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ASSEMBLY

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SCHEDULE OF FEES ANNEXED TO THE REGULATIONS UNDER THE PCT ;
DIRECTIVES FOR ESTABLISHING NEW EQUIVALENT AMOUNTS
OF CERTAIN FEES

Document prepared by the International Bureau

SCHEDULE OF FEES ANNEXED TO THE REGULATIONS UNDER THE PCT

Amounts of International Filing Fee and Handling Fee

1. At its thirty-first (18th extraordinary) session, held in September - October 2002, the Assembly adopted amendments of the Regulations under the Patent Cooperation Treaty (PCT) relating, *inter alia*, to fees, including amendments of the Schedule of Fees annexed to the Regulations (see the report of the Assembly, document PCT/A/31/10). Certain amendments of the Schedule of Fees, relating to the filing of international applications in electronic form, came into force on October 17, 2002 (see document PCT/A/31/10, Annex III and Annex VI, paragraph 1). Other amendments of the Schedule of Fees, and also amendments of Rule 15, consequential on the introduction of a new concept and operation of the designations system and on the replacement of the existing basic and designations fees by a single international filing fee, were adopted to come into force on January 1, 2004 (see document PCT/A/31/10, Annex V and Annex VI, paragraph 3).

2. In adopting the amendments, the Assembly agreed that "the amount of the new international filing fee would be determined in the course of preparing the program and budget of WIPO for 2004 -2005, taking into consideration the proposed level of budgetary resources, including server requirements, as outlined in document PCT/A/31/6, paragraphs 59 to 61" (see document PCT/A/31/10, paragraph 50).
3. Furthermore, the Assembly agreed "that considerations should be given to incorporating the handling fee (see Rule 57 and the Schedule of Fees) into the new international filing fee, and that proposed amendments of the Regulations should be prepared by the International Bureau accordingly and submitted to the Assembly in 2003 for consideration in conjunction with the fixing of the amount of the international filing fee" (see document PCT/A/31/10, paragraph 51).
4. The Program and Budget Committee at its sixth session, held in April -May 2003, in considering the Proposed Program and Budget 2004 -2005 (document WO/PBC/6/2), requested that its report be considered by the fourth session of the Working Group on Reform of the PCT, which was held in May 2003 (see document WO/PBC/6/4, paragraph 116(iv)).
5. At its fourth session, the Working Group agreed that "in view of the strong support for a separate handling fee [...], the International Bureau would prepare a revised proposal with regard to the amounts of the international filing fee and the handling fee, the latter being retained as a separate but reduced fee, taking into account the need to generate the same level of income from fees as mentioned in documents PCT/R/WG/4/8 and WO/PBC/6/4" (see the summary of the session by the Chair, document PCT/R/WG/4/14, paragraph 32).
6. It is therefore proposed to fix the amount of the new international filing fee at 1,450 Swiss francs and to reduce the handling fee from 233 to 200 Swiss francs, as presented in the Revised Proposal for Program and Budget 2004 -2005 appearing in document WO/PBC/7/2.

Fee Reduction Where International Application Filed in Electronic Form

7. The Schedule of Fees presently accords a fee reduction of 200 Swiss francs in cases where the international application is filed on paper together with a copy in electronic form or where it is filed in (fully) electronic form; see the Schedule of Fees, item 4, as amended by the Assembly at its thirty -first session (see document PCT/A/31/10, Annex III). Certain delegations noted the advantages for applicants and Offices which would result from the streamlined handling of international applications where they were filed in fully electronic form, and stressed the importance of promoting electronic filing and of giving applicants an incentive to file international applications in electronic form in the form of a fee reduction.
8. It is now proposed to change the reductions in the international filing fees that are applicable in cases where the international application is filed in electronic form in such a way as to encourage use of the most beneficial format for such applications. The greatest efficiency, in terms of data entry, optical character recognition, storage, handling and searching possibilities, will be gained where applications are filed in character coded format (rather than, for example, image based format). The mixed mode PCT -EASY procedure, which was always intended as the forerunner to full electronic filing, requires the handling and storage of paper, a floppy diskette and the electronic content of the diskette, and thus offers diminished benefits as full electronic filing is introduced.

9. Having regard to those considerations, it is proposed to fix the fee reductions associated with full electronic filing as follows: 300 Swiss francs where the text of the description, claims and abstract is presented in character coded format (which enables the greatest benefits of the use of XML (extensible markup language) format to be derived); and 200 Swiss francs where the text of the description, claims and abstract is not presented in character coded format (for example, as PDF (portable document format) files). It is also proposed to reduce, from 200 to 100 Swiss francs, the present fee reduction applicable where the application is filed with a request prepared using the PCT-EASY software.

10. Further details concerning the fee reductions will need to be included in the Administrative Instructions. In particular, it will be necessary to review Section 102bis(c), which concerns PCT-EASY filings, and Section 707(b), to relate the reductions in the case of full electronic filing to the technical details set out in Annex F. The International Bureau is presently undertaking consultations, pursuant to Rule 89.2(b), on a number of proposals for modification of the Administrative Instructions designed to implement the amendments of the Regulations which will come into force on January 1, 2004, and will soon make further proposals concerning Sections 102bis(c) and 707(b).

