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WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

PCT/WG/6/23 PROV. (1)
ORIGINAL: ENGLISH
DATE: MAY 24, 2013

Patent Cooperation Treaty (PCT) Working Group

Sixth Session
Geneva, May 21 to 24, 2013

DRAFT SUMMARY BY THE CHAIR

AGENDA ITEM 1: OPENING OF THE SESSION

1. Mr. Francis Gurry, Director General of WIPO, opened the session and welcomed the participants. Mr. Claus Matthes (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

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

AGENDA ITEM 3: ADOPTION OF THE AGENDA

3. The Working Group adopted the revised draft agenda as proposed in document PCT/WG/6/1 Rev.

4. [The Working Group noted that item 27 of the agenda involved noting a Summary by the Chair and agreed that the report be adopted by correspondence ~~after the meeting should be in summary style similar to that used in the report of the Meeting of International Authorities annexed to document PCT/WG/6/3~~].

AGENDA ITEM 4: PCT STATISTICS

5. The Working Group noted a presentation by the International Bureau on PCT statistics, based on the recently published *PCT Yearly Review 2013*[1].

AGENDA ITEM 5: ePCT

6. The Working Group noted a presentation by the International Bureau on the ePCT system[2].

AGENDA ITEM 6: MEETING OF INTERNATIONAL AUTHORITIES UNDER THE PCT: REPORT ON THE TWENTIETH SESSION

7. Discussions were based on document PCT/WG/6/3.

8. One delegation noted that many of the items on the agenda of the Meeting of International Authorities, including those related to quality, were of interest to all WIPO Member States and suggested that the sessions of the Meeting of International Authorities should be held in Geneva, allowing for the participation of Geneva-based missions of Member States in the discussions.

9. The Working Group noted the report on the twentieth session of the Meeting of International Authorities under the PCT, based on the Summary by the Chair of that session contained in document PCT/MIA/20/14 and reproduced in the Annex to document PCT/WG/6/3.

AGENDA ITEM 7: PCT KAIZEN

10. Discussions were based on document PCT/WG/6/14 Rev.

11. Delegations congratulated the Delegation of Japan for the thoughtful paper about the future development of the PCT. The approach to quality and sharing of work set out in the paper was consistent with the betterment of the PCT and broadly in line with other proposals to be discussed, as well as with principles of quality already in use at some national Offices. However, the issues were set out in general terms and at some point needed to be more specific or targeted as to actually what should be done or changed.

12. Several delegations raised concerns that the sections relating to linkage between national and international phases and Global Dossier might lead to substantive harmonization or encroach on the responsibility of national Offices to decide the most appropriate procedures and extent of use of reports from other Offices to meet their national requirements. However, several other delegations saw these sections in the manner in which they were presented by Japan as facilitating effective practices rather than imposing requirements. Concerns were also expressed that any provisions relating to feedback from one Office to another would need to be scrutinized carefully to ensure the voluntary nature of such systems and the propriety of their use.

13. The Working Group noted the proposals outlined in document PCT/WG/6/14 Rev. and invited the Delegation of Japan to take into account the comments made, to discuss issues further with interested parties, to merge proposals with ones of a similar nature made by other delegations where possible, and to submit more concrete proposals to the next session of the Working Group.

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1 A copy of the presentation is available on the WIPO web site at ...

2 A copy of the presentation is available on the WIPO web site at ...

AGENDA ITEM 8: DISCUSSION OF EXPANDED PCT 20/20 PROPOSALS

14. Discussions were based on document PCT/WG/6/15.

15. A number of views were expressed with regard to individual proposals set out in document PCT/WG/6/15 which were not the subject of more specific proposals submitted to this session. Several delegations requested further clarification with regard to the proposal for limited Chapter I amendments referred to in paragraphs 10 to 12 of the document, noting that this issue was related to agenda item 16 "Clarifying the Procedure Regarding the Incorporation by Reference of Missing Parts".

16. One delegation expressed its concern with regard to the proposal to standardize fee reductions for international applications which entered the national phase with a positive international preliminary report on patentability as referred to in paragraphs 16 to 18 of the document, noting that it would not be appropriate to grant additional fee reductions to certain applicants which, under its applicable national law, would already benefit from substantial fee reductions in the national phase.

