

International Patent Cooperation Union (PCT Union)

Assembly

Fifty-Sixth (32nd Extraordinary) Session
Geneva, July 9 to 17, 2024

DRAFT REPORT

prepared by the Secretariat

1. The Assembly was concerned with the following items of the Consolidated Agenda (document [A/65/1](#)): 1, 2, 3, 4, 6, 8(ii), 9, 11, 18, 21 and 22.
2. The reports on the said items, with the exception of item 11, are contained in the draft General Report (document [A/65/11 Prov.](#)).
3. The report on item 11 is contained in the present document.
4. Mr. Abdulaziz Algabbaa (Saudi Arabia), Chair of the PCT Union Assembly, presided over the meeting.

ITEM 11 OF THE CONSOLIDATED AGENDA

PCT SYSTEM

Review of Criteria for PCT Fee Reductions for Applicants from Certain Countries and Modification of Directives for Updating the Lists of States Meeting the Criteria

5. Discussions were based on document [PCT/A/56/1](#).
6. The Secretariat introduced the document by recalling that, at its forty-sixth session in 2014, the Assembly adopted amendments to the PCT Schedule of Fees concerning the criteria for determining eligibility for certain fee reductions. The Schedule of Fees required the Assembly to review the criteria at least every five years. As the Assembly had last performed this review in 2019, it was therefore required to review the eligibility criteria for fee reductions in 2024. In preparation for the review, the PCT Working Group, at its seventeenth session in February 2024, had reviewed the criteria set out in item 5 of the Schedule of Fees. The Working Group had recommended to the Assembly to maintain the criteria and review them again in five years' time. The document invited the Assembly to follow that recommendation. The document also proposed modifications to the Directives for establishing the lists of the States whose nationals and residents were eligible for fee reductions. When the lists were updated, the Directives required the Director General to make draft lists available before the session of the Assembly, inviting comments before the close of the Assembly. For the update that year, the draft lists had been made available by Circular C. PCT 1670, issued on June 25, 2024. When the previous update to the lists of States took place, the WIPO Assemblies had met in September/October and the Directives referred to the Assembly taking place in those months. As the WIPO Assemblies meetings currently took place in July, the Annex to the document proposed modifications to the Directives to take that into account. The proposals referred to the annual series of meetings of the Assemblies of the Member States of WIPO instead of a specific time during the year, and therefore would allow for any changes to the timing that might happen in the future.
7. The Delegation of the Russian Federation stated that the criteria set out in item 5 of the PCT Schedule of Fees were appropriate and effective, and agreed for the criteria to be reviewed in five years' time, as required by the Schedule.
8. The Delegation of Greece was pleased to note that the PCT System remained robust, contributing to the positive financial results of WIPO. The Delegation underlined that the PCT System should continue to provide incentives to ensure easy access to any interested user, especially those with limited financial resources. Maintaining the established criteria for fee reductions was therefore of paramount importance to secure early access to the PCT System. The Delegation supported maintaining the criteria and their review in five years' time and concluded by reiterating its commitment to work towards development of the PCT System.
9. The Delegation of France supported maintaining the criteria in item 5 of the PCT Schedule of Fees and performing a review of the criteria in five years' time.
10. The Delegation of China expressed its appreciation to the International Bureau for its work regarding PCT fee reductions and highlighted that the policy was instrumental to encourage innovators to use the PCT System to protect the results of their innovation. The Delegation also encouraged the International Bureau to continue to improve and optimize the PCT System by offering more convenience to applicants.
11. The Delegation of the Bahamas recalled its statement at the opening of the Assemblies, reporting that over the past year, the regulatory framework governing intellectual property (IP) in the Bahamas had been undergoing significant reform and enhancement. The Delegation

thanked the International Bureau for the technical support in capacity building, aiding review and reform of its local legislation and other areas to renew and refine the mandate of the Bahamas Registry with respect to IP. With this support, the Bahamas had tabled new patent legislation in its parliament, which would pave the way for the country to accede to the PCT in the coming months. The Delegation was pleased to note that, following the most recent review of the Schedule of Fees annexed to the PCT Regulations, applicants from the Bahamas would qualify for the reduced rate fees for international applications. This was largely due to a reduction in Gross Domestic Product (GDP) in recent years as a result of the impact of the COVID-19 pandemic on the Bahamian economy. The Delegation took great interest in the methodology and framework used to determine countries eligible for the reduced international application filing fee, which was primarily based on the old, outdated framework of assessing a country's GDP per capita. As a Small Island Developing State (SIDS), the Bahamas like many others, was acutely vulnerable to climate and other shocks on a perpetual basis. It was only necessary to look at the recent news headlines with the impact of hurricane Beryl on fellow Caribbean countries and to see the devastating impact of hurricane Dorian on the Bahamas in 2019 to understand the need to go beyond the sole consideration of the GDP per capita as metric for determining vulnerability, and hence the need for support in various aspects such as fee reductions. The Delegation stated that the issue of going beyond the sole consideration of the GDP per capita for determining vulnerability had also been recognized by the United Nations (UN) General Assembly no later than that week, where the latter Assembly had supported the adoption of Multidimensional Vulnerability Index as a means of assessing the well-being of SIDS. The Delegation encouraged WIPO to consider a similar approach in its PCT fee reduction framework as part of the next five-year review, which would ensure a more robust framework of analysis and aid in providing more equitable benefits in the fee reduction mechanism, such that institutions that required support were more likely to receive it.

