

## **Patent Cooperation Treaty (PCT) Working Group**

**Seventeenth Session**  
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### **COLOR DRAWINGS**

*Document prepared by the International Bureau*

#### **SUMMARY**

1. The ability to file color drawings and have them accepted in both the international and national phases is one of the most significant wishes for many PCT applicants. Technical preparations towards this are under way. In preparing amendments to Rule 11 to allow color drawings, it is necessary to consider from a policy perspective whether the applicant should be entirely free to choose the form of drawing or alternatively whether the rule should offer guidance or include restrictions that Offices could enforce.

#### **BACKGROUND**

2. The expectation of pure black and white line drawings is deeply embedded into the legal and technical frameworks of the patent system. PCT Rule 11.13(a) states:

“(a) Drawings shall be executed in durable, black, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes without colorings.”

3. Most national regulations include an equivalent requirement, although some have relaxed it and others have policies of waiving this restriction in certain circumstances – either for the reason that a color drawing is essential to processing in a specific case, or else accepting greyscale photographs and diagram shading (relaxing the “lines and strokes” requirement, without allowing the use of other colors).

4. The ability to file and reliably process color drawings is one of the primary wishes of PCT users.

5. The International Bureau is updating its processing and publication systems. One of the goals is to permit the processing of color drawings. For some years, the International Bureau has made the application body available to the public through PATENTSCOPE in the exact format in which it is filed, provided that this is supplied by the receiving Office. This includes the case of PDF files containing color drawings. However, the official international publication is always in black and white, and includes automated conversions of any color drawings to a pure black and white file format unless black and white versions have been submitted as corrections in the meantime.

6. The International Bureau intends shortly to offer an unofficial additional view of the international publication in the case of applications processed in XML format, showing any drawings in their original colors and resolution, but further technical and legal progress is required before this can be offered as the main publication route.

### **ABILITY TO PROCESS COLOR**

7. The Text Processing Task Force that will hold its first session from January 29 to 31, 2024, is looking at some of the issues associated with creating technical systems to handle the filing and processing of documents including color drawings and it is hoped to present a proposal to the next session of the Working Group including a fundamental review of PCT Rule 11 (see documents PCT/EF/TPTF/1/2 and PCT/EF/TPTF/1/3). This should reflect the needs and expectations of a modern patent system, including defining acceptable image file formats to allow the filing and publication of photographs and color drawings. It should also leave open the possibility of adding other formats without further major upheaval, such as 3D drawings and videos, if the need and suitable standards are agreed.

### **POLICY OF ACCEPTING DIFFERENT TYPES OF DRAWINGS**

8. When considering how to revise Rule 11 to support color drawings, it will also be necessary to consider the policy of the types of drawings allowed to deliver useful patent information and facilitate efficient patent examination.

9. The definition of a drawing is not fully clear. Rule 11.13(a) gives an expectation of a drawn diagram. Rule 11.11 makes clear that flowcharts can be included. In practice, most Offices accept photographs and equivalent images, at least in certain cases where this is the only practical way of recording the output of a scientific instrument. Some jurisdictions may require the applicant to make a statement that the use of color or a photograph is necessary as the only practical way to disclose the subject matter, but in principle it is already generally accepted that drawings can include a variety of types of image that are not drawn.

10. There is also some overlap between drawings, formulae, tables and similar matter, allowing them to be presented alternatively in different locations. Rule 11.10(a) states that “the request, the description, the claims and the abstract shall not contain drawings.” However, it is common for complex tables and formulae to be represented as images embedded within the text of the description and claims; they are sometimes also included in the drawings.

11. It seems necessary that a new Rule 11 should permit the term “drawings” to be interpreted very broadly where this is appropriate to allowing efficient disclosure. However, this does not necessarily mean that applicants should be entirely free to choose the form of disclosure that they use. It is clearly desirable that it should be possible at least in some cases to submit color drawings and photographs to support the disclosure of an international application. For some inventions, it can be extremely difficult to make a concise and effective disclosure without it. On the other hand, in other cases, a well prepared traditional technical drawing using only black lines might convey the essence of an invention far more quickly and clearly than a photograph of a physical embodiment of the invention.

12. A new PCT Rule 11 allowing color drawings (including photographs and potentially in future extending this to other forms of disclosure such as videos and 3D models), will need to consider whether the applicant should be free to disclose an invention in any way seen fit, or whether some guidance should be given as to when different types of non-written content may be used. If complete freedom is given, applicants may choose the cheapest or easiest form of disclosure that meets the legal need for completeness, even if this is then less effective than a traditional drawing for the purposes of patent information or efficient examination.

13. If the right to provide color drawings or other non-written disclosure aids is intended to be used only in limited circumstances, it is necessary to consider whether this should be supported by provisions in Rule 11 or elsewhere as guidance, or alternatively as an enforceable requirement. During the international phase of the PCT there is no practical opportunity for correcting the content of drawings for substantive reasons and consequently any color drawing that meets the technical requirements would need to be accepted. However, PCT Rule 11 is also relevant to national phase processing and to national applications (either as a result of implementation of the Patent Law Treaty or else due to harmonization of national and international requirements for practical reasons).

14. Consequently, comments are welcome on whether national Offices would see a need to provide either guidance or else enforceable limitations on the use of color drawings and, if so, whether the limitations should be around the use of color or rather are more concerned with the nature of an image, such as the use of photographs rather than technical drawings that might include color elements.

15. Some Offices currently permit the use of color drawings in limited circumstances. However, it may be that some limitations are in place for technical reasons rather than as a matter of policy. For example, an Office might have a system allowing color drawings to be submitted, but which is not fully integrated into other services and less efficient for processing, so that it is desirable to use it only when absolutely necessary. It is therefore important to distinguish between the need for a long-term limitation on the format of drawings with a policy justification, and the need for a transitional period catering for the overcoming of technical or legal difficulties surrounding the relaxing of the current stringent requirements on drawings.

*16. The Working Group is invited to comment on the issues set out in document PCT/WG/17/12.*

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