17. One delegation expressed the view that the proposal to formally integrate the Patent Prosecution Highway (PPH) into the PCT, as referred to in paragraph 30 of the document, would go beyond the objective of the PCT; it also suggested that the discussions in the Working Group of the proposals set out in document PCT/WG/6/15 (Expanded PCT 20/20 Proposals) and document PCT/WG/6/14 (PCT Kaizen) would be greatly facilitated if those proposals were presented in a consolidated way, noting that many were similar in nature.

18. One delegation suggested to further pursue the proposal to require the Office which acts as International Searching or Preliminary Examining Authority to fully recognize its own work when the international application enters the national phase before it as designated or elected Office~~adopt a national first action on the merits issued by that Authority in its capacity as a national Office on a parent application or family member as the international search report and written opinion by that Authority~~, which had been included in the original PCT 20/20 proposal but was not the subject of a separate proposal at this session of the Working Group.

19. The Working Group noted the contents of document PCT/WG/6/15. Further comments by delegations on specific proposals are included under other agenda items.

AGENDA ITEM 9: MANDATORY RESPONSE TO NEGATIVE COMMENTS IN THE NATIONAL PHASE

20. Discussions were based on document PCT/WG/6/16.

21. All delegations that took the floor on the matter expressed their support for the proposal or their support in principle for the idea and the rationale behind the proposal. Several delegations, while generally supportive, suggested that the response to negative comments should not be made mandatory but be left to the discretion of national Offices. Concerns were expressed with regard to the envisaged scope of the proposal, notably whether a response should be mandatory in all cases where the international report on patentability contained negative comments or only where the applicant entered the national phase before the same Office which had established the report in its capacity as an International Authority. One delegation queried whether a response should be required only where the report contained negative statements with regard to novelty or inventive step or in all cases of negative comments, including on issues such as clarity and formal objections. Concerns were further expressed with regard to the envisaged sanction where the applicant did not comply with the requirement to respond to any negative comment; such sanction should be left to each national Office, including the possibility to request payment of a fee, in accordance with the applicable national law. The Delegation of the United States of America emphasized that this provision

had been intended to be very flexible to allow for the relevant procedures at different designated Offices, including the possibility of there being no sanction at all.

22. Several representatives of users noted the continued divergence of national laws and practices of designated Offices and suggested that, while—as the experience of the practice of the European Patent Office had shown—requiring a mandatory response may have positive effects where the applicant entered the national phase before the same Office which had established the report in its capacity as an International Authority, that was not necessarily the case before other Offices which worked under different national laws and standards. The representative of a non-governmental organization expressed the view that, without the addition of top-up searches and collaborative search and examination during the international phase, the proposal would actually lead to a regression in quality of the entire procedure, noting that, at present, national search and examination was considered to add real value and be truly supplementary to the international work products. It was further suggested that making a response mandatory for the applicant would be contrary to the non-binding, preliminary nature of the PCT international work products. Concerns were also expressed with regard to the additional burden on applicants, notably small and medium sized enterprises, which needed flexibility when dealing with designated Offices in national phase procedures and which might not be ready to make a detailed response relevant to each national law by the time of national phase entry, or to pay the fees to the national attorneys for preparing such responses which would otherwise only be required later.

23. The Delegations of the United Kingdom and the United States of America indicated that they would take all the comments made and the concerns expressed into account with a view to presenting a further revised proposal at a future session of the Working Group.

AGENDA ITEM 10: FORMAL INTEGRATION OF THE PATENT PROSECUTION HIGHWAY INTO THE PCT

24. Discussions were based on document PCT/WG/6/17.

25. There was support for the proposal from many of the delegations representing States whose Offices participated in existing bilateral Patent Prosecution Highway (PPH) arrangements, noting the flexibilities which had been included to ensure that the relevant rules would only apply to Offices which wished to provide for this type of acceleration of national processing. The proposals were also supported by several representatives of applicants, subject to the comment that it was hoped that Member States would offer such acceleration of national phase procedures without the need to pay an additional fee, important in particular for individuals, small and medium-sized entities and the like.

