition of universities. Instead, a common definition could be applied based on objective criteria. Group B also wished for additional rules to clarify eligibility. For example, the EPO carried out random checks to confirm eligibility regarding fee reductions for certain applicants, and if it discovered that an applicant was not eligible, the reduced fee was deemed not to have been paid and the application was deemed withdrawn. However, it was unclear under the proposal whether there would be similar checks regarding PCT fee reductions for universities. Finally, paragraph 16 of the document indicated that "the fee reductions should be reviewed at least every five years". In the view of Group B, the proposed fee reductions, if adopted, should only continue past this review period if the Working Group found by consensus that the fee reduction was effective and beneficial, based on evidence.

162. The Delegation of Morocco, speaking on behalf of the African Group, observed that many delegations and regional groups supported the proposal given the positive effect of fee reductions for universities in developing countries. The large support demonstrated the importance of fee reductions that could provide an additional stimulation to innovation and creativity in universities, in particular, in terms of protection of inventions at a global level through the PCT System. The African Group believed that the proposal was a step in the right direction and would stimulate the filing of patents at universities, especially in developing countries, thereby encouraging innovation and creativity in line with the broader objectives of the PCT System to assure the promotion of the diffusion of technology. The African Group believed that the fee reductions as proposed would make the PCT System more accessible to potential users at universities, and would also increase the geographical diversity of the origin of international patent applications given that it would encourage the filing of applications by more users from different countries. Furthermore, the proposal took into consideration the concerns

expressed by certain delegations, notably by providing for a review period to consider the fee reductions and parameters linked to economic impact. Finally, the Delegation believed that the proposal took into account WIPO's overall budgetary balance given that the potential loss of income arising from the proposal would be a minimal proportion of the estimated budget surplus. The African Group therefore supported the proposal in the document.

163. The Delegation of Ecuador, speaking on behalf of the Group of Latin America and the Caribbean (GRULAC), including those States who were observers to the Working Group, expressed its support for the proposal. The proposal was based on solid estimates made by the Chief Economist in document PCT/WG/7/6, as well the first and second supplementary studies in documents PCT/WG/8/11 and PCT/WG/10/2, respectively, namely that universities in developing countries were eight times more price sensitive than an "ordinary" applicant. This implied that a fee reduction for university applicants from developing countries was the most effective and profitable option to increase PCT filings. The revised proposal included language which responded to the concerns expressed by delegations during the ninth and tenth sessions of the Working Group regarding the beneficiaries and the financial impact of this reduction. The changes were reflected in the text through a broadening of the beneficiaries, with both public and private universities from developing countries benefitting from a 50 per cent reduction, and universities from developed countries benefitting from a 25 per cent reduction. The fee reductions also limited the number of applications filed by a university, with developing countries capped at 20 and developed countries at five applications per year. Based on the second supplementary study prepared by the International Bureau on the estimate of fee elasticity in document PCT/WG/10/2, the estimated annual cost of the proposal represented 0.46 per cent of total income under the PCT, and it would have concrete and positive effects for beneficiary countries. The implementation of a fee reduction would enable the use of a large pool of scientific and technological talent at universities. There was a real need to take advantage of this knowledge resource and stimulate the research and development of products. The proposal would be a positive step in the right direction by fostering innovation and creativity in accordance with the broader objectives of the PCT System. GRULAC therefore appealed to all delegations to consider the proposal positively, which was duly structured and took account all the technical considerations, which made it a serious and feasible project with a phased implementation to allow for its proper evaluation.

164. The Delegation of Kazakhstan, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), expressed its support for the proposal and thanked the Delegation of Brazil for the detailed explanation pertaining to the issue being reviewed. CACEEC was of the view that universities had a significant source of knowledge leading to innovation, and that the positive contributions of universities to the growth of a country's economy should not be undermined. It thanked the International Bureau for the technical support provided over the years and especially for conducting the study on fee elasticity of PCT applications, which clearly demonstrated the challenges faced by universities from developing countries. CACEEC reiterated its support for the proposal given the potential benefits it provided.

165. The Delegation of Iran (Islamic Republic of) expressed its appreciation for the revised version of the proposal, and stated that the contribution of universities to creativity, innovation and knowledge generation in developed and developing countries could not be overemphasized. The Delegation noted that the Working Group in 2009 agreed upon the importance of the development of a proposal for universities and research institutions regarding fee reductions and capacity building measures, in particular those from developing and least developed countries. Studies by the International Bureau from previous sessions of the Working Group confirmed that, for some applicants, initial fees remained a significant barrier to the entry of the PCT System, with universities and public funded research organizations being the most price-sensitive. For these reasons, the Delegation supported the revised proposal, which it believed adequately addressed different comments and concerns made by the regional

groups and delegations from the previous sessions of the Working Group. It stated that the proposal would have positive effects for patent filing by universities and recognized that the loss of revenue resulting from the proposal represented a small fraction of WIPO's projected budgetary surplus. It noted that the scope of the proposal was extended to include universities from developed countries in addition to developing countries. The review period for the fee reduction accommodated concerns with respect to the long-term financial and budgetary balance of WIPO. Given the extensive discussions on the consequences of the proposal and the widespread support from delegations and regional groups, the Delegation called on the Working Group to approve the proposal at the current session.

166. The Delegation of Senegal aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation of Senegal thanked the Delegation of Brazil for its revised proposal and recalled that the proposal responded to an invitation by the Chair during the eighth session of the Working Group for any Member State to come forward with proposals in the context of fee reductions for universities and public research organizations. The Delegation also recalled that many delegations and representatives of various regional groups had endorsed the idea of fee reductions for universities and public research organizations. The Delegation believed that the proposal would stimulate the use of the PCT by universities and would also increase the geographical diversity of international patent applications through the PCT. The graduated approach to introducing the fee reductions and the proposed percentage reductions guaranteed an optimal implementation of the proposal to achieve the expected results. Furthermore, the proposal took into account the parameters of the economic impact, including concerns about extending fee reductions to public research organizations. The Delegation considered that this was a sufficient basis to ensure that the proposal should be accepted by the Working Group. In concluding, the Delegation reiterated its support for the proposal given that it also took into account WIPO's overall budgetary balance, which was necessary for its proper functioning.

167. The Delegation of Indonesia supported the proposal, and agreed with the underlying principle of stimulating the use of the PCT System by universities, especially those from developing countries, as this fostered innovation and complemented the collective effort to generate new inventions for the benefit of society. Studies by the International Bureau from previous sessions of the Working Group confirmed that, for some applicants, initial fees remained a significant barrier to the entry of the PCT System. The Delegation believed that it was advisable to reduce this barrier through a targeted fee reduction, which would stimulate the use of the PCT by universities and increase the geographical diversity of international patent applications. At the same time, the possible loss of revenue resulting from the proposal represented a small fraction of WIPO's projected surplus. The graduated approach to introducing the fee reductions and the proposed percentage reduction also ensured that the economic impact was minimized. Moreover, the proposal extended the scope to include universities from developed countries. The Delegation therefore called on the Working Group to approve the proposal at the current session.

168. The Delegation of Chile supported the statement made by the Delegation of Ecuador on behalf of GRULAC and recognized the hard work carried out by the Delegation of Brazil in response to concerns that were raised regarding the proposal. In light of the information presented at the workshop, the Delegation observed that the proposal had a positive impact on universities and the PCT System. The Delegation therefore reiterated its support for the proposal, which it hoped would be approved by the Working Group at the current session.

169. The Delegation of El Salvador aligned itself with the statement made by the Delegation of Ecuador on behalf of GRULAC, and expressed its support for the revised proposal, as it stimulated the filing of patents by universities and public research institutions. The Delegation believed that the benefit of implementing a 50 per cent fee reduction for universities from

developing countries and a 25 per cent fee reduction for universities from developed countries outweighed the drawbacks.

170. The Delegation of Ecuador supported the proposal. In line with several national policies, SENADI was examining the issue of patent filings in higher education institutions in Ecuador through special technical assistance and by teaching adequate management of intellectual property rights. SENADI had identified feasible intellectual property management projects and had provided technical assistance for the filing of applications. However, the majority of patent applications from higher education institutions in Ecuador were only made at the national level. In some cases, this was due to the lack of knowledge and advantages of the PCT System. As a result of the costs associated with PCT filings, the Delegation believed it was important to consider providing fee reductions for universities. This would stimulate PCT filings and would assist countries in carrying out their public policies regarding the protection of research, as well as generating tangible assets arising from such research.

171. The Delegation of South Africa, speaking on behalf of Brazil, the Russian Federation, India, China and South Africa (BRICS), expressed its support for the proposal, which adjusted the fee reduction policy in the right direction for the development of the PCT System, thereby encouraging innovation, technology dissemination and improving accessibility. Although fees might represent a small part of the total cost of obtaining a patent, studies by the International Bureau from previous sessions of the Working Group confirmed that initial fees remained a significant barrier to entry of the PCT System for universities, especially for those from developing countries. Moreover, an international application could give universities the opportunity to find investment partners for the development of inventions. Given that fee reductions might stimulate the filing of more PCT applications by universities, the Delegation believed that the additional filings could counterbalance the revenue loss resulting from the fee reductions to a great extent.

172. The Delegation of Egypt agreed with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation expressed its support for the proposal, which encouraged the use of the PCT System by scientific research institutions and universities.

173. The Delegation of United States of America aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B. First of all, to the extent that there might be a natural and forecast surplus in the budget of WIPO for the current biennium, the Delegation believed that such a surplus should be used to apply a fee reduction to all applicants, rather than attempting to target specific users. Since all applicants had contributed to the surplus, all applicants should benefit from it. Furthermore, an across-the-board fee reduction would be simpler to implement and eliminate the possibility for gaming the system, which could arise with targeted reductions. In this regard, the Delegation noted that the potential abuse of the system had been raised as a serious concern by the International Bureau at recent PCT meetings. Turning to the proposal, the Delegation believed that it represented a step in the right direction. Specifically, the Delegation welcomed the extension of fee reductions to applicants from universities in all countries. However, the Delegation had concerns regarding the disparate treatment between developing and developed countries, both in terms of the percentages of the fee reductions and the maximum number of applications that may be filed annually per entity. In that filings from developed countries created a large portion of the budgetary surplus, users from these countries should benefit equally. The Delegation echoed the logistical concern raised by Group B with regard to the implementation of the proposal and the problems associated with identifying whether an entity was entitled to the fee reduction. There were two issues with respect to tracking the number of applications from users. First, an application could be filed at either a receiving Office of which the university is considered to be a resident or a national, or at the receiving Office of the International Bureau. On top of this, there might be additional receiving Office filing options if an application was based on work done jointly by universities from different countries. Filings would therefore need to be tracked at each possible

Office in which the user could file to ensure that the cap was not exceeded. Second, the filing of applications by universities could be made under variations of applicant name. For example, an application could be filed under the university itself, by its trustees, its President, or by several different departments. The USPTO had encountered multiple examples of this situation when looking through assignment documents. Receiving Offices would therefore need to identify and track the filings of a university and every possible entity under which it could file, a procedure which could incur costs above the amount of the handling fee charged by the receiving Office, which might then require an increase. The Delegation believed that these problems were difficult to solve, especially if some applicants made an improper claim for a fee reduction, whether unintentionally or otherwise. Furthermore, with regard to the specific wording of the proposal, the Delegation noted the comment by Group B that it was unclear how the filing cap could be implemented, in particular, whether it was sufficient that one applicant in an application was entitled to the fee reduction, or whether all applicants needed to be entitled. The Delegation also requested clarification regarding the handling of fees in a situation where there were qualifying applicants from developed and developing nations in a single application. With regard to paragraph 16 of the document and the five-year review period, the Delegation stressed that any fee reduction should be subject to a “sunset clause”, which would guarantee that any fee reduction would only continue if there was consensus that it was warranted and beneficial. Finally, the Delegation was concerned that the proposal relied on the conclusions of studies on fee elasticity, which the authors themselves pointed out were based on limited data, extensive extrapolation and many assumptions that might not prove to be correct. In light of these concerns and considering that the proposed fee reductions were estimated to result in approximately 139 additional filings from universities from developing and least developed countries, the Delegation was not convinced that the proposal presented an effective or workable way to promote innovation and commercialization of inventions developed by universities. Furthermore, the Delegation noted that in the discussion of financial issues in paragraph 25(d) of document PCT/WG/11/5 titled “Future Development of the PCT System”, it is stated that any fee reduction should be targeted effectively. In the view of the Delegation, a reduction that resulted in a minimal increase in filings did not appear to be targeted effectively.

174. The Delegation of Morocco expressed its support for the proposal in the document. With regard to proposed item 6 in the Schedule of Fees in Annex I to the document, the Delegation suggested that the wording referring to “fewer than 20 international applications in the year” should refer to “20 or fewer international applications in the year”.

175. The Delegation of Colombia expressed its support for the proposal and the statement made by the Delegation of Ecuador on behalf of GRULAC. The Delegation believed the proposed fee reductions would be an effective instrument for increasing applications from universities in the PCT System. From 2010 to 2017, the number of patent filings from universities in Colombia had increased in percentage terms from around 20 per cent of a total of about 140 applications to approximately 50 per cent of a total of about 600 applications. In this regard, the Delegation noted that lower fees could further improve access to the PCT System. The Delegation recognized that the issues highlighted by the Delegation of United States of America needed to be addressed. However, it believed that the fee reductions could initially be applied as a pilot program, after which the effects could be evaluated and assessed.

176. The Delegation of India aligned itself with the statement by the Delegation of South Africa on behalf of BRICS and reiterated its support for the proposal, which would stimulate research in developing countries and least developed countries by encouraging an increase in patent filings. However, the Delegation requested the International Bureau to provide guidelines on the criteria for implementing these fee reductions, given that some countries interpreted the definition of a university more broadly than others.

177. The Delegation of China agreed with the statement made by the Delegation of South Africa on behalf of BRICS and expressed its support for the proposal, which it believed addressed the concerns made at the previous sessions of the Working Group. The revised proposal was more feasible and would increase the number of international patent applications by promoting the use of the PCT System by universities. The drafting issue in relation to the maximum numbers of applications proposed in item 6 of the Schedule of Fees in Annex I to the document could be solved through clarification by the Delegation of Brazil. The Delegation expressed its support for the evaluation of the proposal following a pilot program as this would give Member States adequate time to amend their policies accordingly. Furthermore, while limiting the financial impact on WIPO, the proposal would encourage the use and development of the PCT System, providing a good basis for universities to file patent applications.