Fee Reduction for Applicants from Certain Countries

11. The Schedule of Fees presently accords a fee reduction of 75% to applicants who are natural persons and who are nationals of and reside in States whose per capita national income is below US\$3,000; see item 5 in the current Schedule of Fees (renumbered as item 4 in the amended Schedule due to come into effect on January 1, 2004).

12. In order to make the PCT more accessible to applicants from least developed countries, it is proposed to make the 75% fee reduction available, in addition to the case presently covered, to all applicants who are nationals of and reside in least developed countries, whether or not they are natural persons. The reduction for applicants from least developed countries would thus be available, for example, to small and medium-sized enterprises, universities, etc., as well as to natural persons.

13. The United Nations has established a list of least developed countries which is subject to regular review according to specified criteria. There are presently 49 countries on that list, which is reproduced, together with information related to intellectual property concerning such countries, in WIPO Publication No. 486, "Intellectual Property Profile of the Least Developed Countries."

Proposed Amendments of the PCT Fee Schedule

14. It is proposed to introduce the new fee amounts and reductions by amending the Schedule of Fees as shown in Annex I to this document. Text proposed to be deleted is struck through and text proposed to be added is underlined.

15. As to the entry into force of the amended Schedule and transitional arrangements, it is proposed that the Assembly make decisions consistent with those made by the Assembly in relation to the previously adopted amendments that will enter into force on January 1, 2004 (see document PCT/A/31/10, paragraph 45, Annex V and Annex VI, paragraph 3).

16. It is accordingly proposed that the amendments of the Schedule of Fees set out in Annex I:

(a) shall enter into force on January 1, 2004, and shall apply to any international application whose international filing date is on or after January 1, 2004, provided that the Schedule of Fees as worded before its amendment (b) (neither the present amendments nor by those set out in document PCT/A/31/10, Annex V) shall continue to apply to any international application which is received by the receiving Office before January 1, 2004, and is accorded an international filing date that is on or after January 1, 2004;

(b) shall not apply to any international application whose international filing date is before January 1, 2004, provided that the following provisions shall apply to any international application in respect of which a demand for international preliminary examination is filed on or after January 1, 2004, whether the international filing date of the international application is before, on or after January 1, 2004:

(i) item 2 of the Schedule of Fees as amended; and

(ii) item 4 of the Schedule of Fees as amended, insofar as it relates to the handling fee.

DIRECTIVES FOR ESTABLISHING NEW EQUIVALENT AMOUNTS OF CERTAIN FEES

17. New equivalent amounts in various currencies of certain fees are established from time to time by the Director General in accordance with directives of the Assembly (see Rules 15.2(d), 16.1(d) and 57.2(e)). Directives have been established by the Assembly and modified from time to time, the current text being that as modified by the Assembly at its twenty-fourth (11th ordinary) session in September - October 1997 (see document PCT/A/XXIV/10, paragraph 17 and Annex IV).

18. Consequent on the amendments of Rule 15 adopted by the Assembly at its thirty-first session with effect from January 1, 2004 (see document PCT/A/31/10, paragraph 45, Annex V and Annex VI, paragraph 3), it is proposed to modify the directives. The modifications need, in particular, to take into account the introduction of the new international filing fee which replaces the basic and designation fees.

19. It is further proposed to modify the directives, having regard to the fact that the proposed new amount of the international filing fee is more than 1,000 Swiss francs, by enabling the Director General to initiate the consultation process with a view to establishing new equivalent amounts of that fee when the exchange rates fluctuate by plus or minus 5% instead of plus or minus 10% as presently applies in respect of the basic and designation fees, whose amounts are significantly below 1,000 Swiss francs. A modification to similar effect was adopted by the Assembly at its twenty-fourth session in respect of the search fees charged by the International Searching Authorities in cases where the amount was equal to or higher than 1,000 Swiss francs (see document PCT/A/XXIV/10, Annex IV, paragraph (4)).

20. The proposed modified text of the directives is contained in Annex II to this document. Text proposed to be deleted is struck through and text proposed to be added is underlined.

21. *The Assembly is invited:*

(i) to adopt the proposed amendments of the Schedule of Fees annexed to the Regulations under the PCT appearing in Annex I;

(ii) to decide that those amendments shall enter into force on January 1, 2004, in accordance with the application and transitional arrangements set out in paragraph 15, above;

(iii) to adopt the proposed modifications of the directives of the Assembly relating to the establishment of new equivalent amounts of certain fees appearing in Annex II; and

(iv) to decide that those modifications shall enter into force on January 1, 2004.