26. There was general support for a further amendment of the proposed new Rules put forward by the Delegation of Canada to address the risk of a high volume of PPH requests seriously affecting the workload of national Offices. A number of Offices which did not examine for novelty and inventive step indicated that they were generally in favor but called for further consideration of whether the provisions on notifications of incompatibility were sufficient to cover their situation.

27. Several delegations expressed concerns over possible effects on national sovereignty from reuse of work by other Offices and the quality of national processing as a result of accelerated search and examination, noting that the focus in particular of designated Offices should be on the quality of the national procedures rather than on their efficiency. Other delegations pointed out that the system was rather intended to increase the quality of national examination work by allowing examiners to start from a point which was likely to be closer to meeting their respective national patentability requirements.

28. Questions were raised over whether provisions which affected the manner of national phase processing might be *ultra vires* and thus might require a modification of the Treaty rather than merely amendments to the Regulations, and whether it was appropriate to introduce a procedure into the PCT system which affected more than 140 Member States based on bilateral arrangements which had been negotiated outside of the PCT system and were currently in place between only around 20 Member States. The Chair suggested that it might be useful if Offices participating in a meeting concerning the plurilateral PPH system to be held in Tokyo in June 2013 ~~might~~ be invited to prepare additional information elaborating on how the PPH worked for them, its real effects in terms of expediting applications and the quality of granting of rights, for the benefit of the entire membership of the PCT system. One delegation indicated that information regarding PPH was available from the PPH portal[3] and that results of the June meeting would be made publicly available.

29. The Working Group noted the intention of the United States of America and the United Kingdom to bring forward revised proposals and further information at the next session of the Working Group, taking into account the comments made and the concerns raised.

AGENDA ITEM 11: MANDATORY TOP-UP SEARCHES

30. Discussions were based on document PCT/WG/6/18.

31. Several delegations representing Offices that acted as International Authorities stated their preference for a flexible approach, where each International Authority determined the need for a top-up search according to its own policies.

32. However, there was broad support for a mandatory approach in principle and it was noted that the proposal contained significant flexibility. A number of detailed drafting concerns were expressed, including certain cases where no top-up search would be necessary and the distinction between "prior art", which for PCT purposes is defined as documents published before the "relevant date" and "certain published documents" – earlier patent documents which were the primary but not sole target of this proposal.

33. Discussions continued on the basis of a revised draft. Delegations recognized that a number of details remained which would need to be addressed in further discussions on modifications of the Administrative Instructions (notably the relevant forms) and the International Search and Preliminary Examination Guidelines and timing or transitional provisions to ensure that IT systems could be updated, but considered that the revised proposals appeared to set out the key policy requirements.

34. The Working Group approved the proposed amendments of the Regulations set out in Annex I to this document with a view to their submission to the PCT Assembly for consideration at its next session, in September–October 2013, subject to any further comments to be made by Contracting States or affected Offices during a short consultation period to be set by the International Bureau following the session.

AGENDA ITEM 12: MANDATORY RECORDATION OF SEARCH STRATEGY

35. Discussions were based on document PCT/WG/6/19.

36. All delegations which took the floor expressed the desirability in principle of making search strategies available. This gave a reader of a report a greater ability to judge the search and would lead to an increase in confidence on quality. It could also be a useful learning tool for

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[3] The PPH portal can be found on the Japan Patent Office website at: ...

examiners in designated Offices seeking searching tips from experienced examiners in International Searching Authorities.

37. Several delegations representing countries whose Offices acted as International Authorities noted that they already made available their search strategies on a voluntary basis. Several of those and other delegations expressed their support for the proposal for mandatory recordation and making available of search strategies in whatever format they might be produced.

38. However, several other delegations expressed their concerns, noting that proper definition of the scope of search recordation strategies should first be agreed upon, taking into account the desired aims. ~~f~~Full records of search could be long, complicated and sometimes misleading to the reader if they did not understand the exact details of what was recorded by a particular system. Some delegations indicated that manually converting the record to a more readable search strategy could be a time-consuming task for examiners, which should not be made obligatory without careful consideration. ~~Ideally, a~~ A consistent format should be agreed between all International Authorities, taking into account the utility of different types of information, appropriate presentation for easy understanding, usefulness for users and a cost-benefit analysis of any work which would be required.