178. The Delegation of Malaysia thanked the Secretariat for the workshop and observed the active participation by delegations during the discussions on fee reductions. The Delegation also expressed its thanks to the Delegation of Brazil for the revised proposal, which it believed was balanced given that it took into account the proposal's economic impact while ensuring that universities and public research institutions were incentivized to continue producing beneficial innovative products and services. The Delegation recognized that there were other mechanisms or interventions that could stimulate innovation and growth at universities and public research institutions. However, initial fees remained a significant barrier to entry of the PCT System for universities, especially in developing countries where funds remained limited. This was confirmed through feedback received from universities, institutes and the Ministry of Education at a recent event organized by the Intellectual Property Corporation of Malaysia, as many users cited the high fees as one of the main barriers to entry. The Delegation expressed its support for the proposal, which would encourage accessibility to an affordable and internationally available IP protection system, and hoped that the proposal would be approved at the current session.

179. The Delegation of Australia thanked the Delegation of Brazil for its continued work on the proposal and noted the revisions that had been made with regard to the concerns that had previously been raised by delegations. A common theme from the key speakers in the workshop was that there was no "one-size-fits-all" solution, and many of the suggestions made by the speakers pertained to specific measures that national Offices could achieve, such as matchmaking between companies and universities, databases that allowed universities to find interested companies, and specific funding for certain technologies. The Delegation remained open to finding ways and initiatives to promote research development in universities, but noted that a reduction in fees was just one of the ways in which this could be done. In conclusion, the Delegation remained willing to engage in constructive discussions to achieve a balanced solution, but acknowledged that there it would always be a challenge to know whether the proposal would stimulate innovation or the filing of high-quality patents.

180. The Delegation of United Kingdom expressed its thanks for the revised proposal, which it believed addressed the issues that had been raised by other delegations. At the workshop, the Delegation had been interested to hear the thoughts of both the panel of speakers and the Secretariat, who raised important questions for consideration, particularly the number of practical issues identified by the Secretariat that needed to be addressed in order to implement the proposed fee reduction. For example, with regard to the extent of monitoring needed by receiving Offices, the revised proposal aimed to limit the cost to the PCT System by introducing a ceiling to the number of applications for which universities could receive fee reductions. However, the Delegation raised concerns regarding the affordability of implementing this idea given that a system would need to be developed which was capable of assessing when the maximum number of applications had been reached, correlating variations of applicant names from the same university while tracking applications filed at different receiving Offices. The Delegation therefore requested clarification from the Delegation of Brazil regarding the implementation of the ceilings and the projected costs involved, and fully aligned itself with the

Group B statement in that it was essential to have clarity on these issues to be able to properly assess the feasibility of the proposal. Furthermore, the Delegation agreed with the Group B statement that any review of the fee reductions after implementation needed to be evidence-based and agreed by consensus. The United Kingdom did not offer fee reductions as a way of stimulating innovation at universities, but instead encouraged collaboration between universities and industry by assisting with IP knowledge and commercialization strategies.

181. The Delegation of United Arab Emirates welcomed the proposal as an important initiative in stimulating innovation and creativity. Universities would benefit from the proposed fee reductions, which would encourage them to file patent applications.

182. The Delegation of Japan aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B and expressed its appreciation to the Delegation of Brazil for preparing the revised proposal. There needed to be a careful discussion on fee reductions given that 76 per cent of WIPO's revenue came from the fees paid by users of the PCT System. The Delegation believed that fee reductions should benefit all applicants. Furthermore, the Delegation highlighted the responsibility of Member States to explain to users why the proposal should be introduced, especially in their respective countries. In particular, users who had greatly contributed to the PCT System would need to receive an explanation why they would not benefit from the fee reduction. Finally, the Delegation noted that a variety of concerns remained over details of implementation, as highlighted by the Secretariat in its presentation during the workshop, including the definition of a university, the eligibility of applicants, and the difficulty of monitoring the numbers of applications by a university across multiple receiving Offices and variations of applicant names.

183. The Delegation of the Russian Federation agreed with the statement made by the Delegation of South Africa on behalf of BRICS and expressed its support for the proposal, which it believed provided a good balance regarding the number of eligible applications. With respect to the proposed item 6 of the Schedule of Fees in Annex I to the document, the Delegation stated that having 20 eligible filings per year would not significantly impact WIPO's budget. Initial fees remained a significant barrier to entry of the PCT System for universities and fee reductions would act as a stimulus for universities to protect inventions from their research.

184. The Delegation of Spain thanked the Delegation of Brazil for the proposal and acknowledged that fee reductions were applied at a national level by some IP Offices. For example, the SPTO, in its capacity as an International Searching and Preliminary Examining Authority, applied a 75 per cent reduction on the search and preliminary examination fee for applicants from developing countries irrespective of whether the applicant was a legal person or not. The Delegation was not opposed to the implementation of the proposal, but agreed with the concerns raised in the statement made by the Delegation of Switzerland on behalf of Group B. Based on experience, the Delegation reported that the outcome of granting subsidies to applicants from public universities in Spain had not yielded effective results. After a zero filing fee for national patent applications was introduced for public universities, a substantial increase in the number of filing of filings was observed. However, this did not go hand in hand with more patents being granted or the greater use of such patents, whereas an intended aim of the proposal was for innovation and creativity to be more widely benefiting society. The Delegation had therefore eliminated its zero fee filing policy for public research institutions and universities when new patent laws entered into force in Spain in 2017. Under the new laws, public research institutions and universities benefitted from a 50 per cent fee reduction, which could be increased to 100 per cent if it could be demonstrated that the patent was being used. By contrast, the 75 per cent fee reductions for applicants from developing countries using the SPTO as an International Searching and Preliminary Examining Authority were maintained. The Delegation therefore generally favored fee reductions being provided to larger groups such as applicants from developing countries, rather than being more narrowly targeted to groups

such as universities, and had doubts regarding the effectiveness of implementing fee reductions for universities in the PCT.

185. The Delegation of Switzerland supported the statement that it had made on behalf of Group B and expressed its appreciation for the amendments made to the proposal since the previous Working Group. However, there were some questions that remained open which still needed to be clarified. The Delegation was of the opinion that a reduction of PCT fees might not be the best way to support the role of universities in innovation. The study in document PCT/WG/7/6 demonstrated that the reduction of PCT fees resulted in no significant increase in patent filings by universities, and that the overall estimated fee elasticity was low. By contrast, other measures were more effective in fostering innovation by universities. For example, some universities in Switzerland had a dedicated unit that provided assistance in matters relating to the filing and prosecution of patent applications, management of rights, contracts with industry and the development of inventions. The Delegation also offered assisted patent searches which, for a modest fee, allowed researchers to benefit from the specialist knowledge of patent examiners. The Swiss Federal Institute of Intellectual Property (IPI) also offered assistive patent searches for a modest fee, where a researcher could benefit from the knowledge of a patent examiner in a given specialized field for whole day, with the examiner providing general information on patents and patenting procedures and carrying out searches together with the researcher in public patent databases. The Delegation was willing to provide interested Member States with more information on how to assist universities in the innovation process. In terms of the proposal by Brazil, the definition of a university varied between countries. The Delegation therefore expressed concern that the adoption of a broad definition could lead to misuse of the PCT System. The Delegation therefore would welcome a common definition based on objective criteria, rather than one based on the subjective understanding of each Member State. The Delegation also agreed with the statement made on behalf of Group B in terms of the need for a condition regarding eligibility of applicants and the measures that should be taken in the event that an applicant was not eligible for a fee reduction. Moreover, the Delegation expressed concern regarding the different thresholds and fee reductions regarding where a university was located. Furthermore, filing costs represented only a small part of the total research and development costs faced by universities. In underlining its commitment to high quality patent filing filings and their benefits to society as a whole, the Delegation pointed out that PCT fees acted as a quality gauge. The reduction of fees could consequently increase the number of lower quality patent applications that might not pass through substantive patent examination. For example, some inventions might not be worth the filing fees if the patent was not bought or licensed commercially. The Delegation concluded that it was not in a position to support the proposal at this stage.

186. The Delegation of Denmark aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B. The Delegation thanked the Delegation of Brazil for the revised proposal and particularly for addressing some of the concerns expressed by delegations, namely attempting to find a definition of a university and proposing ceilings to manage the financial impact of the proposal. The Delegation also expressed its appreciation to the International Bureau for the workshop and the excellent speakers. The Delegation recalled that the estimated 139 additional applications from the proposed reductions would come at a high price of 1.5 million Swiss francs. Having heard the workshop speakers, the Delegation continued to believe that introducing fee reductions for universities to stimulate the use of the PCT System was just one of the ways to improve the promotion and commercialization of inventions developed at universities, and other measures outside the patent system might be better suited to achieve this goal. For example, Prof. Dr. Fazilet Vardar Sukan had highlighted the introduction of technology transfer offices as a key initiative to raise IP knowledge and foster the use of IP. In light of the varied opinions from the speakers at the workshop, the Delegation questioned whether the proposed fee reduction was the most effective way to stimulate patent filings from universities, and no evidence had been presented to show that an increase in numbers of patent applications would lead to more commercially viable patents. On the



contrary, one of the speakers, Ms. Elizabeth Ritter dos Santos, feared that the proposed fee reduction could lead to an increase in lower quality patents. The Delegation reminded the Working Group that the main costs of obtaining patent protection were associated with advisors, translations and annual renewal fees, rather than the payment of PCT fees. Furthermore, it was clear from a study published in 2015 by the European Commission titled *Patent costs and impact on innovation* that filing costs represented a fraction of the total research and development costs. The Delegation echoed the statements by the Delegations of Japan and the United States of America in support of any further fee reduction to be applied across the board to all applicants. Furthermore, as pointed out in the statement from Group B, there were ongoing practical issues that needed to be addressed. The Delegation concluded that further work was required before being able to reach a decision on the proposal.

187. The Delegation of Germany thanked the Delegation of Brazil for the revised proposal and the Secretariat for organizing the workshop, which provided many different ideas on how to assist universities to increase patent filings. The Delegation expressed its appreciation for the amendments that had been made since the last Working Group and noted that some of the questions it had raised regarding this topic had been answered. However, there were still general concerns and outstanding issues that needed to be addressed. The Delegation was not convinced that a fee reduction for universities was the best way to foster innovation, technology transfer and high-quality patents. Presentations from the workshop demonstrated that the fee elasticity was low, and that only 10 to 15 per cent of the costs associated with patent protection were related to PCT fees. Although fee reductions could be useful in some industries, the benefits of general fee reductions were questionable. In light of this, the Delegation was of the opinion that a “one-size-fits-all” approach was not the most appropriate measure to reach the declared aim of the proposal. In addition, a variety of concerns remained over details of implementation. A generally binding definition of a university had not yet been found. There were also numerous questions relating to the eligibility criteria for reductions, and the implementation of the proposal had not been clarified either in terms of administration, or in terms of the financial implications. The Delegation was therefore not in a position to support the proposal.

188. The Delegation of the Philippines supported the proposal and thanked the Secretariat for organizing the informative workshop. The Delegation agreed with the rationale of the proposal, but noted the concerns raised by other delegations regarding its implementation. While the proposal did not represent a cure-all solution, it had merit in its aim to eliminate cost barriers for universities using and accessing the PCT System. Universities were important players in the innovation system and the proposal was a significant initiative that would further encourage the use of the PCT System. The Delegation concluded by stating that it believed that a workable solution could be found regarding the implementation concerns.

189. The Delegation of Greece thanked the Delegation of Brazil for the revised proposal and aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B. Despite the concerns raised, the Delegation was in favor of encouraging university initiated innovation by facilitating access to the PCT System through reduced fees. Affordable access to the patent system was of paramount importance for universities which often operated under limited resources and tight budgets. Minimal loss of revenue could therefore be supported in order to stimulate innovative activity by universities. Furthermore, various measures and incentives existed to facilitate entry into the patent system. For example, the OBI had low filing fees for patent applications and subsidized searches to allow applicants to protect their inventions. The importance of granting access to the patent system, taking into account the financial situation of certain categories of applicants was also recognized by the Administrative Council of the European Patent Organisation, namely, natural persons, small and medium sized enterprises, universities and research centers. These applicants from States having working agreements with the EPO were eligible for 75 per cent reductions on searches carried out by the Office on national first patent filings, limited to 100 filings per year. The Delegation believed

that fee reductions should be targeted, but that they should be subject to regular review to evaluate the effectiveness in achieving the policy goal. The Delegation looked forward to working towards a solution on the proposal that accommodated the concerns of all delegations.

190. The Delegation of Turkey aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B and thanked the Delegation of Brazil for the revised proposal. The Delegation believed that universities played an important role in economic and technological development by converting scientific research into inventions through patenting and licensing. The Delegation reported that a new national industrial property law, which came into force in 2017, introduced a major change for the ownership of university inventions. The new law gave inventors from universities the right to receive at least one third of the income generated from the commercialization of an invention, with the aim of realizing the innovative potential of universities. As a potential beneficiary of the proposed system, the Delegation was in principle in favor of the revised proposal, but wished to monitor the issues closely that needed clarification to ensure proper implementation of the proposed fee reduction.

191. The Delegation of France thanked the Delegation of Brazil for the revised proposal and the Secretariat for organizing the instructive workshop, and supported the statement made by the Delegation of Switzerland on behalf of Group B. Given that the PCT contributed a great deal to the income of WIPO, the issues regarding the proposed fee reduction needed to be viewed in a broader framework than the PCT System alone. The Delegation shared the concerns expressed by the Delegations of the United States of America and the United Kingdom regarding the definition of the ceilings and the control mechanism associated with those ceilings. At a national level, French patent law provided a 50 per cent reduction for universities as part of a range of measures across its national territory. Under the supervision of INPI France, examiners were able collaborate with universities to assist them with the formalities of filing, and certain fees payable to patent agents were financed. Together, these measures had improved the proportion of patent filings by universities, which made up 13 out of the top 50 filers. The Delegation was ready to continue with the dialogue on the proposal but acknowledged that some issues needed to be explored in greater depth before consensus could be reached.

192. The Delegation of Belarus supported the proposal and aligned itself with statement made by the Delegation of Kazakhstan on behalf of CACEEC. The Delegation believed that reducing fees by 50 per cent would increase the number of applications under the PCT procedure, and that the ceiling of 20 filings was not of great importance. Although it was not possible for an IP Office to influence the quality of patent applications, more applications should lead to increased opportunities for licensing of inventions, would be beneficial to society.

193. The Delegation of Portugal thanked the Delegation of Brazil for the proposal on fee reductions for universities from developed and developing countries. The Delegation believed that filings from certain universities, including those in Portugal, were more sensitive to fee changes than other applicants, but it supported equal treatment of all universities regardless of location. Taking this into account, the Delegation welcomed proposals that would benefit universities and allow them to increase their capacity to file more and higher quality PCT applications. The Delegation acknowledged that a few issues needed clarification, including the application of the proposal in cases of joint applications and the role of receiving Offices in its implementation.