[Annex I follows]

ANNEXI

PROPOSED AMENDMENT OF
THE REGULATIONS UNDER THE PCT

SCHEDULE OF FEES

(as proposed to be amended with effect from January 1, 2004)

1

| Fees | Amounts |
|---|---|
| 1. International filing fee: (Rule 15.2) | 1,450 650 Swiss francs plus 15 Swiss francs for each sheet of the international application in excess of 30 sheets |
| 2. Handling fee: (Rule 57.2) | <u>200</u> 233 Swiss francs |

Reductions

3. The international filing fee is reduced by the following amount ~~200 Swiss francs~~ if the international application is, in accordance with and to the extent provided for in the Administrative Instructions, filed:

- | | |
|--|-------------------------|
| (a) on paper together with a copy thereof in electronic form ; or | <u>100 Swiss francs</u> |
| (b) in electronic form ; where <u>the text of the description, claims and abstract is not in character coded format:</u> | <u>200 Swiss francs</u> |
| (c) <u>in electronic form where the text of the description, claims and abstract is in character coded format:</u> | <u>300 Swiss francs</u> |

4. The international filing fee ~~All fees payable~~ (where applicable, as reduced under item 3) and the handling fee are reduced by 75% if the international application is for international applications filed by :

- | |
|---|
| (a) <u>an</u> any applicant who is a natural person and who is a national of and resides in a State whose per capita national income is below US\$3,000 (according to the average per capita national income figures used by the United Nations for determining its scale of assessments for the contributions payable for the years 1995, 1996 and 1997); <u>or</u> |
| (b) <u>an applicant, whether a natural person or not, who is a national of and resides in a State that is classified as a least developed country by the United Nations;</u> |

provided that, if there are several applicants, each must satisfy ~~the these~~ criteria set out in either sub -item (a) or (b).

[Annex II follows]

¹ The text on the basis of which the presently proposed amendments are shown include the amendments previously adopted by the Assembly to enter into force on January 1, 2004 (see document PCT/A/31/10, paragraph 45, Annex V and Annex VI, paragraph 3).

ANNEXII

PROPOSED MODIFICATIONS OF THE
DIRECTIVES OF THE PCT ASSEMBLY RELATING TO THE
ESTABLISHMENT OF NEW EQUIVALENT AMOUNTS OF CERTAIN FEES
(*as proposed to be modified with effect from January 1, 2004*)¹

The Assembly ~~established~~ **establishes** in the following terms the directives referred to in Rules 15.2(d), 16.1(d) and 57.2(e), it being understood that, in the light of experience, the Assembly may at any time modify these directives:

(1) At the time of each ordinary session of the Assembly, the Director General shall undertake consultations along the lines of the consultations referred to in Rules 15.2(b) and 57.2(c) and shall establish new equivalent amounts of the ~~basic fee, designation fee—international filing fee and handling fee~~ in currencies other than Swiss francs according to the exchange rates applicable on the first day of that session, so that their amounts correspond to the amount of the fees expressed in Swiss currency. Where such an adjustment would only slightly affect the income of the International Bureau, the Director General may decide notto proceed with it. Unless otherwise decided by the Assembly, any adjustment under this paragraph shall enter into force on the first day of the calendar year subsequent to the ordinary session referred to above.

(2) Where for more than 30 consecutive days, the exchange rate between Swiss currency and any other currency is by at least 5% ~~higher, or by at least 5% lower,~~ than the last exchange rate applied,

- (i) so far as Rule 15.2(d) is concerned, any receiving Officer referred to in the second sentence of Rule 15.2(b) or
- (ii) so far as Rule 57.2(e) is concerned, any receiving Officer or International Preliminary Examining Authority referred to in the second sentence of Rule 57.2(c)

may ask the Director General to newly establish the amount of the ~~basic fee, designation fee—international filing fee and/or handling fee~~ in that currency according to the exchange rate prevailing on the day preceding the day on which the request is made. The Director General shall proceed accordingly, as provided in Rules 15.2(d) and 57.2(e).

(3) Where for more than 30 consecutive days, the exchange rate between Swiss currency and any other currency is by at least 10% higher, or by at least 10% lower, than the last exchange rate applied, the Director General shall,

- (i) so far as Rule 15.2(d) is concerned, after consultation with the receiving Officer referred to in the second sentence of Rule 15.2(b) or
- (ii) so far as Rule 57.2(e) is concerned, after consultation with the receiving Officer or International Preliminary Examining Authority referred to in the second sentence of Rule 57.2(c)

¹ The text of the directives as presently in force is that which appears in Annex IV of document PCT/A/XXIV/10.

and as provided in Rules 15.2(d) and 57.2(e), as the case may be, newly establish the amount of the ~~basic fee, designation fee~~ international filing fee and/or handling fee in that currency according to the exchange rate prevailing on the day preceding the day on which the consultation is initiated by the Director General. Where such adjustment would only slightly affect the income of the International Bureau, the Director General may decide not to proceed with it.

(4) As far as the international filing fee is concerned, the Director General may decide to apply paragraph (3) as if the percentage referred to in that paragraph was 5%.

~~(4)~~(5) As far as the search fee of any International Searching Authority in any currency other than the currency or currencies fixed by that Authority is concerned, paragraphs (1) to (3) shall, to the extent applicable, apply *mutatis mutandis*, except in the case where the equivalent amount of that fee in Swiss francs is equal to or more than 1,000 Swiss francs, in which case the Director General may decide to apply paragraph (3) as if the percentage referred to in that paragraph was 5%.

[End of Annex II and of document]