

PATENT COOPERATION TREATY (PCT) WORKING GROUP

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IMPROVED PROCEDURE FOR CORRECTION OF ERRORS MADE BY THE RECEIVING OFFICE OR THE INTERNATIONAL BUREAU

Document submitted by the United Kingdom

SUMMARY

1. The Annex contains a proposal by the United Kingdom for amendment of Rules 20 and 26*bis* of the PCT Regulations to introduce a procedure allowing certain errors made by the receiving Office (RO) or the International Bureau (IB) to be corrected in the international phase.
2. The current system requires users to request correction of such errors before each national Office in the national phase. The proposed new system would be more efficient and less burdensome for users since it would allow a single request for correction to be made in the international phase.

BACKGROUND

3. Under the PCT Regulations currently in force, Rule 82*ter* allows the applicant to request correction of an error made by the RO or the IB where the international filing date is incorrect or a priority claim has been erroneously considered void. Under this rule, an applicant must wait until their application enters the national phase and then pursue the request before each designated or elected Office individually. This provides a considerable period of uncertainty and causes the applicant to have to deal with varying national practices and procedures at a number of different offices in order to correct an error that was not their fault.

PROPOSED AMENDMENTS OF RULES 20 AND 26BIS

4. In order to address this problem, we propose amendments to Rules 20 and 26bis of the PCT Regulations to allow errors made by the RO or the IB in according a filing date or a priority claim to be corrected before the RO or the IB (whichever made the error) during the international phase. The proposed amendments would give the applicant two months in which to prove to the satisfaction of the RO or the IB that an error had been made. If the RO or the IB is satisfied that it made an error, the error would be rectified and the application would proceed as if the error had not been made. We propose that procedures for correcting the error could be included in the Administrative Instructions.
5. The advantage of the proposed amendments would be that, in cases where an error is quickly noticed, the applicant need only follow a single procedure with a single office rather than having to go to each designated or elected Office individually.
6. The procedure under Rule 82ter would remain in place so that, if the error is not identified in sufficient time, the applicant would still have the option of correcting the error in the national phase.
7. Recent consultations with UK users indicated support for a simpler and more efficient system for correcting errors and users were in favour of our proposed changes to the Regulations.

8. *The Working Group is invited to consider the proposed amendments contained in the Annex to this document.*

[Annex follows]

ANNEX

PROPOSED AMENDMENT OF THE REGULATIONS UNDER THE PCT:

Rule 20

International Filing Date

20.1 [No change]

20.2 *Positive Determination under Article 11(1)*

(a) to (c) [No change]

(d) If, within two months from the international filing date, the receiving Office discovers, or on the basis of a request by the applicant realizes, that, while the decision to accord an international filing date was correct, the international filing date accorded is incorrect due to an error made by the receiving Office, the receiving Office shall correct the international filing date, notify the applicant accordingly and proceed as provided for in the Administrative Instructions.

20.3 to 20.8 [No change]

Rule 26bis

Correction or Addition of Priority Claim

26bis.1 [No change]

26bis.2 *Defects in Priority Claims*

(a) to (d) [No change]

(d-bis) Where the receiving Office or the International Bureau has made a declaration under paragraph (b) and, within two months of making that declaration, the receiving Office or the International Bureau, as the case may be, discovers, or on the basis of a request by the applicant realizes, that a declaration made by it is incorrect due to an error made by it and that the priority claim should not have been considered void, that declaration shall be considered not to have been made, and the receiving Office or the International Bureau, as the case may be, shall so declare, inform the applicant accordingly and proceed as provided for in the Administrative Instructions.

(e) [No change]

26bis.3 [No change]

[End of Annex and of document]