194. The Delegation of Canada thanked the Delegation of Brazil for the revised proposal and aligned itself with the statement made on by the Delegation of Switzerland on behalf of Group B. The Delegation of Canada believed that any fee reduction should be targeted and managed prudently and hoped that the Working Group could proceed with good ideas to improve the PCT System even though there may be some unknowns. In Canada, the importance of incentivizing universities was recognized and the Delegation hoped that a

workable solution could be devised internationally which also ensured that PCT revenue was not unduly affected.

195. The Representative of the African Intellectual Property Organization (OAPI) supported the proposal and associated itself with the statement made by the Delegation of Morocco on behalf of the African Group, and the interventions made by other African delegations. The budgets of universities in the 17 Member States of OAPI for research were low, and budgets were even lower for exploiting the results of research to benefit the country. OAPI had therefore provided subsidies as a first step for university applicants. The Representative believed that the proposal would enable applicants from its Member States to bring inventions to an international level, stating that the present level of fees acted as a brake to universities in Africa. While there were issues that might still need to be resolved, the Representative hoped that the principle of the proposal would be agreed by the end of the session.

196. The Delegation of Brazil associated itself with the statements made by the Delegation of Ecuador on behalf of GRULAC and by the Delegation of South Africa on behalf of BRICS. The Delegation noted that delegations and groups representing 105 of the 152 Contracting States had supported the proposal. This demonstrated that there was a legitimate demand for the proposal from the majority of the PCT members which should be addressed by the Working Group. The Delegation particularly thanked the African Group, BRICS, CACEEC and GRULAC, along with the Delegations of Belarus, Chile, China, Colombia, Egypt, El Salvador, India, Indonesia, Iran (Islamic Republic of), Malaysia, Morocco, Philippines, the Russian Federation, Senegal, Spain, Turkey and United Arab Emirates, and the Representative of African Intellectual Property Organization (OAPI) for their support. The Delegation agreed with the Delegation of Japan that the proposal needed to be discussed carefully, but believed that the Working Group had had enough time to consider the issue since the second session of the Working Group in 2009, where this issue had originally been raised. In response to the interventions, the Delegation noted that some delegations had mentioned the issue of application ceilings. Statistics regarding the timeliness of receiving Offices to transmit PCT applications to the International Bureau showed the average time in 2017 to be 2.5 weeks from the international filing date. Furthermore, 95.1 per cent of PCT applications transmitted to the International Bureau were received within four weeks from the international filing date. This demonstrated that it was unnecessary to wait a full year to assess the exact number of applications made by a university. Regarding the requests for equal treatment, the differentiation between universities from developing and developed countries in the proposal had been made in response to concerns about the overall cost to WIPO. The Delegation was nevertheless open to a proposal offering the same level and quota of reductions to all universities. As for the need for a clear definition of a university, opening a university was subject to authorization, control and monitoring by governments. The Delegation therefore proposed to rely on a list of accredited universities provided by countries themselves, adding that governments were in the best position to assess what constituted a university according to national characteristics. The Delegation also believed that discussion of the definition of a university was not a role for the PCT. Moreover, the agreed definition of a university from the World Higher Education Database produced in collaboration with UNESCO could be used. In order to resolve issues regarding eligibility and variations of applicant names, the Delegation stated that an application would need to be made under the same name as that appearing on the accredited list of universities to enjoy the benefits. Regarding joint applications from universities in different countries, the Delegation believed that it was important for international organizations such as WIPO to stimulate international cooperation. In this regard, the Delegation referred to the aims in the preamble of the PCT, where it stated that Contracting States were “convinced that cooperation between nations will greatly facilitate the attainment of these aims”. Although the workshop demonstrated that there was a significant amount of international cooperation between universities, data from the International Bureau showed that the majority of patents were filed by one university from the same country of the receiving Office. This suggested that the status of a joint application should not be a major issue.

However, the Delegation was willing to be flexible and to include a rule similar to Item 5 in the Schedule of Fees, stating that “if there are several applicants, each must satisfy the criteria set out in item 6”. In response to concerns that the proposal relied on the conclusions of the Secretariat’s study on fee elasticity, responses from Circular C. PCT 1515 showed that many countries had consulted their universities and received feedback which stated that the PCT filing fees were a barrier to entry to the system. This was stated in particular by the Delegations of Colombia, Greece, Portugal, and Malaysia, and the Representative of the African Intellectual Property Organization (OAPI). During the workshop, the speaker from Brazil, Ms. Elizabeth Ritter dos Santos, mentioned that the proposal would be a welcome initiative, but also pointed out that further government initiatives were needed alongside fee reductions in order to generate inventions. At the workshop, Mr. Bo Stenhuus highlighted the importance of the 30 month period until entry into national phase under the PCT, since the philosophy at the University of Copenhagen was that if an applicant could not commercialize an invention within 28 months from the filing of the priority application, the invention became public knowledge or the researcher had the opportunity to buy it back from the university. The Delegation was also open to include a sunset clause with proper assessment of the effects of the proposal as suggested by the Delegation of the United States of America in order to make progress in discussions. However, it was not possible to assess the effects of a fee reduction before real data had been obtained from implementation. The Delegation believed that the PCT System enabled higher quality patent applications during the national phase due to the written opinion on patentability by the International Searching Authority or International Preliminary Examining Authority. As a result, the proposal would likely result in higher quality applications and should therefore be given consideration by the Working Group. Furthermore, when deciding whether or not to file a patent application, an applicant took into account the expected benefit and the associated costs. The proposal addressed the associated costs, while the expected benefit was an internal decision that applicants needed to make. As was pointed out by the Chief Economist, the main reason for the higher price elasticity of universities from developing countries could be due to limited budgets. It was therefore likely that universities from developing countries would continue to evaluate applications carefully before deciding to file an application and pay the necessary fees. The Delegation acknowledged the remarks made by the Delegation of Switzerland that fee reductions were one example regarding national measures that assisted its universities in the innovation process. Although the alternative policies that had been discussed could be useful, they were complementary to fee reductions and remained outside the competence of the PCT Working Group, which aimed to address specific barriers to the filing of international patent applications. Studies on fee elasticity showed that the level of fees were particularly important for some innovators, in particular universities, when accessing this stage of the patent procedure. Several users of the patent system had also stated that PCT filing fees remained a barrier to entry of the system for applicants, even in developed countries. The Delegation agreed that there were many other costs associated with obtaining patent protection, in particular attorney fees. However, the PCT Working Group was not the appropriate forum to address other costs, as Member States had their own national policies which did not fall within the mandate of the Working Group. Finally, there was little risk of abuse of the system given the institutional nature of universities and the fact that universities relied on their reputation to attract students, which they would not deliberately tarnish. There was also a general expectation that stakeholders acted in good faith.

197. The Chair, in summarizing the discussions, stated that while delegations believed in the positive intentions of providing incentives for researchers in universities in solving technical problems faced in today’s world, Member States had indicated practical difficulties in the implementation of the proposal. While Brazil had revised the original proposal to deal with issues that had been raised in previous discussions, such as the definition of a university, the financial liability to WIPO and the eligibility of universities from developed countries, some Member States nevertheless had significant concerns with the proposal which would need to be addressed. The Chair therefore summarized that the proposal could be accepted in its present form and further discussions were necessary.

198. The Working Group invited the Secretariat to begin a consultation, through a Circular, amongst Member States and other stakeholders before the end of 2018 to identify issues and solutions, risks and mitigations which might be relevant to the discussions on possible fee reductions for universities. The consultation might, if practical, include examples of concrete measures which could be considered to address the issues referred to in paragraphs 157 to 196, above, without prejudice to alternative suggestions which might be proposed by Member States. The feedback received during those consultations would serve as the basis for a document prepared by the International Bureau setting out possible options as to how to address the various implementation issues which had been identified during the discussions at the present session, including, where appropriate, proposals for necessary amendments to the PCT Regulations, for consideration by the Working Group at its next session.

**(B) UPDATE TO PROGRESS REPORT ON IMPLEMENTATION OF FEE REDUCTION CHANGES**

199. Discussions were based on document PCT/WG/11/23.

200. The Delegation of Brazil stated that the data in the document showed that natural persons represented a relevant proportion of applications from beneficiary countries, including upper middle-income countries such as Brazil, Mexico and Turkey. The data demonstrated the positive effects of targeted fee reductions on filing behavior. Sharp decreases in filings by natural persons (larger than the overall decrease in applications) were seen from the two countries whose nationals and residents had lost entitlement to the reduction in July 2015. By contrast, in the countries that had gained entitlement to fee reductions for natural persons, there was an increase on average in the number of filings from natural persons of 8 per cent in the first year and 15 per cent in the second year after the introduction of the fee reductions. Referring to the proposal to introduce a fee reduction for universities, the Delegation emphasized that the document showed the positive effect on filing behavior after introducing a fee reduction, and a negative effect from eliminating a fee reduction, but the Delegation acknowledged that the data referred to in the document did not concern universities.

201. The Working Group noted the contents of document PCT/WG/11/23.

**COORDINATION OF TECHNICAL ASSISTANCE UNDER THE PCT**

202. Discussions were based on document PCT/WG/11/22.

203. The Secretariat introduced the document by updating the Working Group on discussions that took place under the sub-agenda item “WIPO Technical Assistance in the Area of Cooperation for Development” at the twenty-first session of the Committee on Development and Intellectual Property (CDIP) from May 14 to 18, 2018. The CDIP had taken note of the two documents referred to in paragraph 13 of the document, and had also discussed the establishment of a web-forum on technical assistance for sharing ideas, practices and experiences, which was referred to in paragraph 1(b) of Annex III to the document. The CDIP had requested the Secretariat to provide a document on the establishment of this web-forum for the following session of the CDIP, due to take place from November 19 to 23, 2018. In addition, part of that session would be dedicated to an interactive dialogue on technical assistance. Finally, referring to paragraph 6 of Annex III to the document, the Secretariat informed the Working Group that a new WIPO Technical Assistance webpage had been launched during the twenty-first session of the CDIP. This webpage covered technical assistance and various projects with Member States and users of IP. It also linked to technical assistance resources such as the WIPO IP Technical Assistance Database referred to in paragraph 7 of the document.

204. The Delegation of Brazil underlined the importance of technical assistance as a tool to enable the use of intellectual property towards development. In line with Recommendation 1 of the WIPO Development Agenda, technical assistance needed to be development-oriented, demand-driven and transparent, taking into account the priorities and special needs of developing countries. In the PCT, technical assistance was the subject of Article 51, which set out the establishment of a Committee for Technical Assistance. These elements needed to provide the basis for activities of the area of the PCT Secretariat working in technical assistance. Referring to document CDIP/21/4, which compiled WIPO's existing practices, methodologies and tools for providing technical assistance, the PCT was extensively mentioned as an area of activity, underlining the importance of the system for users of WIPO services and other stakeholders. The Delegation called for WIPO's efforts to provide technical assistance to be strengthened and supported by Member States, respecting the specific national characteristics of each country. An important area for additional work was the facilitation of access to patent and other scientific databases by Offices in developing countries to enhance their examining capacities. The Working Group could also help to strengthen technical cooperation to empower countries to use the PCT System as a contributing factor for achieving the development goals and increasing the level of innovation in the global economy.

205. The Working Group noted the contents of document PCT/WG/11/22.

## **TRAINING OF EXAMINERS**

### **(A) SURVEY OF PATENT EXAMINER TRAINING**

206. Discussions were based on document PCT/WG/11/16.

207. The Secretariat introduced the document by presenting an updated compilation of e-learning activities and self-study material, as explained in paragraph 21 of the document<sup>5</sup>. In addition, the Secretariat provided further details of the examiner training activities that had been carried out under the Australia Funds-in-Trust arrangements for the 2017-2018 biennium, as described in paragraph 26 of the document. Based on a proposal and needs assessment, the International Bureau, together with IP Australia, had conducted two national workshops on work sharing. In addition, five examples of on-the-job training were funded by Australia Funds-in-Trust: two patent examiners from the Intellectual Property Office of the Philippines (IPOP HL) undertook one week of training at the Swiss Federal Institute of Intellectual Property (IPI) on gene sequence searching; two patent examiners from Bhutan undertook on-the-job training at the IPOP HL; three patent examiners from Lao People's Democratic Republic visited the Department of Intellectual Property of Thailand; and IP Australia trained two patent examiners from the National Office of Intellectual Property of Viet Nam. Furthermore, IP Australia planned to conduct a further training activity in 2018 with patent examiners from Indonesia. Furthermore, a technology specific workshop under the Australia Funds-in-Trust arrangements would take place later this year in Malaysia dealing with searching an examination of patent applications in the pharmaceutical field, which would involve experts from the EPO, IP Australia and the World Health Organization.

208. The Delegation of the Philippines commended the International Bureau for the excellent work in implementing PCT-related technical assistance activities. Over the years the IPOP HL had greatly benefitted from a wide range of PCT-related capacity building activities organized by the International Bureau, as well as in partnership with other IP Offices such as the JPO, the USPTO, and the KIPO among others, which had been funded by the regular budget of WIPO and the different Funds-in-Trust arrangements of various Member State donors. The Delegation thanked the International Bureau for organizing the on-the-job training undertaken in April 2018 by two patent examiners from IPOP HL at the Swiss Federal Institute of Intellectual Property on searching and examining applications with gene sequences. The Delegation was

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<sup>5</sup> The compilation is available on the WIPO website at [https://www.wipo.int/meetings/en/pct\\_wg\\_11\\_e\\_learning](https://www.wipo.int/meetings/en/pct_wg_11_e_learning).

grateful for the financial support from Australia Funds-in-Trust for making this activity possible and the hospitality of the IPI which shared its expertise and best practices in the searching and examining inventions in this area. The training had greatly benefitted the examiners whose competencies were significantly enhanced in this highly technical area. Moreover, the training likewise introduced examiners to the different public and commercial databases and platforms that could be used for searches of gene sequences. Furthermore, the Delegation stressed that the technical capacity at an institutional level was benefitting tremendously since the knowledge and skills from the training were being cascaded to other patent examiners and would be passed on to the new patent examiners that the IPOPHL would be hiring later this year, thereby ensuring an institutionalized transfer of knowledge. The training had also been opportune as IPOPHL had adopted Guidelines on the Examination of Biotechnology Applications in January 2018. Another example of patent examiner training was the hosting by IPOPHL of two patent examiners from Bhutan in a program developed jointly with the International Bureau, where IPOPHL provided training covering its operations as a receiving Office under the PCT, hands-on training in search and examination and various parties and procedures. Overall this program had been a mutually beneficial engagement for both IPOHL as well as the participating examiners from Bhutan. The Delegation underlined that the efficiency of the PCT System depended on the ability of different actors to perform their respective functions in an efficient manner, particularly for IP Offices in their capacities as receiving Offices, International Searching and Preliminary Examining Authorities and designated/elected Offices. Technical assistance and capacity building remained a vital component in the effective and efficient operation and functioning of the PCT System. In conclusion, the Delegation supported and encouraged the International Bureau and donor Offices to continue to offer and develop training courses that were competency and needs-based, such as customized on-the-job training.