12. The Representative of the Intellectual Property Latin American School (ELAPI) expressed its firm support for any action that enabled inventors and applicants to have greater access to protection offered by the PCT at the national and international levels. As a means of incentivizing new technologies, the PCT System needed to continue to take into account inventors with insufficient financial resources to invest adequately to access systems for the protection of their rights. The Representative further noted that it was essential to provide assistance that promoted the dissemination and protection of innovative technologies. In its view, continuing the reductions of the international filing fee, the supplementary search handling fee and the handling fee for nationals and residents of beneficiary countries was important because, according to UN data, it encouraged inventive activity in less developed countries. That, in turn, allowed innovators responsible for future solutions and stakeholders working to improve the quality of life in those societies to overcome any obstacles they may face. In that regard, the Representative underscored that ELAPI agreed that the established criteria for assessing fee reductions should be maintained, and that the proposed modifications to the Directives for Updating the Lists of States Meeting the Criteria for Reduction of Certain PCT Fees should be adopted, which would continue to encourage inventive activity as a driver for development in those countries. Finally, the Representative encouraged the submission of documents in electronic format, which had significant advantages over physical documents, providing immediate access to documents and contributing to a more sustainable future.

13. The Assembly of the PCT Union:

(i) decided, having reviewed the criteria set out in item 5 of the PCT Schedule of Fees, that those criteria be maintained and reviewed again by the Assembly in five years' time, as required by that Schedule; and

(ii) adopted the proposed modifications to the Directives for Updating the Lists of States Meeting the Criteria for Reduction of Certain PCT Fees set out in the Annex of document PCT/A/56/1.

Proposed Amendments to the PCT Regulations

14. Discussions were based on document [PCT/A/56/2](#).

15. The Secretariat introduced the document, which presented four sets of proposed amendments to the PCT Regulations. The amendments proposed in Annex I would allow an Office to require international applications and subsequently-filed documents to be submitted in electronic form only, or to require that any document submitted on paper be resubmitted in electronic form within two months. The proposals explicitly excluded the International Bureau from that possibility. Applicants would therefore continue to be able to use the International Bureau to file on paper if their national or regional Office decided to require submissions in electronic form only. The amendments proposed in Annex II would allow the International Bureau to correspond with applicants or Offices in any of the 10 languages of international publication, instead of only in English or French. That would apply to certain communications to be set out in future Administrative Instructions. By expanding the languages of correspondence for communications that were limited to the applicant or an Office, the International Bureau aimed to improve the services it offered to users of the PCT. At the same time, where a wider group of Offices received correspondence, the International Bureau intended to continue using English and French. The amendments proposed in Annex III concerned international applications where the abstract or text matter of the drawings was in a different language from the language of the description and claims. The proposals would enable a receiving Office to request the applicant to furnish a translation of the abstract or text matter of the drawings into the publication language in more situations to ensure that the international application would be published in a single language. The amendments proposed in Annex IV broadened the definition of prior art for international search and preliminary examination to include non-written disclosures. This would make the PCT System more like national patent systems in the treatment of non-written disclosures. Paragraph 4 of the document proposed that the provisions should enter into force on July 1, 2025, except for the amendments relating to the definition of prior art for international search and preliminary examination, which were proposed to enter into force on January 1, 2026, at the same time as the amendments to the definition of the minimum documentation to consult during international search that were adopted by the Assembly in 2023.

16. The Delegation of India welcomed all the proposed amendments to the PCT Regulations in the document. The amendments to Rules 33 and 64 incorporated non-written disclosures into the definition of prior art for the purposes of international search and preliminary examination. The acknowledgement of non-written disclosures presented a significant advancement in the protection of traditional knowledge (TK), recognizing transmission by oral tradition across generations, strengthening the TK system against undue appropriation. As a result, it would ensure that patents were not conferred on innovations that were already in the public domain through oral disclosure. The Delegation also welcomed the proposed amendments mandating international applications and subsequent submissions to be exclusively in electronic format or requiring paper submissions to be resubmitted electronically within two months, which would offer streamlined document processing, environmental sustainability, global standardization, and expedited processing times. The Delegation also expressed its appreciation for the proposal to narrow the exceptions regarding the requirement of the receiving Office to request a translation of the abstract and text matter of the drawings when provided in a different language, thereby ensuring the international application was published in a single language. Finally, the Delegation indicated that the proposed amendments to Rules 89*bis* and 92 would be beneficial for the IP system, and it looked forward to participating in future discussions.