39. The International Bureau observed that, as an interim measure for some International Authorities, an arrangement could be offered where search strategies sent electronically could be assigned one of two codes at the choice of International Searching Authority. The one currently used automatically would make the search strategy available to the public from the date of international publication, but an alternative code could be used to make the strategies not available on PATENTSCOPE but visible through ePCT only to the applicant and to national Offices.

40. The Working Group recommended that the Quality Subgroup of the Meeting of International Authorities under the PCT should continue to review this subject ~~with high importance~~, focusing in the first instance on developing a consistent format, and that International Authorities should share information on search strategy reporting formats to help move the work forward as quickly as possible.

AGENDA ITEM 13: PCT FEE REDUCTIONS

FEE REDUCTIONS FOR SMALL AND MEDIUM SIZED ENTERPRISES, UNIVERSITIES AND NOT-FOR-PROFIT RESEARCH INSTITUTES

41. Discussions were based on document PCT/WG/6/10, paragraphs 3 to 46.

42. All delegations which took the floor welcomed efforts to make the PCT system more accessible to certain types of applicants, such as small and medium sized enterprises, universities and research institutes, but recognized that, as outlined in the document, many issues needed to be carefully considered and resolved before new fee reductions for such groups of applicants could be introduced; notably, it was seen to be of particular importance to find possible ways to introduce such fee reductions in a financially sustainable, income neutral way for the Organization.

43. Several delegations stressed the need to make the PCT system more accessible in particular for applicants from developing and least developed countries and highlighted the importance of technical assistance as well as fee reductions in this context.

44. Several delegations felt that more information was needed to be able to better understand the possible impact of new fee reductions on PCT income, notably with regard to the number of applicants who could potentially benefit from such fee reductions and with regard to the

potential effect such fee reductions might have on the filing behavior of such groups of applicants and the consequent effects on PCT fee income and for the Organization.

45. Noting that it was not possible for the Chief Economist to carry out a detailed study on the question to ~~which~~ what extent fee reductions would enable small and medium sized enterprises to better participate in the international patent system, due to the limitations of the existing data and the lack of resources for collecting more detailed information, the Working Group requested the Chief Economist to carry out a study on the issue of the elasticity of PCT fees for the group of applicants for which data was readily available to the International Bureau, namely, universities and research institutes.

46. In addition, the Working Group agreed that the International Bureau should invite all Member States which at present granted reductions of national pre-grant patent fees to applicants which, under applicable national criteria, were considered to be small and medium sized enterprises to provide information to the Secretariat on the national experiences gained, notably in terms of numbers of applications benefitting from such fee reductions and on any measurable impact on the filing behavior of such groups of applicants.

47. The Working Group further requested the International Bureau to prepare a working document, for discussion by the Working Group at its next session, on the various existing definitions of what constituted a small and medium sized enterprise under applicable national or regional laws or practices in relation to fee reductions for national or regional IP/patent applications. That document should also contain a description of applicable mechanisms already in place in some countries concerning fee reductions for small and medium sized enterprises, universities and research institutes.

48. The Working Group agreed that the study by the Chief Economist referred to in paragraph 45, above, any information submitted by Member States referred to in paragraph 46, above, and the requested working document referred to in paragraph 47, above, would form the basis for the continuation of the discussions of the issues set out in paragraphs 3 to 47 of document PCT/WG/6/13 by the Working Group at its next session.

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

49. Discussions were based on document PCT/WG/6/10, paragraphs 48 to 85.

50. Several delegations offered their comments on the questions put forward in the document as to the main principles which should govern the establishment of new eligibility criteria for certain applicants from certain developing and least developed countries; views expressed included: that the status of a country as a small island state should be taken into account and added to the list of criteria originally proposed by the Secretariat; that the two-step test originally proposed by the Secretariat, including both innovation-based as well as income-based criteria, should be maintained; that periodical reviews should be carried out as to the appropriateness of the criteria on a regular basis; that ~~is~~ it was important to maintain the principle of cost-neutrality for the Organization; that the appropriateness of the criteria "size of a country" and "number of PCT applications filed in a given country" should be reconsidered; whether a tiered approach to reductions should be considered; and that it was necessary to better clarify what the real aim of the debate was: to facilitate the use of the PCT by developing and least-developed countries or to attempt a more general review of PCT fee reductions.