209. The Delegation of China expressed appreciation for the patent examiner training activities that had been undertaken, and stated that SIPO would continue within its capacity, to provide training to examiners in developing countries through Funds-in-Trust and other means. In 2017, SIPO had trained 90 patent examiners from 20 different countries through six training sessions, and it hoped to continue this work in 2018.

210. The Delegation of Spain stated that the SPTO had been providing technical assistance activities as a donor Office, collaborating with IP Offices, particularly in Latin America. Spain had set up a Funds-in-Trust in 2004 with WIPO and ran various training programs. The Delegation highlighted the training program on Patent Searches and Examination (CIBIT) which had been running for about 20 years and involved a fully-financed six-month training course, including practical support and assistance from the SPTO. Patent examiners of many Latin American countries had participated in this program. Of the four examiners from Latin America participating in the present program, one was from a country that had not yet acceded to the PCT.

211. The Delegation of India explained that, in terms of medium to long term comprehensive training programs, the Indian Patent Office provided in-house training over three months for its newly-recruited patent examiners at the Rajiv Gandhi National Institute of Intellectual Property Management in Nagpur (RGNIIIPM). Further comprehensive training for eight months was then provided to these examiners after their posting to the different branches of the Indian Patent Office under the guidance of the Senior Controller who monitored their activities and guided them during this period. Later, one month advanced training was provided, where performance during the term was evaluated. On the job training was also being offered to examiners in the Indian Patent Office. After performance evaluation of examiners, some were shortlisted and performance improvement programs were organized to further improve their capabilities. Some training programs were also organized in cooperation with WIPO and other IP Offices. With respect to classroom-type training events, the Indian Patent Office conducted technical training at RGNIIIPM for patent examiners, and had so far organized two programs for examiners from the Asia Pacific region. Furthermore, the Indian Patent Office also organized summer school

training programs at RGNIPM. Examiners at the Indian Patent Office had also been utilizing the training courses organized by WIPO.

212. The Delegation of the Republic of Korea stated that KIPO had provided various training programs through the Republic of Korea Funds-in-Trust. In cooperation with the WIPO Academy, KIPO had carried out five training programs for 98 examiners over the past year covering subjects such as patent law and examination procedure. In cooperation with the International Bureau and International Intellectual Property Training Institute of the Republic of Korea, KIPO had organized a workshop in July 2017 with the participation of 16 examiners from 12 countries in the region. In the future, the Republic of Korea hoped to offer more training programs for patent examiners through the Republic of Korea Funds-in-Trust, and it hoped that the International Bureau would provide customized training to examiners through other programs.

213. The Representative of the Asian Patent Attorneys Association (APAA) thanked the International Bureau and IP Offices for their training efforts for patent examiners. Such training could only improve the quality of the examination process, and as a result, the quality of granted patents. The APAA had recently received a request for capacity-building from the Intellectual Property Office of Papua New Guinea, which it had passed to the International Bureau. The Representative also indicated that the APAA would be ready to assist the International Bureau and IP Offices in the training of patent examiners and in awareness-raising activities.

214. The Delegation of the European Patent Office stated that, in line with its cooperation policy, the EPO supported the patent examiner training activities carried out by the International Bureau for the reuse of PCT work products from search and examination in specific technological areas. In this context, coordination and early planning in the training activities allowed for enhanced efficiency in the use of the limited resources available.

215. The Working Group noted the contents of document PCT/WG/11/16.

#### (B) COORDINATION OF PATENT EXAMINER TRAINING

216. Discussions were based on document PCT/WG/11/17.

217. The Secretariat, in introducing the document, updated the Working Group on the development of the competency framework using the open source platform Moodle, which had been straightforward to set up. The framework presently contained more than 300 different competency elements, and further work was underway to ensure compatibility with the competency framework developed under the IP Australia Regional Patent Examiner Training (RPET) program. In contrast to the RPET program competency framework which contained about 30 to 40 different competency units, the competency framework under development in the context of improving the efficiency of donor sponsored examiner training carried out by the Regional Bureau for Asia and the Pacific (ASPAC) would be more complex, with possibly between 500 to 1000 different competency of skills elements.

218. The Delegation of the Philippines supported and encouraged the work of the International Bureau in developing a learning management system that IP Offices could use to track learning progress of patent examiners. The IPOPHL looked forward to continuing exploratory discussions with the International Bureau on this subject and expressed its willingness to extend its assistance in this respect.

219. The Delegation of Ecuador acknowledged the work of the International Bureau in the training of patent examiners, and recognized that this required solid initial training and constant updates of this training in relation to the technical and legal aspects of the work. SENADI attempted to keep the training of its examiners up to date and therefore engaged in taking on board assistance through participation in training courses provided by the International Bureau and donor Offices. The Delegation therefore supported the initiative of the International Bureau



to facilitate provision of examiner training courses in the PCT, which contributed to boosting capacity within a country and motivated patent examiners to improve their skills. This had a positive impact on the quality of their work and enabled examiners to learn from practices of other Offices. The Delegation underlined the need to work in a coordinated manner with the International Bureau, which would ensure patent examiners would acquire all the skills and knowledge which they needed. To this end, the Delegation urged the International Bureau to continue to provide the transparent technical assistance needed within the framework of the PCT. Efficient training programs could be achieved through effective coordination, with all examiners needed to participate being able to do so, and assessing the outcome of the training. There also needed to be adequate supervision of training activities between donor and beneficiary countries.

220. The Working Group noted the contents of document PCT/WG/11/17.

## **INCORPORATION BY REFERENCE OF MISSING ELEMENTS AND PARTS**

### **(A) REPORT FROM WORKSHOP**

221. Mr. Paul Harrison, Chair of the Workshop on Erroneously Filed Elements and Parts, held on June 19, 2018, summarized the main findings of the workshop by stating that there had been agreement among all speakers at the workshop, representing the views of users of the PCT System, that there was a need for a safety net where an applicant made a mistake and erroneously filed a wrong description or a wrong set of claims<sup>6</sup>. While the actual number of such mistakes might indeed be low, each of these cases could have significant impact on the fate of the application and thus on the applicant and/or the agent. There had been agreement that, in the case of erroneously filed elements or parts of an application, incorporation by reference of the correct elements or parts, if completely contained in the priority application, should be allowed, within the strict time limits set out in present Rule 20.7. As to the “how”, that is, the details governing the correction process, there had been minor differences among the users as to whether the erroneously filed element or part should remain in the application, in addition to the correct element or part, or whether the correct element or part should replace the erroneously filed element or part; whether receiving Offices should be permitted to charge a fee for any request for correction, or whether the applicant should be required to submit an explanation as to why the mistake had occurred. However, those differences appeared negligible, as long as there was agreement to address the “what” by introducing a new correction procedure for the incorporation of correct elements or parts.

### **(B) CONDITIONS FOR THE CORRECTION OF THE INTERNATIONAL APPLICATION IN CASE OF “ERRONEOUSLY” FILED ELEMENTS AND PARTS**

222. Discussions were based on document PCT/WG/11/21.

223. The Delegation of the European Patent Office, in introducing the document, referred to the five conditions in paragraph 30 for supporting a proposal to provide a legal basis for allowing the correction of erroneously-filed elements and parts of an international application on the basis of the priority application, as had been set out in proposed Rule 20.5*bis* in Annex I to document PCT/WG/9/13. Referring to the first condition, the Delegation observed that various user groups believed that diverging practices among receiving Offices regarding the provisions on missing parts caused legal uncertainty for applicants and third parties, as well as practical difficulties for the designated or elected Offices dealing with the file. The adoption of a separate and new provision covering instances of erroneous filings would make it possible to clarify that Rule 20.5 would only be available for its original purpose, namely completing parts that were missing from an objective and formal perspective, judged by the contents of the documents as filed on the international filing date. Noting that the receiving Office was only expected to carry out a formal

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<sup>6</sup> The presentations for the workshop are available on the WIPO website at [https://www.wipo.int/meetings/en/pct\\_wg\\_11\\_erroneously\\_filed\\_parts](https://www.wipo.int/meetings/en/pct_wg_11_erroneously_filed_parts).

verification of the international application and could not enter into substantive matters, the starting point for the check carried out by the receiving Office under Rule 20.5 should be whether the application appeared to be incomplete from a strictly formal perspective. The second condition stated that the new provision to cover erroneously-filed elements should not allow the “replacement” of the erroneous element or part but only the incorporation by reference of the correct element or part as completely contained in the priority application. This was important as the deletion of a feature present in the original disclosure might result in extension of the scope of the international application, thus affecting the disclosure, for instance, when a feature was removed from a combination of features or when a definition was deleted. The possibility of added matter in such situations was a strong ground against the removal of erroneous elements or parts of the international application. The Delegation therefore proposed that the correct elements or parts were clearly marked and added to those filed on the date of receipt of the international application. Applicants could, however, file amendments under Chapter II or during the national phase to put the application in order. The third condition was that the incorporation by reference and the correction of the erroneously-filed element or part should only be allowed in the pre-publication phase. It was understood that the provisions regarding time limits of Rule 20.5*bis* would refer to Rule 20.7, which was designed to operate during the pre-publication phase. Therefore, applicants would be entitled to correct an erroneously-filed part within two months of the invitation sent by the receiving Office after performing the check in Article 11(1), or as an alternative, at their own motion within two months of the date in which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office. With regard to the fourth condition that the International Searching Authority should be entitled to charge an additional fee if the search of the erroneous filing had already started, the Delegation thanked all users for the openness and flexibility shown regarding this topic and stated that the decision on whether or not to charge a fee would be in the hands of the respective International Searching Authority, with the purpose that the fee would cover the additional cost of carrying out a second international search. The fifth condition was that receiving Offices and designated Offices should be allowed to submit a notification of incompatibility where national laws did not allow the correction of erroneous filings. Notifications of incompatibility were needed to avoid inconsistencies between the international and national phases at Offices, and to provide time for the adoption of national laws with a view to eventually withdrawing notifications of incompatibility. The Delegation concluded by noting that the five conditions appeared to address the concerns and expectations expressed by representatives of the various user associations during the workshop.

224. The Delegation of the United States of America stated that it continued to hold the strong view that the ability of applicants to add a full description, set of claims and/or drawings through incorporation by reference was within the spirit and intent of the provisions on incorporation by reference. It was clear that this type of error was what Member States were attempting to address when these provisions were adopted. The Delegation expressed its general support and thanked the EPO for the proposal, which went in the right direction and could provide a compromise on the differing practices among Offices on incorporation by reference. However, it raised some concerns regarding the five conditions under paragraph 30 of the document. The Delegation considered that the intention of the first bullet was unclear. The Receiving Office Guidelines intended to ensure that the correct invention was searched and examined. As a result, the Delegation believed that these provisions in the Receiving Office Guidelines should be retained. The Delegation did not believe that the second condition was an ideal solution, since retaining the originally filed elements and not allowing for the replacement of an erroneous element or part would unduly complicate the application. Moreover, only allowing correction in the pre-publication phase would unnecessarily differentiate this type of incorporation from other types of correction made after international publication. For example, where a determination was made by the receiving Office at a late stage and a notice was required in the international publication, a correction might need to be made at a post publication stage; such situations arose infrequently and did not justify the drafting of separate provisions. Finally, regarding the fifth condition, the Delegation stated that there was no need for the provision of a notification of

incompatibility from receiving Offices as applicants should expect uniform treatment in the processing of their international stage applications. The Delegation concluded by suggesting that the International Bureau could modify the proposal in document PCT/WG/9/13 for discussion at the following session of the Working Group

225. The Delegation of the United Kingdom, as a Contracting State of the European Patent Convention and Contracting Party of the Patent Law Treaty, fully supported all of the conditions set out in the proposal. The Delegation stated that its national laws did not allow for the replacement of erroneously filed elements or parts, and therefore supported the incorporation by reference of a correct element or part, with a view that both the erroneously filed and correct element should remain part of the application until the applicant removed the erroneous part by amendment after publication. In order to maintain consistency and due to the low number of applications, it did not believe it was necessary to impose a fee or evidence burden on applicants.

226. The Delegation of Japan stated its support for further discussions on the proposal to allow for correction of erroneously filed elements and parts, observing that users could be disadvantaged if the interpretation of the PCT legal provisions and operating procedures differed between Contracting States.

227. The Delegation of Spain thanked the EPO for its efforts to achieve consensus on this issue of erroneously filed elements and parts. It acknowledged the importance of the flexibility provided by the proposal and the possibility for Offices to submit notifications of incompatibility

228. The Delegation of China expressed its appreciation to the EPO for the proposal and the legal analysis it had conducted and also thanked the Secretariat for organizing the workshop, which had aided its understanding of different user group experiences. The Delegation supported the development of a new provision to define conditions for the correction of erroneously filed elements and parts in the international application as it believed this would provide legal certainty and clarify the relationship between incorporation by reference and the submission of corrections. Such additional remedies would also offer further protection to applicants. In view of the balance that needed to be struck between applicants, the public and Offices, it observed that an overly generous provision might contribute to abuse of the system and increase uncertainty of applications. The provision therefore needed to have a limited scope as it would affect the work carried out by Offices, which could reduce the accuracy and efficiency of international search. The Delegation believed that applicants should need to demonstrate that they had exercised due care and submit reasons for the filing of the erroneously filed elements or parts. Furthermore, the International Searching Authority should be entitled to charge an additional fee if the search of the erroneously filed element or part had already started. Contracting States would also need to adapt their national laws in line with the new provision covering erroneously filed elements and parts. The Delegation further stated that a provision covering erroneous filings should make it clear that applicants would not be allowed to use the incorporation by reference process to file an entire description and claims. Furthermore, in order to maintain clarity and limit additional work burden on examiners, the Delegation further stated that erroneously-filed elements and parts should be clearly marked to avoid confusion and that the provisions should clarify that they would not be examined.

229. The Chair clarified three of the points made by the Delegation of China. First, the proposal concerned the incorporation by reference of a disclosure of an earlier application, but did not limit the scope only to particular circumstances of the applicant. Second, incorporation was made by reference on the disclosure in the earlier application. On this basis, it did not appear consistent to refuse incorporation when the entire specification had been erroneously filed since the applicant would be referring to the earlier filing when requesting the incorporation. Third, the incorporation by reference provisions were administrative in nature; it was a matter for national laws on which elements would be examined.