17. The Delegation of Spain thanked the International Bureau and PCT Contracting States for the work undertaken in the PCT Working Group to develop the PCT System to make it more accessible and user-friendly to applicants. In the Delegation's view, the proposed amendments

would improve communication between applicants, receiving Offices and the International Bureau by expanding the possibility to communicate in any of the 10 languages of publication. The Delegation likewise underlined the interest of the PCT Working Group to update the PCT System to new technologies and realities, while reinforcing legal certainty. In this sense, one of the proposed amendments provided for the expansion of the definition of relevant prior art to include non-written disclosures, taking into account the increasing forms of disclosure. The Delegation further expressed appreciation to the commitment of the International Bureau to continuing to advance as many proposals as possible that resulted in improvement of the PCT System to the benefit of users.

18. The Delegation of Brazil conveyed its appreciation to the International Bureau for the excuse of delay in meeting time limits in the PCT that had been granted upon request of the National Institute of Industrial Property (INPI), Brazil, in light of the tragic floods that affected people in the Brazilian state of Rio Grande do Sul. The Delegation of Brazil supported the proposed amendments in the document and thanked PCT Contracting States for their support for the proposal that Brazil had submitted to amend Rule 89*bis* regarding the filing medium of international applications, which sought to optimize the digitization of requests during the international phase while maintaining flexibility to allow Offices to tailor their processes according to their own context and national legislation.

19. The Delegation of the Russian Federation thanked the Secretariat for preparing the document containing proposed amendments to the PCT Regulations. The Delegation appreciated the initiative to increase the number of languages used for communication by the International Bureau with applicants and national IP Offices to all 10 languages of international publication, including Russian. The Delegation highlighted that this initiative corresponded to promoting multilingualism and to the updated linguistic policy of WIPO, also included in the Medium-Term Strategic Plan (MTSP) 2022-2026. The Delegation expressed its confidence that the adoption of that amendment would improve the quality of services and the convenience of the PCT System by expanding the languages of correspondence for applicants and Offices, ensuring the rights of applicants and facilitating their easy access to PCT services. The increase in the number of languages would have a positive effect on the PCT System in general and would improve its convenience and attractiveness to users. The Russian Federation continued to offer language support to the International Bureau and had provided a translation of the PCT forms into Russian. In addition, the Delegation appreciated the proposed amendments to Rule 89*bis*.1 relating to the filing methods of international applications and corresponding documents. These amendments took into consideration the interests of all receiving Offices and would provide them with more flexibility to determine the appropriate filing method for applications. The Delegation hoped to see a further expansion of languages of correspondence in other aspects of the PCT System, as well as the use of that experience by other international registration systems administered by WIPO. The Delegation also counted on continuation of the constructive dialogue, exchange of views and practices to improve the PCT System. Finally, the Delegation stated that it was deeply concerned about the destructive actions of the European Union regarding the registration and protection of patent rights of applicants and rights holders from the Russian Federation. The Delegation condemned these actions as contrary to international IP law and in violation of the provisions regarding national treatment provided for in Article 2 of the Paris Convention. The Delegation reiterated that, in its view, such actions were unacceptable, impermissible, and unworthy of WIPO Member States.

20. The Delegation of China supported the proposed amendments to the PCT Regulations set out in the document, including the expansion of languages of correspondence for the International Bureau. The proposed amendments were conducive to improving efficiency of the international filing process and provided many conveniences to users. The Delegation also encouraged other registration systems to learn from the good experience and practices in the PCT System.

21. The Delegation of Greece stated that, despite the slight decline in PCT filings in 2023, the PCT System remained robust, which could be attributed to the commitment of staff of the International Bureau. The Delegation observed that PCT online services increased the functionality of the system for applicants and IP Offices. To remain robust, the PCT System needed to continuously improve to correspond to the changing needs of users. The proposed amendments to Rules 26, 33, 64, 89*bis* and 92 would facilitate the processing of applications and the use of the system to the benefit of users. The Delegation therefore endorsed the proposed amendments in the document and their proposed entry into force.

22. The Delegation of Iran (Islamic Republic of) expressed its appreciation for the document. The proposed amendments to Rule 89*bis* allowing Offices to require electronic submission of applications and subsequent documents were a significant step in reducing administrative bureaucracy and expediting the patent granting process. The Delegation further stated that, by reducing administrative burden, expediting the patent granting process and making the PCT System more accessible, those changes held the promise of fostering innovation and efficiency in the global IP landscape. Accordingly, and considering that patent applications were already received electronically under its domestic law, the Delegation supported those amendments. The Delegation also expressed support for the amendments to Rules 33 and 64 to extend the definition of relevant prior art to include non-written disclosures. Under national law in Iran (Islamic Republic of), the definition of prior art included everything made available to the public anywhere in the world by any means. In the view of the Delegation, the changes aimed to enhance the quality of patents, ensure a fairer assessment of innovations, and foster a more dynamic and inclusive innovation ecosystem. The Delegation believed that, while the proposed amendments might come with challenges, these could be overcome, and the broad benefits of the amendments could be realized through the development of new methods, proper training and enhanced international cooperation.

23. The Assembly of the PCT Union adopted the proposed amendments to the Regulations under the PCT set out in Annexes I to IV of document PCT/A/56/2, and the entry into force and transitional arrangements set out in paragraph 4 of the same document.

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