51. The Delegation of Belgium, speaking on behalf of Group B, stated that Group B was of the view that further work and discussion was urgently needed in order to develop a system of fee reductions that was dynamic and could take into account, providing regular review, the changes that occurred in the development of the economy worldwide. It suggested that the Working

Group should invite the International Bureau to prepare a working document, for discussion by the Working Group at its next session, that should further examine a system of fee reductions that would combine the two criteria of income and innovation, as suggested in document PCT/WG/6/10, and make a projection on possible thresholds, so as to enable the Working Group to hold thorough discussions on the possibility of identifying new beneficiary countries that at present did not benefit from the fee reductions.

52. Another delegation stated that it could not support the suggestion by the Delegation of Belgium, speaking on behalf of Group B, for a working document to be prepared by the International Bureau that was limited in scope to the two criteria of income and innovation; rather, the discussions by the Working Group at its next session should be open ended and not limited to the set of criteria set out in document PCT/WG/6/10.

53. The Chair concluded from the discussions that there was no clear way forward, and that further time and information appeared necessary in order for the Working Group to make progress on the issue. He encouraged Member States to provide input and concrete suggestions on a possible way forward to the Secretariat, in preparation for a continued discussion of the matter at the next session.

54. The Working Group agreed to continue its discussions on the matter at its next session.

AGENDA ITEM 14: COORDINATION OF TECHNICAL ASSISTANCE UNDER THE PCT

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

56. In introducing document PCT/WG/6/11, the Secretariat provided an oral update to the Working Group of the discussions on the "External Review of WIPO Technical Assistance in the Area of Cooperation for Development ("the External Review"; document CDIP/8/INF/1) and related documents at the eleventh session of the Committee for Development and Intellectual Property (CDIP), referring to the Summary by the Chair of that session.

57. All delegations which took the floor on the matter welcomed the report by the International Bureau on the technical assistance projects related to the PCT carried out in 2012 and thus far in 2013.

58. Several delegations expressed their satisfaction about the fact that it had been agreed that such reports would from now on be included as a regular agenda item of future sessions of the Working Group, thus giving the issue of technical assistance to developing and least developed countries the same prominence as other substantive issues discussed by the Working Group. Of particular note was the fact that the document also provided information on planned activities for the remainder of 2013, in contrast to discussions of issues of a similar nature in other WIPO bodies.

59. Several other delegations considered that the document showed that the PCT-related technical assistance formed an essential element of broader WIPO technical assistance, which was effective, comprehensive, well-coordinated and implemented by various different WIPO bodies; those delegations expressed the view that specific PCT-related technical assistance should not be separated from other technical assistance provided by WIPO.

60. Delegations expressed divergent views with regard to the question as to whether, as had been agreed at the 5th session of the Working Group, discussions by the Working Group on how to proceed with regard to the technical assistance related parts of the PCT Roadmap recommendations should continue to await the outcome of the discussions of the External Review and related documents in the CDIP. Several delegations expressed the view that those discussions should commence within the Working Group, noting that the Working Group's role

was to discuss PCT specific technical assistance to enable developing countries to benefit from the PCT system, whereas the CDIP's role was to evaluate technical assistance, to discuss

projects and to make proposals related to development in more general terms. Several other delegations spoke in favor of continuing to await the outcome of the discussions in the CDIP, thus avoiding duplication of effort.

61. Responding to a question as to the relationship between the work of the Committee on WIPO Standards (CWS) and the Working Group in relation to PCT related technical assistance, the Secretariat referred to paragraph 13(e) of the document, citing the example of training courses on the use of International Classifications provided to developing countries as a patents-related technical assistance activity that covered developing patent systems in general, as mandated by PCT Article 51, but fell under the responsibility not of a PCT body but the CWS as the competent WIPO body.