230. The Delegation of Germany supported the proposal. It highlighted its support for the first and the second conditions, which provided greater legal certainty by clarifying that Rule 20.5 only covered cases where a part of the description, claims or drawings was truly missing from the international application and not cases where an entire element or part of the application has been erroneously filed, and that the new provision should not allow for the replacement of the erroneously filed element or part. These conditions were important guidelines and needed to be taken into account when further developing the proposal set out in Annex I to document PCT/WG/9/13.

231. The Delegation of Norway expressed its support for the proposal. However, it raised concern regarding a suggestion presented during the workshop that applicants should provide an explanation for any erroneous filing. If the explanation were to be assessed by the Office, such subjective criteria might lead to differing practices between Offices.

232. The Delegation of the Russian Federation supported the proposal. It wished to note that, in practice as a receiving Office, it used a similar approach. However, regarding the fifth condition, it aligned itself with the comments voiced by the Delegation of the United States of America in that receiving Offices should not be able to submit a notification of incompatibility since a unified approach should be followed in the international phase between Offices.

233. The Delegation of Denmark thanked the EPO for the proposal and expressed its full support. It confirmed that the proposal was also supported among EPO Member States the Committee on Patent Law.

234. The Delegation of Canada expressed its appreciation for the detailed document that explained the background behind the EPO position. It observed that the PCT offered no remedy to applicants who noticed an error unless this was discovered before the expiry of the priority period, wherein the applicant could then file a new application with the correct elements or parts. The Delegation supported conditions one through four, but highlighted that with respect to the fourth condition the fees were to be charged by the International Searching Authorities and not necessarily by receiving Offices. It agreed with the Delegations of the United States of America and the Russian Federation regarding the fifth condition, namely that a notification of incompatibility should not be available to receiving Offices.

235. The Delegation of France wished to thank the EPO for introducing the document and the Secretariat for organizing the workshop. The Delegation stated that it had a similar practice to the EPO in terms of incorporation by reference and gave its support to the proposal in that it did not allow for the replacement of erroneous elements or parts, but the only the addition of the element or part. The proposal had also been supported during consultations with the main user association in France.

236. The Delegation of Australia thanked the speakers from the workshop and the EPO for its continued work on the proposal. The Delegation observed that there was a need to amend the Receiving Office Guidelines to define the cases covered by Rule 20.5. The Delegation agreed with the second condition and expressed its approval for the third condition, namely that incorporation by reference should be allowed only in the pre-publication phase and subject to an appropriate time limit. The Delegation also supported the fourth condition that the International Searching Authority should be entitled to charge an additional fee if the search of the erroneous filing had already started, but stated that there should not be a fee for the amendment itself. With respect to the last condition that, where appropriate and possible, all receiving Offices should function in the same fashion. The Delegation concluded that it would appear appropriate to ask the International Bureau to consider possible drafting of provisions based on the proposal and comments by delegations.

237. The Representative of the Japan Patent Attorneys Association (JPAA) expressed concern that Member States had differing national laws regarding whether to allow for the correction of erroneous filings, applicants might be unaware of when proceeding to national phase entry. Although notifications of incompatibility might help to avoid such a situation, applicants needed to be aware of any notifications, which would need to be accessible on the WIPO website.

238. The Representative of the International Federation of Industrial Property Attorneys (FICPI) highlighted Rule 9, which stated that “The international application shall not contain: ... (iv) any statement or other matter obviously irrelevant or unnecessary under the circumstances”. This statement appeared to contradict the second condition proposed by the EPO. The Representative observed that in accordance with Rule 9, some erroneously filed elements or parts were “obviously irrelevant or unnecessary”.

239. The Representative of the International Institute for Intellectual Property Management (I3PM) wished to remind the Working Group of a suggestion made at the roundtable discussion during the workshop that the decision regarding incorporation by reference following erroneously filed elements or parts should be made by one Office, namely the International Bureau. This could be a practical solution to achieve consistency given that the number of such cases was low.

240. The Delegation of India supported the proposal and stressed that incorporation by reference without affecting the international filing date should only be allowable if the relevant elements or parts were completely contained in the earlier application from which priority was claimed.

241. The Delegation of the European Patent Office thanked delegations for their support for the proposal. The Delegation wished to clarify that the proposal did not require applicants to submit justifications when requesting corrections as this would inevitably lead to subjective criteria being used and therefore result in different practices between Offices, as had been pointed out by the Delegation of Norway. Regarding the comments by the Delegation of the United States of America, the Delegation of the European Patent Office agreed that only the correct invention should be searched and examined and stated that it would be open to adding further clarification to this effect in the International Search and Preliminary Examination Guidelines. In relation to not allowing the removal of erroneous elements or parts, the Delegation acknowledged that it might not be ideal, but it was necessary to ensure legal certainty. With regard to time limits, the Delegation suggested that the provisions regarding incorporation by reference due to erroneously filed elements and parts should refer to Rule 20.7 like the provisions in Rule 20.5 on missing parts, thereby ensuring consistency between erroneously filed and missing parts. Finally, the Delegation expressed surprise at the diverging views concerning notifications of incompatibility, particularly the idea to limit notifications to designated Offices, which would not be consistent with Rule 20.5. Whether or not to make use of notifications of incompatibility should be left to national Offices, both as a receiving Office and as a designated Office, noting that this would give full flexibility to allow notifications which an Office could then withdraw when national laws had been aligned with the new provisions.

242. The Chair, in summarizing the discussions, concluded that: (a) there was general agreement that, should a new Rule allowing for the incorporation by reference of correct elements or parts be added to the Regulations, the Receiving Office Guidelines should be modified to clarify that Rule 20.5 only covered “truly” missing parts; (b) there was significant but not unanimous support not to allow the “replacement” of the erroneous element or part from the application, but further discussion appeared to be needed on this matter; (c) there was general agreement that any incorporation by reference of correct elements or parts should only be permitted within the time limits provided for in present Rule 20.7; (d) there was agreement that the International Searching Authority should be entitled to charge an additional fee for the search of the international application including the correct elements or parts incorporated by

reference where that Authority had already started the search on the basis of the erroneously filed element or part, as long as such a fee was not otherwise precluded by Article 17; and (e) further discussion appeared to be needed on whether receiving Offices should be given the opportunity to submit a notification of incompatibility in respect of any new provision allowing for the incorporation of correct elements or parts.

243. With reference to the question whether receiving Offices should be given the opportunity to submit a notice of incompatibility, the Secretariat suggested that, in case that no agreement was reached among Member States to not allow such notifications, Member States might consider the adoption of an Understanding that any receiving Office which submitted such a notification should commit to transmitting the application to the International Bureau in its capacity as a receiving Office under Rule 19.4(a)(iii), if so requested by the applicant.

244. The Delegation of the United States of America responded to the comments about the limitation of incorporation by reference to the pre-publication stage by stating that the provisions regarding erroneously-filed elements and parts should be aligned with those under Rule 20.5 concerning missing parts. The Delegation could therefore accept the new provisions referring to Rule 20.7. In addition, while the Delegation was not in principle opposed to the charging of additional search fees, it was important to consider the limitations in Article 17 about subject matter that the International Searching Authority was not required to search.

245. The Working Group invited the International Bureau to prepare draft amendments to the Regulations for the next session of the Working Group, taking into account the discussions at the present session and further consultations with interested stakeholders, as required.

#### **DELEGATION OF DESIGNATED OR ELECTED OFFICE FUNCTIONS**

246. Discussions were based on document PCT/WG/11/7.

247. The Delegation of the European Patent Office stated that the addition of the proposed Rule 50*bis* was a long-awaited clarification for users of the PCT system and interested Offices. The proposal was coherent with the approach taken in Rule 19.1(b) which allowed a Contracting State to agree to delegate responsibilities as a receiving Office to a national Office of another Contracting State or to an intergovernmental organization. The Delegation was aware that Montenegro was interested in this provision as the EPO had signed an extension agreement with Montenegro, and Montenegro had closed its national route in 2008. The proposed Rule 50*bis* would make it possible for applicants to be better aware that an Office had closed its national route, preventing the loss of rights if an applicant attempted to enter the national phase at an Office which had closed down its national route. The proposal therefore solved a problem of a practical nature which had now existed for about 10 years.

248. The Delegation of India strongly opposed the proposal on the following grounds. First, the PCT aimed to streamline procedures to ease the burden on applicants in terms of a single application and to provide for international search and preliminary examination reports when seeking patent protection in different countries. However, this was not meant to supplant the right to determine substantive conditions for patentability in any nation. Therefore any attempt to abrogate such rights of Contracting States by whatever manner would be interfering in the sovereign rights of States. Second, the Delegation agreed with the views of the International Bureau that the PCT legal framework only allowed a State to close its national route if the State was party to a regional patent treaty within the meaning of Article 45(1). The International Bureau has also stated that at present, there was no express provision in the PCT that allowed a State not party to a regional patent treaty to close its national route in that way. The Delegation agreed with the International Bureau on this point. The Delegation therefore asserted that under the framework of the PCT, there was no provision that supported the proposed Rule 50*bis*. During the negotiations on the PCT, at no time was the possibility

discussed of a Contracting State closing the national route in the absence of a regional patent treaty. The proposed Rule was therefore *ultra vires*. The Working Group did not therefore have the mandate to approve acts that were not allowed by the PCT. The proposal, if it were even to be considered by the Working Group, would require an amendment to the Treaty. Third, attempts aimed at harmonization of the patent law were neither desirable nor acceptable to India. Fourth, the proposal amounted to undermining the flexibility provided in the TRIPS Agreement, which the Delegation firmly believed was not the mandate of the PCT. In this regard, the Delegation referred to the Report of the United Nations Secretary-General's High Level Panel on Access to Medicines that recommended that World Trade Organization (WTO) Members must make full use of the TRIPS flexibilities as confirmed by the Doha Declaration to promote access to health technologies when necessary. Fifth, the Delegation believed that every state had to decide its policies on the basis of its development and needs; a one-size-fits-all approach would be counterproductive. Accordingly, focus should rather be on providing technical assistance under Article 51 so as to develop the search and examination capabilities of patent Offices of developing and least developed countries taking into account the 45 recommendations under the WIPO Development Agenda, which all Member States had agreed on. The Delegation believed that only a balanced patent system that addressed the circumstances prevailing within a State could contribute to a sustainable patent ecosystem. The Delegation therefore strongly opposed the proposal which undermined flexibilities within the TRIPS Agreement and infringed on the sovereign rights of nations.

249. The Delegation of Egypt stated that the PCT made it possible to file patent applications at an international level. Rules dealing with patent applications after entry in the national phase went beyond the scope of the PCT. The proposal did not take into account the differences in laws and practices between countries, especially in relation to inventions regarding genetic resources and traditional knowledge and related rights, as well as software. The proposal also ran counter to the flexibilities provided by the TRIPS Agreement, which were a fundamental right for all members of the World Trade Organization. The Delegation was therefore against the proposal for the delegation of designated or elected Office functions outside of a regional patent treaty.

250. The Delegation of Canada considered that the wording of Article 2 was limiting, and agreed that a mechanism was needed to enable Contracting States whose national Offices had limited to no examination capacity to enter into agreements with other Contracting States or intergovernmental organizations to prosecute their applications in the national phase. If this were not to be permitted, applications in the national phase in Offices without the capacity to examine an application would never become a granted patent, which could prevent commercialization of the invention. The Delegation believed that it would take little effort for an Office to learn the national laws of the country delegating its functions in the national phase. As the Treaty was not easily amended, the only available route to authorize such an agreement was through the rules. The Delegation therefore did not perceive any significant downside to the proposed Rule 50*bis* and was in agreement with the proposal.

251. The Delegation of Indonesia enquired whether the possibilities for an Office to delegate its functions as a designated and elected Office under the proposed Rule 50*bis* would require similar bilateral agreements to those specified for receiving Offices, as stated in paragraph 4 of the document. The Delegation also believed that the possibilities under the proposal were too broad and should be limited to the particular gap under the current legal framework that needed to be addressed.

252. The Delegation of Ecuador did not support the proposal, which it considered could weaken national capacities to examine patents and the independence of Offices and lead to patent law harmonization. Instead, the International Bureau should focus on the needs of all Contracting States.

253. The Delegation of Iran (Islamic Republic of) recognized that 37 Contracting States had delegated receiving Office functions to the Office of another Contracting State or intergovernmental organization under Rule 19.1(b), and recalled that the PCT legal framework allowed for a State that was already a party to a regional patent treaty within the meaning of Article 45(1) to close its national route. However, according to the PCT, the final decision to grant a patent lay within the national or regional patent Office that conducted substantive examination of the application in accordance with patentability criteria under the relevant law. According to the proposal, the examination of patent applications would be performed by another patent Office under the examination guidelines, practices and patentability criteria at that Office, which might be in contradiction with law, policy, examination guidelines and practices of the country whose Office was delegating these functions. The Delegation expressed the view that examination of patent applications should be done in accordance with the national law and policy of each Contracting State within the flexibilities provided under the TRIPS Agreement. The Delegation understood that this proposal might lead to weakening of national patent examination and encourage dependency on foreign patent Offices. While the proposal to delegate designated or elected Office functions was not mandatory, its long term consequences on the PCT system were undeniable. To conclude, the Delegation believed that the proposed amendments deserved more in-depth consideration by Contracting States with regard to long term consequences to patent Offices and the PCT System as a whole. Therefore, the Delegation was in favor of providing more time for States and for IP Offices to consider the proposal before taking any final decision in this regard.

254. The Delegation of Brazil supported international cooperation as a way for dealing with the surge of patent applications seen in the last 10 years. Despite the drop in national phase entries in 2016 compared to the previous year, there was still a large number of patent applications that needed to be processed by Offices worldwide. There were many options for regional agreements. For example, in South America, regional cooperation took place under the PROSUR agreement. Turning to the proposal, the Delegation agreed that it was advisable to conduct substantive examination prior to granting a patent. It was for Member States to approach other Offices to verify which of them had the closest or similar national patentability requirements to understand better which model would be most advisable for them. The Delegation had two requests for clarification of the proposal. First, the Delegation asked for further information about the countries that had expressed a wish for more flexibility in terms of closing off the national route in the PCT System, as stated in paragraph 2 of the document, and how such requests had been made. Second, the Delegation requested more information on the issues in the PCT that were related to the proposal to allow delegations to make a more informed decision.

255. The Delegation of Montenegro supported the proposed amendments to the PCT Regulations as well as the intervention made by the Delegation of the European Patent Office. This provision to delegate designated and elected Office functions was introduced in the national law of Montenegro due to the limited staff resources that the Intellectual Property Office of Montenegro had upon setting up in 2008. The relevant provision of Montenegrin patent law, currently Article 153, had not been abolished or reworded when amending this law in 2015. Therefore the proposal offered a balance that satisfactorily addressed Montenegro's closure of the national route. On that basis, Montenegro could make use of the proposed Rule 50*bis* by notifying the International Bureau accordingly so that the PCT user community would be informed appropriately. Furthermore, the Delegation was of the opinion that the possibility to close the national route by a Contracting State which was not a party to a regional patent treaty would help small IP Offices such as the Intellectual Property Office of Montenegro to focus their resources on crucial issues of national IP policy instead.

256. The Secretariat, in response to the questions raised by delegations, stated that the PCT did not dictate to any Contracting State how to design its national patent system. When the PCT was developed in the 1960s and early 1970s, there were national patent systems covering



an individual State and some regional Offices to grant rights with effect in several States. Since then, other models had been introduced such as systems whereby patents could be granted by a national or regional Office and extended to another country, even if that country was not party to the corresponding regional patent treaty, such as the case for Montenegro. While the Secretariat considered that one could interpret the existing PCT legal framework as already allowing for such models and the closure of the national route, the proposal aimed to put it beyond doubt that such closure of the national route was indeed possible under the PCT. Moreover, any State could accept a patent granted by another Office as applying in its territory, including patents originating from a PCT application.

257. The Delegation of Indonesia referred to the clarification from the Secretariat that the current legal framework of the PCT could be interpreted to allow for a designated or elected Office to delegate its functions to another national Office or intergovernmental organization. In this case, the Delegation was not able to accept the proposal for a new Rule 50*bis* as this delegation was already possible under existing provisions.

258. The Delegation of Iran (Islamic Republic of) stated that in its understanding, any proposal should aim to solve a problem or address specific needs, which would affect the appropriate functioning of the system. In this case, the Delegation could not find any clear gaps or problems in the PCT System. From the legal point of view currently there were two possibilities for Contracting States to delegate some or all of their functions to the Office of another Contracting State or intergovernmental organization. One possibility was through regional patent offices, such as the EPO, the African Regional Intellectual Property Organization (ARIPO) and the Eurasian Patent Organization (EAPO), and the other possibility was by bilateral agreement among countries. Therefore, the Delegation asked for clarification of what gaps, needs and problems the proposal intended to solve.

259. The Delegation of the United States of America agreed with the legal analysis provided by the Secretariat and supported providing a specific legal basis for the arrangements which already existed with regard to delegation of designated and elected Office functions.

260. The Chair, in response to the question by the Delegation of Iran (Islamic Republic of), stated that the gap the proposal aimed to address was to provide clarity that a Contracting State could close the national route in the PCT outside of a regional patent treaty.

261. The Delegation of the European Patent Office highlighted the importance of information being available to the public, in the *PCT Applicant's Guide* or otherwise, of the applicable national law regarding the entry into the national phase of PCT Contracting States, including when they had decided to close their national route. In the case of Montenegro, applicants who had tried to enter the national phase had lost their rights because it was too late to enter the European regional phase. It was therefore important that applicants were informed of this situation to reduce these situations occurring in the future.

262. The Delegation of Brazil supported the request of the Delegation of the European Patent Office to make information available where a Contracting State had closed its national route.

263. The Chair concluded that there was no consensus to proceed with the proposal.

## **SAFEGUARDS IN CASE OF OUTAGES AFFECTING OFFICES**

264. Discussions were based on document PCT/WG/11/19.

265. The Delegation of the European Patent Office, in introducing the document, stated that outages of electronic communication services for reasons attributable to patent Offices were not explicitly covered by the PCT. Possible reasons for outages included maintenance, technical problems or cyberattacks. Where available, patent Offices might be able to apply their

respective national practices to extend time limits. For example, some national laws provided for the international filing date to be established from the date of mailing, therefore allowing postal services to be used as an alternative filing route. However, some other national laws, as well as the EPO accorded the international filing date based on the date of receipt. Where one of the electronic means of communication was unavailable on the day that a period expired for performing procedural acts, Rule 134(1) of the European Patent Convention (EPC) provided for the extension of the period to the following day when all means of electronic communication were available, which the EPO applied to PCT proceedings under EPC Article 150(2). However, for greater transparency, reliability, traceability and harmonization of practices among Offices, the Delegation proposed to add a provision in the PCT to deal with outages in electronic means of communication at an Office. Following feedback that the EPO had received that not all Offices would provide for such a possibility, the Delegation indicated that it would be willing to amend the draft Rule 80.5(iii) to include the text “if so permitted and” prior to “as determined by such Office or organization”. The details and explanation concerning the operation of the provision could be included in the Receiving Office Guidelines, with Offices publishing notices of outages on their websites. Finally, the Delegation indicated that it could consider inserting the provision in a different part of Rule 80 as outages were not strictly a non-working day or official holiday.

266. The Delegation of the United States of America stated that it could not support the proposal in its current form as it did not consider the unavailability of electronic communication as sufficient grounds to excuse delay if other means of transmission were available to the applicant. It was therefore necessary to include language pertaining to alternative communication means in the proposed rule or the Receiving Office Guidelines. With regard to the legal framework and practice concerning electronic communications at the USPTO, where appropriate, it would issue notices to users indicating that, for the purposes of any given date, the Office would be considered not to be open for the transaction of official business. The Delegation observed that the EPO supplemented the gaps in the PCT in a similar manner. The Delegation emphasized that determinations in relation to outages should be made on a case-by-case basis. The Delegation, however, appreciated the willingness of the EPO to amend draft Rule 80.5(iii) and requested that these amendments be put in writing to allow Offices to review them and have further discussions.

267. The Delegation of the United Kingdom supported the implementation of a provision which provided safeguards for applicants in the event of an outage. However, it believed that any extension ought to be granted on a case-by-case basis. A brief explanation could be provided surrounding the applicant's failure to meet the time limit and the reasons for not pursuing an alternative filing route. The Delegation requested clarification regarding the application of the rule in the situation where the outage lasted for part of a day and the filing service was restored that same day. The Delegation also expressed interest in plans for informing third parties that such an extension had been granted.

268. The Delegation of Canada stated that it could support the insertion of subparagraph (iii) in Rule 80.5 if the following two issues were addressed. Firstly, that information regarding how Offices or organizations should make such determinations needed to be clearly laid out, for example in the Receiving Office Guidelines as suggested in the proposal, or the *PCT Applicant's Guide*. Secondly, it would be necessary to add an indicator to the application's associated data to help designated and elected Offices identify such an application. The Delegation expressed concern that, without the latter, the introduction of the provision could complicate the national phase entry process and would introduce uncertainty for third parties regarding the validity of a priority claim, as Rule 2.4(b) stipulated that Rule 80.5 applied *mutatis mutandis* to the priority period. As a result, designated and elected Offices would need to go to great lengths to ascertain if the priority period had been extended due to an outage at any given Office.

269. The Delegation of India supported the proposal to amend the PCT Regulations by adding subparagraph (iii) to Rule 80.5. However, the Delegation raised concerns that some applicants might take advantage of the provision and therefore asked whether the proposed extension also had to be available when filing international applications using ePCT services, where filing was available 24/7. The Delegation also added that the Indian Patent Office already offered extensions to applicants on a case-by-case basis.

270. The Delegation of the Russian Federation supported the proposal. Information concerning outages needed to be posted on the website of the relevant Office and it would be appropriate for the Office to inform the International Bureau of any such outage for making available on the WIPO website.

271. The Delegation of the Republic of Korea asked for clarification regarding whether the proposal concerned delays in meeting a time limit or in the computation of the time limit. In the case of the former, an amendment could be made to Rule 82*quater* since Rule 80 dealt with the latter. The Delegation explained that in the event of an electronic outage at the Korean Intellectual Property Office, its national laws allowed the applicant to submit documents on the next working day on which that electronic service was available. The Delegation therefore questioned whether the amendment was necessary, given that an Office could excuse a delay in these circumstances under its respective national law. The Delegation concluded by proposing that the International Bureau could conduct a survey to evaluate the necessity to amend the PCT Regulations instead of this being a matter for the law and practice at each Office.

272. The Delegation of Colombia expressed its support for the proposal in the document and stated that applicants should be reassured that there were safeguards in place to protect their rights in the case of an outage. This was even more necessary as Offices were receiving a higher proportion of applications by electronic means.

273. The Delegation of Japan supported the proposal to revise Rule 80.5 as it considered it to be reasonable for procedures to be in place for applicants to use in the event of an outage attributed to an Office.

274. The Delegation of China expressed its support for the proposal. Although Offices could use the existing legal framework and national practices to extend time limits, the Delegation believed that the proposed amendment would provide greater clarity and certainty. Furthermore, in the digital age, Rule 82*quater* had been adapted to excuse delays due to digital outages.

275. The Delegation of Spain supported the proposal. It emphasized the usefulness of such a provision as various Spanish government institutions and departments had been affected by a cyberattack in May 2017.

276. The Delegation of Sweden supported the proposal but reiterated concerns expressed by other delegations as to whether Rule 80 was the ideal place for the proposed amendment.

277. The Delegation of France sought clarification regarding the words “as determined by such Office or organization”. French law stipulated that in the event that online services were unavailable, the required documents had to be filed by fax. Providing an extension solely for applicants in the international phase of the PCT would thus result in inequality between applicants acting before INPI France. The Delegation stated that it would not oppose the proposed amendment to Rule 80.5 if the words “as determined by such office or organization” gave receiving Offices the discretion to make decisions regarding the extension of time limits. The Delegation also raised a point in the drafting of the proposed Rule 80.5(iii); the wording

“documents filed by one the permitted electronic means of communication cannot be received” contradicted itself since if the documents could not be received, they had not been filed. `

278. The Representative of the Japan Patent Attorneys Association (JPAA) supported the proposed amendment. The Representative referred to document PCT/MIA/25/12, which related to two situations. The first situation, namely the unavailability of means of electronic communication for reasons attributable to Offices was dealt with in document PCT/WG/11/19. The second situation related to unavailability due to cyberattacks at the users’ end. The Representative hoped that further discussion could take place on IT outages that did not arise at an Office but were nevertheless beyond the control of the applicant. In this case, it was difficult for applicants to switch from electronic to paper documents, and ascribing responsibility in such circumstances was problematic.

279. The Representative of the Asian Patent Attorneys Association (APAA) agreed with the comments made by the Representative of the JPAA and expressed support for the proposal. As an organization that represented members in emerging economies, the Representative pointed out that outages might be particularly common for users from some emerging economies.

280. The Chair summarized that, while delegations recognized the importance of ensuring appropriate safeguards in the case of outages in electronic services, there were different views on how such outages should be handled, whether through a provision in the PCT Regulations, or using the legal framework at a national level. There was therefore no consensus to proceed with the proposal in its present form.

281. The Working Group noted the intention of the European Patent Office to consult further with interested parties, taking into account the comments made, with a view to submitting a revised proposal to the next session of the Working Group.

## **EARLIER START OF PCT CHAPTER II**

282. Discussions were based on document PCT/WG/11/20.

283. The Delegation of the European Patent Office introduced the document by explaining that an earlier start of Chapter II would allow more time for dialogue between the applicant and examiner, thereby providing a better service for users. In addition, the implementation of the proposed amendment should have limited impact on IT systems since only the text needed to be changed in the demand form PCT/IPEA/401.

284. The Delegation of the United States of America supported the proposed amendment to Rule 69, as it did not impact the applicant's entitlement to submit amendments under Articles 19 and 34 as a basis for the procedure under Chapter II.

285. The Delegation of China believed that the proposal was a positive step towards improving the quality and attractiveness of the international preliminary examination procedure. However, it requested clarification from the user groups present at the session on whether they wished to have an earlier start to the Chapter II procedure, and whether the proposal would affect the time available to applicants for preparation and filing. Concerning the latter point, applicants needed sufficient time to file amendments before the start of Chapter II, but also adequate time for dialogue with the examiner during international preliminary examination. In circumstances where the applicant considered that both were not possible, the applicant would need to make a choice. As the Delegation has not been able to survey users in China, it therefore wished to hear the views of the user groups at the session.

286. The Delegation of Japan supported the proposal. By extending the time limit for Offices to carry out international preliminary examination, examiners would have more time to issue written opinions and international preliminary reports on patentability, which the Delegation hoped would improve quality.

287. The Delegation of Spain supported the proposal, particularly as it would increase the possibilities to issue a second written opinion during international preliminary examination. At present, this was not possible in many situations due to the limited time available under Rule 69.2.

288. The Delegation of the United Kingdom stated that the proposal was a positive step towards producing better quality international preliminary examination. It could also lead to an increase in the filing of amendments in the international phase, which might result in better quality applications in the national phase.

289. The Delegation of the Republic of Korea noted the low number of demands for the international preliminary examination compared to the number of international searches. According to a survey conducted by the KIPO at a PCT user meeting in April 2018, some users believed that the written opinion under Chapter I and the international preliminary examination yielded similar results, and therefore believed the latter to be unnecessary. Some users had stated that the time limit under Chapter II was inconvenient. The Delegation therefore supported the proposal to improve the quality of Chapter II by making an earlier start the general rule and allowing applicants to opt out.

290. The Delegation of Canada expressed its support for the proposed amendment to Rule 69.1(a), which would simplify the processes for handling demands at CIPO. However, it observed that there needed to be amendments to the demand form PCT/IPEA/401 to allow for the indication of postponement permitted by the change in Rule 69.1(a)(iii) as it was only possible to indicate postponement under Rule 69.1(d) in the present form.

291. The Delegation of Colombia agreed with the proposal. Under national legislation in Colombia, there were specified time periods before certain procedures were allowed to start which applicants could waive if they wished the procedure to begin earlier. The proposal would increase dialogue during the international preliminary examination to the benefit of the applicant and Offices.

292. The Delegation of Chile welcomed the proposal as it facilitated the internal work of International Preliminary Examining Authorities.

293. The Delegation of Singapore supported the proposal because the early commencement of Chapter II improved the efficiency of downstream examination processes by allowing applications and examiners more time for clarifications.

294. The Delegation of Australia expressed its support for the proposal for the same reasons mentioned by other delegations.

295. The Representative of the Japan Patent Attorneys Association (JPAA) expressed its appreciation for the proposed amendment to Rule 69.1. It highlighted that the amendment would make the international preliminary examination procedure more user friendly and allow greater possibility for International Preliminary Examining Authorities to issue a second written opinion.

296. The Representative of the Asian Patent Attorneys Association (APAA) fully supported the proposal, as it would provide a better quality product by giving applicants and International Searching and Preliminary Examining Authorities more time to propose amendments and make arguments during Chapter II. Statistics suggested that Chapter II was not being used as much

as might have been expected, however, the Representative believed that more time and flexibility would increase the uptake. The Representative further added that the proposal would also dovetail with other measures such as collaborative search and examination and more possibilities for Chapter I and Chapter II to be conducted by different Offices.