62. There was no agreement in the Working Group on the suggestion by several delegations that the Working Group should submit the report on PCT related technical assistance activities set out in document PCT/WG/6/11 to the CDIP. Several delegations considered that the submission of the report to the CDIP would serve to show the good efforts and the progress made by Member States in the implementation of the Development Agenda recommendations and would thus assist and contribute to the discussions in the CDIP on related issues. However, several other delegations believed that this was unnecessary since the CDIP was already considering other documents linked to patent-related technical assistance which dealt with the matter and emphasized the need to avoid duplication of work.

63. The Delegation of Australia updated the Working Group on its Regional Patent Examiner Training Program (RPET) provided by IP Australia with financial support from the ASEAN-Australia-New Zealand Trade Agreement Economic Cooperation Work Program, which had commenced in April 2013 and under which training was provided to eight participants from five IP Offices, with WIPO providing financial support for participants from the two African Offices.

64. The Working Group took note of the contents of document PCT/WG/6/11.

AGENDA ITEM 15: APPOINTMENT OF INTERNATIONAL AUTHORITIES

65. Discussions were based on document PCT/WG/6/4.

66. There was general support for a thorough review of the criteria and procedures for appointment of International Authorities to ensure that they were appropriate to ensure that Offices which were appointed were appropriately qualified and skilled to undertake the task of carrying out a high quality international search and preliminary examination.

67. The International Bureau agreed to coordinate a review of the criteria in consultation especially with the Offices which currently acted as International Searching and Preliminary Examining Authorities, with the aim of bringing recommendations to the Working Group. However, the International Bureau believed that for a thorough and neutral review to be conducted, it was necessary to consider the "ideal" requirements for an International Authority without any assumptions that any new criteria would not apply to existing International Authorities, as had been proposed by some delegations. Rather, the application of any new set of requirements, including a possible "grandfather" clause, would need to be considered by Member States when discussing future implementation of the new requirements.

68. A number of delegations supported a moratorium on the appointment of new International Authorities, pending the outcome of the review. However, there was no consensus for such an approach, noting that the review might take some time and that several delegations felt that such a moratorium could be considered unfair with regard to Offices preparing to seek

appointment in the near future. Rather, the current criteria would continue to apply until a new set of criteria had been agreed upon and entered into force.

69. The Working Group agreed to recommend to the PCT Assembly that the International Bureau should ~~coordinate~~ undertake a review of the criteria and procedures for appointment of an Office as an International Searching and Preliminary Examining Authority under the PCT and make proposals for necessary changes if appropriate, in coordination where appropriate with the Meeting of International Authorities, for discussion by the Working Group at its next session.

AGENDA ITEM 16: CLARIFYING THE PROCEDURE REGARDING THE INCORPORATION BY REFERENCE OF MISSING PARTS

70. Discussions were based on document PCT/WG/6/20.

71. Several delegations supported the proposal to clarify the practice of incorporation by reference of missing parts by modifying the receiving Office Guidelines to clearly state that the incorporation by reference, as a missing part, of a new description and a new set of claims where such elements had already been contained in the international application as filed was not covered by present Rule 20. Several delegations representing countries whose Offices acted as International Authorities emphasized the importance of an effective search on a single patent application disclosure.

72. Several other delegations stated that they did not share the interpretation by the European Patent Office of present Rule 20, referring in particular to the discussions by Member States on this issue when Rule 20 was amended to provide for incorporation by reference (see the report of the first session of the Working Group, paragraphs 126 and 127 of document PCT/WG/1/14). Those delegations suggested that the issue should be further considered in the context of the ongoing discussions on the proposal presented by the Delegations from the United Kingdom and the United States of America on limited Chapter I amendments as set out in the original "PCT 20/20 Proposals" submitted by those delegations.

73. The Working Group invited the Delegations of the United States of America and of the European Patent Office to work together with the International Bureau on a revised proposal to be submitted to the next session of the Working Group.