297. The Working Group approved the proposed amendments to Rule 69 of the Regulations as set out in the Annex to document PCT/WG/11/20 with a view to their submission to the Assembly for consideration at its next session in September/October 2018.

### **PCT COLLABORATIVE SEARCH AND EXAMINATION PILOT: PROGRESS REPORT**

298. Discussions were based on document PCT/WG/11/15.

299. The Delegation of the European Patent Office introduced the document by reporting that the necessary documentation had been agreed upon and the tools were in place to start receiving pilot requests. The Delegation informed the Working Group that all IP5 Offices had published official notices concerning the commencement of the PCT Collaborative Search and Examination (CS&E) pilot project and detailing the requirements for participation in the pilot, which would begin on July 1, 2018. While the initial pilot only covered international applications filed in English, the EPO intended to open the pilot to applications filed in French and German early in 2019. It thanked the IP5 Offices for their cooperation and the International Bureau for its support regarding the pilot.

300. The Representative of the Japan Intellectual Property Association (JIPA) thanked the EPO for the proposal and wished to make two comments. Firstly, it hoped that the PCT Collaborative Search and Examination pilot project would soon be available for international applications filed in languages other than English, especially Japanese. Secondly, the Representative further underlined that any collaborative search and examination framework available to applicants after the pilot should be offered at a reasonable cost with a flexible work sharing procedure for applicants.

301. The Working Group noted the contents of document PCT/WG/11/15.

### **PCT MINIMUM DOCUMENTATION: STATUS REPORT**

302. Discussions were based on document PCT/WG/11/12.

303. The Delegation of the European Patent Office, as leader of the PCT Minimum Documentation Task Force, informed the Working Group that discussions had started on Objectives B and C described in paragraph 7 of the document, and that the Task Force was also tackling two issues emerging from the discussions of Objective A, namely, the exact scope of patent collections belonging to the PCT minimum documentation and the coverage of utility model collections.

304. The Delegation of the United States of America, as leader of Objective D described in paragraph 7 of the document, informed the Working Group that the USPTO had prepared a survey for International Searching Authorities on the use of non-patent literature and traditional-knowledge based prior art, including databases. The International Bureau would make this survey available through a questionnaire in July for completion by early September in order to prepare for discussion at the next session of the Meeting of International Authorities under the PCT, due to take place in early 2019. The Delegation stated that the goals of the survey were to learn what sources were used by the International Searching Authorities, and how Authorities ascertained the accuracy and trustworthiness of new sources and effective dates. This would enlighten the PCT Minimum Documentation Task Force on the requirements for a database to be useful as a source of prior art. This would be the first step in discussions leading to the

development of criteria and standards for the review, addition and maintenance of non-patent literature and traditional knowledge-based prior art in the PCT minimum documentation.

305. The Delegation of China noted the importance of the work of the PCT Minimum Documentation Task Force and suggested that more information could be shared of up to date inventories of patent and non-patent literature of the PCT Minimum Documentation. The Delegation also stated that it was necessary to conduct adequate studies of the contribution of utility models to prior art searching before deciding whether these should be included in the PCT minimum documentation.

306. The Delegation of Brazil underlined the importance of the work of the PCT Minimum Documentation Task Force. The Delegation noted that the National Institute of Industrial Property of Brazil received a significant number of requests for utility model protection at both a national level and through the PCT, and believed that it was necessary to include utility model databases from all countries that provided for this type of protection, which would be a significant source of prior art for searching by examiners.

307. The Working Group noted the contents of document PCT/WG/11/12.

#### **APPLICATION FORM FOR APPOINTMENT AS AN INTERNATIONAL SEARCHING AND PRELIMINARY EXAMINING AUTHORITY UNDER THE PCT**

308. Discussions were based on document PCT/WG/11/6.

309. The Delegation of India expressed the view that only the questions relating to mandatory requirements should be necessary in the application form, and that inclusion of optional questions did not solve any useful purpose as the candidate Office would be free to avoid such questions, leading to a non-comparable output. Since the application form affected the interests of a much larger group of countries with IP Offices that might desire appointment as an International Searching and Preliminary Examining Authority, the Delegation suggested that the application form could be kept for further analysis by all countries before final adoption in a later year. This could be preferable as more than nine years remained for the use of the application form before appointments of existing International Authorities will be needed to be extended again.

310. The Delegation of the United States of America appreciated the continued work of the International Bureau on the draft application form and continued to support its use for evaluating the appointment of new International Searching and Preliminary Examining Authorities. The Delegation therefore supported recommending that the PCT Assembly should adopt the standard application form this year. The Delegation further highlighted some suggestions on the draft application form in the Annex to the document that it had made during previous discussions and consultations. First, regarding the bracketed text immediately preceding section 1 of the form, the Delegation preferred that the form itself did not make a reference to which sections were mandatory and which were not since it wished that candidate Offices be encouraged to include all information routinely as it would clearly strengthen the overall application and increase the value of the form. The Delegation, however, was not opposed to an indication in paragraph (e) of the "Procedures for Appointment of International Authorities" pointing out which sections of the form were mandatory. The Delegation continued to support the proposal in paragraph 14(b) of the document to add a section which provided an opportunity for a candidate Office to demonstrate the quality of their national search and examination. This could be done through a comparison of search results from family members. More specifically, an Office could show that in cases where an examination on a patent family member was performed at a later stage by other Offices, the later examination of the family members did not uncover more relevant prior art. In the view of the Delegation, applications through the Patent Prosecution Highway provided an ideal sample to carry out this type of analysis. The candidate Office could also provide results of internal quality assessments in order to demonstrate their

level of quality. The Delegation agreed that at this time the Working Group should focus on the form to be used for the evaluation of Offices seeking appointment as a new International Authority and not for the extension of appointment of existing Authorities as the next time this would occur would be several years down the road. However, in general, regarding the extension of appointment for existing Authorities, the Delegation supported in principle that some of the information requested in the proposed standard form should be recorded by operational International Authorities on an ongoing basis in a similar way to the annual reporting on quality management systems. This idea could be considered in more detail, including within the Quality Subgroup of the Meeting of International Authorities, to ensure that the additional ongoing reporting requirements were not too burdensome for Offices.

311. The Delegation of the Russian Federation supported the proposal for a standard application form for appointment as an International Searching and Preliminary Examining Authority, but wished for the further work to continue on the draft. The Delegation supported the amendments proposed in section 6(c) of the draft application form to take into account international applications at the receiving Office of the International Bureau from nationals and residents of the State(s) of the candidate Office, along with the deletion of “Main Offices/States in which priority is claimed from national applications”. The Delegation believed that it should not be necessary to complete the sections concerning breakdown of qualifications in section 2.1(a)(i) of the table “Employees qualified to carry out search and examination” and 2.1(c)(ii) “Other languages in which large numbers of examiners are proficient”, and section 5 on the applicant State(s).

312. The Delegation of the Republic of Korea agreed with the intervention from the Delegation of the United States of America. In 2017, KIPO used the form for its application for extension of appointment as an International Searching and Preliminary Examining Authority along with some other Offices. This process had demonstrated that the form was useful. Although the form contained matters beyond the minimum requirements for appointment as an International Searching and Preliminary Examining Authority specified in Rules 36 and 63, the optional elements helped the Committee for Technical Cooperation in its consideration of the Office or organization seeking appointment.

313. The Delegation of China believed that a standard application form would help determine whether an Office fulfilled the conditions to be appointed as an International Searching and Preliminary Examining Authority, as had been seen during the procedure for the extension of appointment of International Authorities in 2017. On top of the minimum requirements for appointment, the form had some additional information in order to have a better understanding of the search and examination capacities of an Office. The Regulations under the PCT set out the specific requirements for appointment as an International Searching and Preliminary Examining Authority. While the Delegation supported the principle of raising the threshold of applications to improve quality, it was also important to take due consideration of the needs and concerns of developing countries. In order to reflect this balance in the application form, the Delegation believed that the application form should have a moderate threshold in terms of information required from Offices. Specifically, the mandatory parts of the form should not go beyond the requirements in the PCT Rules 36 and 63. In terms of the proposals in paragraph 14 of the document for an Office to indicate the average time that would be allowed for an examiner to conduct international search and examination as well as details of the examiner’s working environment, and for an Office to demonstrate the quality of national search and examination, these details could provide meaningful information to the Committee for Technical Cooperation. However, as it was beyond the scope of the requirements in the PCT Regulations, this information should not be mandatory. With regard to the wording in the draft application form, the Delegation stated that the details were numerous under “special subject matters” in Section 2.1(a)(ii) about training programs, and when SIPO used the form for the extension of its appointment as an International Searching and Preliminary Examining Authority,



it was not considered practical to complete this part. The Delegation therefore requested the phrase “special subject matters” to be deleted.

314. The Delegation of Australia supported the use of the form as a good basis when applying for or extending an appointment as an International Searching and Preliminary Examination Authority. It was important that the form covered all of the minimum requirements of PCT Rules 36.1 and 63.1. Therefore, the Delegation believed that the first two sections should be mandatory, and that section 3 onwards should be strongly advised. In that regard, the first two sections would represent a streamlined way to present the information in order for the Committee for Technical Cooperation to make a considered determination of the application, while the other parts of the form would be used to strengthen the application. The Delegation further supported the changes to the Understanding concerning procedures for appointment as set out under paragraph 15 of the document. With regard to the two specific further proposals for inclusion in the form in paragraph 14 of the document, these could be examined more thoroughly at a later date, but at this point this should not impact on the submission of the form to the PCT Assembly.

315. The Delegation of the European Patent Office agreed with the intervention made by the Delegation of Australia. Referring to the discussions between International Authorities during the informal meeting of the Quality Subgroup in February 2018, the Delegation believed that International Authorities had reached an understanding that the information in the application form supported the Committee for Technical Cooperation in assessing whether an Office met the requirements for appointment as an International Searching and Preliminary Examining Authority, and that the completion of the form should be mandatory as such. While completion of the parts of the form relating to the requirements under Rules 36.1 and 63.1 would be mandatory, the remaining information would support the application and be optional. The Delegation therefore could accept a form that provided a clear distinction between the mandatory and optional parts. Information in the optional parts would provide added value and ensure that all important information relevant to a particular Office was included to the greatest extent. This would be beneficial to all parties concerned because the prospective International Authority could demonstrate better that it met all requirements for appointment as well as contribute to the PCT System as a whole. The EPO therefore recommended the adoption of the application form in its present form, as well as the proposed changes to the Understanding concerning procedures for appointment in paragraph 15 of the document. However, the Delegation proposed that paragraph (e) of the Understanding should include wording to the effect that the application should contain all the information indicated as mandatory. This would highlight that it was necessary to complete at least certain sections of the form while others were optional and supportive to the application.

316. The Delegation of the United Kingdom stated that the use of a standard format for applications from an Office for appointment as an International Searching and Preliminary Examining Authority was invaluable to the Committee for Technical Cooperation in providing its advice on an application. The application form would also help the Office to ensure that all of the relevant information was included in their application to be taken into account by the Committee. The Delegation therefore welcomed further efforts by the Quality Subgroup of the Meeting of International Authorities to approve the mandated use of a form for all new applications for appointment and agreed with the Delegation of Australia that the first two sections of the form should be mandatory, and the rest should be strongly advised.

317. The Delegation of Japan believed that creating a standard application form would be useful for the Committee for Technical Cooperation and the Assembly of the PCT Union to determine whether or not requirements needed to appoint an Office as an International Searching and Preliminary Examining Authority were satisfied. The Delegation therefore hoped that the use of the standard application form would be recommended to the Assembly so that it could be used as soon as possible. Nonetheless, as stated in Circular C. PCT 1519, in

recommending the use of the application form as a required part of the application process, only section 1 and 2 should be mandatory while the other sections should be optional and for information purposes. At a later stage, it could be possible to discuss whether section 3 onwards of the application form should be mandatory after gaining experience on how Offices were completing the form.

318. The Delegation of France stated that it did not oppose the adoption of the standard form for Offices when seeking appointment as an International Searching and Preliminary Examining Authority. However, if adopted, only completion of the parts related to the minimum requirements for appointment should be mandatory, and the form could be further checked in order to have the full trust from users. Completion of the other parts of the form should be voluntarily in order to not toughen the minimum requirements for appointment as an International Authority.

319. The Delegation of Denmark supported the introduction of the draft application form for appointment as an International Searching and Preliminary Examining Authority in its present format and bringing the draft form to the next session of the PCT Assembly. Sections 1 and 2 of the form should be mandatory as it covered items that would be useful for the evaluation of the application. Overall, the form provide a holistic picture of the Office seeking appointment and its motivation for becoming an International Authority, even if some of the information requested might appear to be additional to the minimum requirements stipulated in Rules 36.1 and 63.1.

320. The Delegation of Sweden agreed with the comments made by the Delegations of the European Patent Office and the United Kingdom regarding the role of voluntary information provided in the draft application form for appointment as an International Searching and Preliminary Examining Authority. However, it was important to discuss how voluntary information would be evaluated so Member States would have guidance on how to consider the information and avoid arriving at incorrect conclusions or misinterpretations from the voluntary parts.

321. The Delegation of Chile supported the introduction of the application form for appointment as an International Searching and Preliminary Examining Authority and underlined that the form should be clear on which parts were obligatory and which were optional.

322. The Secretariat acknowledged the support from delegations for submitting the draft application form appointment as an International Searching and Preliminary Examining Authority, with Sections 1 and 2 being mandatory and Sections 3 to 7 being optional, but strongly recommended. There had also been support from some delegations for the proposals in paragraph 14 of the document, which the Secretariat suggested could be incorporated into the (non-mandatory) Section 6 concerning the profile of patent applications at the applicant Office.

323. The Working Group invited the International Bureau to prepare a document for consideration by the PCT Assembly at its next session in September/October 2018 setting out a proposal for introducing an application form for appointment, based on the proposal in document PCT/WG/11/6, taking into account the comments raised in paragraphs 309 to 321, above, as well as seeking improvements to the presentation and layout of the form.

## **PCT SEQUENCE LISTING STANDARD**

### **(A) SEQUENCE LISTINGS TASK FORCE: STATUS REPORT**

324. Discussions were based on document PCT/WG/11/13.

325. The Delegation of the European Patent Office introduced the document, which reported on the work of the Sequence Listings Task Force in the preparation for the translation from WIPO Standard ST.25 to ST.26.

326. The Working Group noted the contents of document PCT/WG/11/13.

(B) IMPLEMENTATION OF WIPO STANDARD ST.26 IN THE PCT

327. Discussions were based on documents PCT/WG/11/24 and 24 Cor.

328. The Secretariat introduced the document by explaining that the preliminary draft amendments to the PCT Regulations and modifications to the Administrative Instructions were intended as a starting point for discussion. At this stage, the Working Group was invited to give guidance to the International Bureau and the Sequence Listings Task Force towards developing a formal proposal for consideration at a later date, when more detailed comments could be made. In particular, the Working Group was invited to highlight any significant issues that might need investigation in the preparation of a formal proposal in order that the PCT legal framework and IT systems would operate smoothly after the implementation of WIPO Standard ST.26.

329. The Delegation of the United States of America stated that it would provide the International Bureau with detailed comments on the proposal.

330. The Delegation of China highlighted the need to consider existing laws and practices in the implementation of WIPO Standard ST.26. In particular, the Delegation hoped that there would be an appropriate transitional period for the entry into force of the amendments and modifications, noting that after the transition date, there would be applications with a priority application containing sequence listings filed under WIPO Standard ST.25. The Delegation expressed the wish that the common authoring and validation tool would assist applicants in this situation where both ST.25 and ST.26 were involved, and that it would be available in Chinese. Finally, the Delegation reiterated its support for the transition to ST26, and underlined that it would need to adapt its own legal framework for implementation of the new standard.

331. The Delegation of Canada wished to seek confirmation of its understanding of two points in the document. First, while Section 313(c) of the Administrative Instructions as proposed required any sequence listing that was part of an international application filed on paper to be filed on a physical medium, under Rule 89*bis* receiving Offices had to permit the filing of international applications and other related documents and correspondence on paper. The Delegation therefore understood that Article 14 did not provide any legal basis for not according an international filing date where an application filed on paper contained a sequence listing. Second, the Delegation understood that a sequence listing that had been omitted from an international application could be incorporated as a missing part with the international filing date being accorded as the date of submission of the missing sequence listing unless this was contained in a priority document, in which case incorporation of the missing part by reference could be possible. Furthermore, while the official languages of Canada were English and French, the Delegation stated that, in the view of CIPO, an applicant should not be required to provide English translations of language-dependent free text, and the authoring and validation tool for submitting sequence listings under ST.26 should provide features to translate any free text that was not originally provided in English into this language.

332. The Delegation of the European Patent Office stated that the draft amendments to the PCT Regulations and modifications to the Administrative Instructions were an excellent basis for further discussions within the Sequence Listings Task Force. The Delegation had prepared a detailed set of comments for the Task Force, and highlighted some of the main aspects of these comments to the Working Group. First, in relation to the proposed drafting in new Rule 5.2(a-*bis*), the Delegation suggested to replace the wording "any file contained in the international application" with "any file together with the international application" as a sequence

listing filed on the international filing date should be part of the international application pursuant to Rule 13<sup>ter</sup>. Second, the Delegation believed that it should be possible to file a sequence listing as part of the description of an application filed electronically in XML format. Consequently, the Delegation proposed that Section 204(a)(vii) of the Administrative Instructions should take this into account; the draft modifications in Annex II to the document showed this section as being deleted due to sequence listings in future only being submitted as separate electronic files. Third, the Delegation stated that it should still be possible to file a sequence listing under Rule 13<sup>ter</sup>.1(a) where a sequence listing contained or deemed to be contained in the international application was not in compliance with the ST.26, which would affect the drafting in Section 303(c) of the Administrative Instructions and other parts. Finally, with regard to paragraphs 19 and 20 of Annex C, the Delegation stated that the requirement for the applicant to make a statement that the sequence listing did not contain information beyond what was disclosed in the application as filed should apply to the correction, clarification and amendment of sequence listings and those filed under Rule 13<sup>ter</sup> subsequent to the international filing date and not forming part of the international application. Furthermore, the Delegation indicated that it would like the Sequence Listings Task Force to explore provisions dealing with the transition from ST.25 to ST.26 such as handling priority claims of applications containing sequence listings in accordance with ST.26, dealing with potential added or deleted matter, and issues associated with free text.

333. The Working Group noted the contents of document PCT/WG/11/24 and 24 Cor. and invited the International Bureau to continue working towards an implementation of WIPO Standard ST.26 in the PCT, which would be effective and consistent with the needs of national Offices.

#### **USE OF NATIONAL CLASSIFICATION SYMBOLS IN INTERNATIONAL APPLICATIONS**

334. Discussions were based on document PCT/WG/11/8.

335. The Secretariat stated that the responses received to Circular C. PCT 1536 were all positive regarding the proposal to allow national classification information to be transmitted as part of the international search report in XML, or as a separate file in machine-readable format at the same time as the international search report. Among the features in the proposal, the responses highlighted three of particular importance: first, that Cooperative Patent Classification (CPC) symbols should only be provided by International Searching Authorities which have proper experience in classification using that system; second, that the information should be provided in a suitable electronic format rather than the International Bureau trying to retype things from paper; and finally, that International Searching Authorities should not be obliged to provide that information even if they have the relevant experience with the CPC. Most Offices with this experience indicated that they would indeed like to do so, but that implementing the necessary technical measures would take some time and could be dependent on other issues such as producing the international search report in XML format. The Secretariat stated that the International Bureau would be able to provide the option for transmission of national classification information as soon as it had made the necessary technical changes, with International Searching Authorities then being able to make use of this possibility when ready to do so. The outstanding issues with the proposal related to preparing the technical specifications for transmitting the classification information to the International Bureau, and for passing this information from the International Bureau to other interested parties. As stated in paragraph 8 of the document, the International Bureau hoped that making the technical changes could be handled by further written consultations.

336. The Delegation of the European Patent Office stated that providing for two options for the transmission of Cooperative Patent Classification (CPC) and other national patent classification symbols to the International Bureau was a pragmatic approach, which would allow more Offices to transmit classification symbols in a machine-readable format. Regarding the accessibility of national classification symbols from the PATENTSCOPE database, the EPO supported the

proposal in paragraph 23 of Circular C. PCT 1536 (reproduced in paragraph 6 of the document), namely, the inclusion in PATENTSCOPE of the file containing the International Patent Classification (IPC) and any national classification symbols produced by automated extraction at the time of international publication of the symbols from the international search report, along with any separate file containing the CPC and national classification symbols. The Delegation concluded by indicating agreement with the next steps proposed in the document.

337. The Delegation of the United States of America stated that it continued to support the general concept of providing certain national classifications, and specifically the Cooperative Patent Classification (CPC), with published international applications, and agreed that providing this information in addition to the International Patent Classification (IPC) symbols would be beneficial to Offices and users. Twenty-two Offices currently classified patent applications using CPC, and it was used for search purposes by more than 45 Offices. As such, the USPTO supported the use of CPC symbols in addition to IPC symbols in international search reports where the International Searching Authority had experience and expertise in the CPC. With regard to the inclusion of national classification symbols on the front page of the international publication, rather than merely including the information in the PATENTSCOPE database and in the XML data associated with the publication, the USPTO continued to support the inclusion of the information in both locations, and considered that there was further value to Offices, applicants and third parties if national classification symbols were present on the front page. The USPTO supported the proposal in paragraph 23 of Circular C. PCT 1536 (reproduced in paragraph 6 of the document) to include in PATENTSCOPE the file containing the International Patent Classification (IPC) and any national classification symbols produced by automated extraction at the time of international publication of the symbols from the international search report, along with any separate file containing the CPC and national classification symbols. The USPTO also supported the proposal in paragraph 19 of Circular C. PCT 1536 (reproduced in paragraph 6 of the document) to make changes to ePCT to enable CPC symbols to be entered in machine-readable format in the international search report, which could be validated against the most recent version of the CPC. In conclusion, the Delegation supported the International Bureau moving forward with the proposal to include CPC symbols related to the international application in the PATENTSCOPE database.

338. The Delegation of China recognized the advantages of using national classification symbols in international applications. However, the Delegation pointed out the different situations of Offices in terms of its practical implementation; SIPO would have difficulties in this regard. While SIPO was considering the feasibility of using national classification symbols in international applications, the Delegation hoped that the International Bureau would assess the technical requirements of the work and report to PCT Contracting States and International Searching Authorities.

339. The Delegation of the Republic of Korea thanked the International Bureau for developing the proposal in the document, which had been based on an original proposal from the Republic of Korea discussed at the ninth session of the Working Group (document PCT/WG/9/26). The intention of the original proposal had been to reduce overlapping work between the International Searching Authority and designated/elected Offices. While the Delegation supported the proposal in the document, it also considered that inclusion of national classification symbols on the front page of the published international application would be helpful for the applicant.

340. The Delegation of Canada expressed appreciation for the progress made on the proposal in the document. In the short term, CIPO would use a machine-readable formatted file for transmission of the classification information via a separate data package. However, the long term plan was to incorporate national classification data into the international search report in XML for a single export. CIPO predicted that it would have the capacity to add Cooperative Patent Classification (CPC) symbols to international applications sometime in early 2020. The Delegation added that it was necessary to determine how sufficient experience with using the

CPC could be ascertained. To that end, the Delegation indicated that it would individually approach Offices which presently exported CPC symbols. The Delegation also expressed interest in knowing the percentage of international search reports that were created using ePCT in terms of having assurance from the International Bureau that the benefits of implementing the technical changes to ePCT would be justified in view of the cost. In conclusion the Delegation looked forward to participating in the consultations on the technical changes that would be required to implement the proposal.

341. The Delegation of Colombia stated that the proposal would make more information available on international applications, which would be better for Offices and users of the PCT System. However, the Delegation drew a distinction between providing the national classification information in XML format or available as a separate archive; in the latter case, various tasks would need to be performed to access the information. It was therefore desirable to have information in an accessible format.

342. The Secretariat, in response to the comments made by the Delegation of Colombia, indicated that the International Bureau intended to make the classification symbols available to all types of user, including those interested in machine-readable data and those using PATENTSCOPE in a web browser. It was important that Offices read the forthcoming consultation circulars and responded to ensure that their interests would be properly covered, and it was important for Offices to be able to access the information easily.

343. The Delegation of Japan supported that proposal to allow transmission of national patent classification symbols on international applications using either of the two ways proposed in the document. Moreover, the Delegation believed that inclusion of national classification symbols on the front page of the international publication had disadvantages, as had been stated in paragraph 11 of Circular C. PCT 1536 (reproduced in paragraph 5 of the document).

344. The Delegation of the United Kingdom supported the proposal in the document, and underlined that publication of CPC data relating to international applications was useful for many Offices. However, to ensure that the quality of published classification data remained the Delegation agreed that the transfer of such data to the International Bureau should only take place if International Searching Authorities had experience of applying the CPC. Furthermore, for the reasons provided in Circular C. PCT 1536, publication of CPC and national classification symbols on PATENTSCOPE was preferable to the inclusion of this data on the front page of the publication of an international application.

345. The Representative of the Japan Intellectual Property Association (JIPA) stated that including CPC symbols on the front page of the international publication in addition to the PATENTSCOPE database had merit in view of usability of this information for the public.

346. The Working Group endorsed the proposal in document PCT/WG/11/8 to continue consultations, by means of PCT Circulars, on technical changes required to receive national classification symbols from International Searching Authorities.

#### **LANGUAGES OF INTERPRETATION IN THE PCT WORKING GROUP**

347. Discussions were based on document PCT/WG/11/3.

348. The Delegation of Canada supported the proposal.

349. The Delegation of Saudi Arabia thanked the Delegation of China for the proposal to provide interpretation in the other United Nations languages.

350. The Delegation of Spain agreed with the proposal.

351. The Delegation of Oman underscored the importance of providing interpretation in the six United Nations languages in accordance with what was applied in other WIPO Committees.

352. The Delegation of the Russian Federation expressed its gratitude to the International Bureau and the Director General for the proposal to add the other three United Nations languages to English, French and Spanish that were presently provided as languages of interpretation in session of the Working Group.

353. The Delegation of the Republic of Korea welcomed the proposal to expand the working languages of the PCT Working Group. It observed that the usability of the PCT by Chinese applicants had increased and that such a trend contributed positively to the PCT. It was therefore appropriate to provide interpretation in all six United Nations languages.

354. The Delegation of the United Arab Emirates stated that the provision of interpretation in additional languages facilitated communication and expressed its support for the proposal.

355. The Delegation of South Africa, speaking on behalf of Brazil, the Russian Federation, India, China and South Africa (BRICS), expressed support for the proposal.

356. The Delegation of Algeria welcomed the proposal. It expressed its gratitude to the Secretariat for providing interpretation in the six United Nations languages and thanked the Delegation of China for the request to expand the languages of interpretation, which facilitated the involvement of all delegations.

357. The Delegation of Egypt supported the proposal to expand the languages of interpretation at the Working Group and expressed its thanks to the Secretariat and the Delegation of China for the proposal.

358. The Delegation of Brazil supported the proposal and believed that it would increase participation in the Working Group, particularly from delegations of developing countries.

359. The Delegation of Belarus thanked the Delegation of China for the request to expand the coverage of interpretation languages at the Working Group and supported WIPO's linguistic policy regarding the provision of simultaneous interpretation. The Delegation also expressed gratitude for being able to have simultaneous interpretation in Russian at the present session.

360. The Delegation of Colombia agreed with the proposal. However, it expressed concern that the proposal depended on the availability of funds. The Delegation hoped that the Program and Budget Committee would consider the proposal as one of its highest priorities so that interpretation in the six United Nations languages would become a general principle.

361. The Delegation of China thanked the International Bureau for its work on the proposal, for which it reiterated its support. The PCT System was one of the four global IP registration systems provided by WIPO and was one of the most influential due to the number of users. As countries worldwide placed increasing value on innovation, the PCT System had a growing importance in facilitating development and also in the operation of WIPO. As an active member of the PCT System, the Delegation believed that the proposal would help users engage more deeply in discussions on the agenda items of the Working Group which had significance in contributing to a balanced development of the PCT System.

362. The Chair concluded that there was unanimous support for the proposal and thanked the interpreters for facilitating clear and effective communication during the Working Group.

363. The Working Group decided that future sessions of the Working Group will be provided with interpretation in the six official languages of the United Nations, subject to the availability of funding.

## **OTHER MATTERS**

364. The Working Group agreed to recommend to the Assembly that, subject to the availability of sufficient funds, one session of the Working Group should be convened between the September/October 2018 and September/October 2019 sessions of the Assembly, and that the same financial assistance that was made available to enable attendance of certain delegations at this session should be made available at the next session.

365. The International Bureau indicated that the twelfth session of the Working Group was tentatively scheduled to be held in Geneva in May/June 2019.

## **SUMMARY BY THE CHAIR**

366. The Working Group noted that the contents of the Summary by the Chair in document PCT/WG/11/26 and that the official record would be contained in the present report of the session.

## **CLOSING OF THE SESSION**

367. The Chair closed the session on June 22, 2018.

*368. The Working Group adopted this report by correspondence.*

[Annex follows]



LISTE DES PARTICIPANTS/  
LIST OF PARTICIPANTS

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