AGENDA ITEM 17: IMPROVING THE TIMELINESS TO ISSUE AND PUBLISH INTERNATIONAL SEARCH REPORTS

74. Discussions were based on document PCT/WG/6/21.

75. One delegation stated that it fully supported the proposal for an amendment of Rule 42.

76. Several delegations, while generally expressing sympathy for the aim of easing the pressure on International Authorities tasked with the timely establishment of international search reports in very short time limits and giving Authorities more flexibility in internally prioritizing work, expressed their concern with regard to the proposal to in essence move the deadline for the establishment of the vast majority of international search reports to 17 months from the priority date. Such a new deadline would leave little time for the International Bureau to process international search reports, and notably to have translations thereof prepared, in time for international publication at 18 months from the priority date. Concerns were further expressed with regard to the little time such a new deadline would leave applicants to decide, after the receipt of the international search report, whether to proceed with the application and let it be published, or whether to withdraw it prior to international publication so as not to prejudice a possible later, improved application.

77. Several delegations suggested that, rather than generally extending the deadline for the establishment of international search reports, efforts should be focused on the timely communication of search copies by receiving Offices to International Authorities. The hope was expressed in this context that the ePCT system might help improve the current situation in the near future.

78. The Delegation of the European Patent Office expressed its thanks to all delegations which had taken the floor on the matter and~~, having taken note of the concerns expressed, stated that it would continue its efforts to improve the current situation with regard to the timeliness of international search reports by focusing on the timely transmittal of search copies by receiving Offices and means to improve the internal prioritization of work~~ noted that there was general agreement with the aim of the proposal to have more international search reports established on time for international publication. The Delegation therefore stressed the need for receiving Offices to transmit as early as possible search copies to the competent International Searching Authority and welcomed efforts from the International Bureau to assess ways to achieve this objective.

AGENDA ITEM 18: AVAILABILITY OF WRITTEN OPINION BY THE INTERNATIONAL SEARCHING AUTHORITY AS OF THE DATE OF INTERNATIONAL PUBLICATION

79. Discussions were based on document PCT/WG/6/13.

80. The Working Group agreed to recommend to the PCT Assembly that the written opinion of the International Searching Authority should be made available to the public as of the date of international publication by deleting PCT Rule 44*ter* and, consequential on that deletion, by deleting the reference to Rule 44*ter*.1 in Rule 94.1(b).

AGENDA ITEM 19: RESTORATION OF THE RIGHT OF PRIORITY

81. Discussions were based on document PCT/WG/6/12.

82. The Working Group appreciated the work which had gone into researching national practices and preparing draft Receiving Office Guidelines on the subject of restoration of the right of priority. The final version of the Guidelines was expected to be published in the near future. All delegations which took the floor on the matter, including those representing States whose Offices were the subject of notifications of incompatibility, felt that the Guidelines would be very useful. Several indicated that they would also find the Guidelines useful in their role as designated Offices.

83. The Delegations of Japan, Spain and the United States of America indicated that they expected ~~shortly~~ to be able to withdraw their notifications of incompatibility under the rules relating to restoration of the right of priority. A number of other delegations indicated that the document and related information and draft Guidelines would be useful in their discussions with the relevant national authorities concerning the possible amendment of their national laws in this respect.

84. The Working Group noted the content of document PCT/WG/6/12.

AGENDA ITEM 20: SUPPLEMENTARY INTERNATIONAL SEARCH

85. Discussions were based on document PCT/WG/6/5.

86. Several delegations expressed views on the likely causes of the low uptake of the system by applicants, in particular, the cost of the service, the fact that no Authority whose official languages included an Asian language was participating in the system, and continued lack of awareness by applicants. Several representatives of non-governmental organizations cited

economic considerations for the low number of requests, pointing to the general mentality among patent applicants that the burden of any searching beyond what was required to obtain a patent should lie with competitors or third parties.

87. Several delegations reported on their activities to raise awareness of the system through activities such as publicizing the service in seminars and presentations and including further information on the service on Office web sites.

88. Several delegations supported the idea of including standardized text about supplementary international search on the form communicating the international search report and written opinion to applicants. One delegation, referring to the cost and time needed to revise internal IT systems to make any changes, suggested deferring the inclusion of standardized text on forms until after the review of the supplementary international search system by the Assembly in 2015.

89. The Representative of the Nordic Patent Institute announced that it had launched a new supplementary international search service on May 1, 2013. This service provided an option for PCT applicants of choosing a less expensive supplementary international search covering only the documents in Danish, Icelandic, Norwegian and Swedish held in the search collections of the Nordic Patent Institute and its member states.

90. Several delegations representing countries whose Offices acted as International Authorities currently not offering the service expressed their generally favorable view of the system but cited workload considerations as the main reason for not being able to offer the service in the foreseeable future.

91. The Delegation of China stated that it continued to monitor the operation of the supplementary search system with great interest and that the State Intellectual Property Office (SIPO) was considering ~~to~~ the possibility of offering the service in the near future.

92. The Working Group noted the contents of document PCT/WG/6/5.

AGENDA ITEM 21: STATUS REPORT ON THE COLLABORATIVE SEARCH AND EXAMINATION PILOT PROJECT

93. Discussions were based on documents PCT/WG/6/22 Rev.

94. The Delegation of the European Patent Office introduced a revised version of the document, now jointly submitted by the European Patent Office and Korean Intellectual Property Office, including revisions following additional review of the results of the pilot by the latter Office. The pilot had produced very promising preliminary results in terms of impact on both quality and efficiency and the positive feedback by examiners. The Delegation of the United States of America indicated that, while its assessment was not complete at the time the document had been submitted, the assessment had since been completed and, its ~~preliminary~~ findings were essentially the same. The Offices hoped to conduct an applicant-driven third phase of the pilot, subject to the availability of sufficient resources and to the availability of an IT-tool to support the collaboration.

95. All delegations which took the floor welcomed the report and stated that they would continue to monitor the pilot and its possible third phase with great interest. One delegation pointed to the particular interest of users in issues such as cost and the need for translations of documents.

96. All representatives of user groups who took the floor equally welcomed the report and the very positive findings to date. Issues raised by the user groups included: the hope that further Offices would join in piloting collaborative search and examination; the fact that the success of collaborative search and examination would eventually hinge on the cost of the service; the

idea that collaborative search and examination should also be offered as part of the PCT Chapter II procedure; and the request to make available more quantitative data from phase two and a possible phase three of the pilot to enable the users to better analyze the results of the pilot. In response to the final issue, the Delegation of the European Patent Office stated that the European Patent Office would be happy to share more data once it became available, notably in the possible phase three of the pilot and once international applications processed under the pilot had entered the national phase before the Offices participating in the pilot.

97. The Working Group noted the content of document PCT/WG/6/22 Rev.

AGENDA ITEM 22: THIRD PARTY OBSERVATIONS

98. Discussions were based on document PCT/WG/6/6.

99. All delegations taking the floor welcomed the third party observation system. It was considered a useful service for improving the quality of examination. There was support for a more detailed review once there was some experience with regard to international applications which had been the subject of third party observations which had entered the national phase. Some delegations indicated that they would be open to the possibility of extending the service to permit ~~observations~~ "~~briefs~~ explanations of relevance" of citations which were longer (more than 500 characters as at present) and across a wider range of subjects, including on issues such as clarity and support. The International Bureau clarified that purported observations which did not meet the current limitation that they should be directed to matters of novelty and inventive step were treated as not having been made and would not be made available to applicants, Offices or the public. One delegation welcomed the fact that no abuse of the system had occurred but requested the International Bureau to continue to monitor the situation carefully.

100. The International Bureau noted a request for improved options for notification of the existence of third party observations. In relation to a request from a user representative for information on how third party observations were used by designated Offices, the International Bureau noted that information and experience was currently very limited, but that it was likely that a survey would be conducted when it appeared that a sufficient number of observations might exist on international applications which had been examined in the national phase.

101. One delegation suggested that WIPO CASE could be modified to make allowance for notifications of third party observations.

102. The Working Group noted the contents of document PCT/WG/6/6.

AGENDA ITEM 23: PCT SEQUENCE LISTING STANDARD

103. Discussions were based on document PCT/WG/6/7.

104. The Delegation of the European Patent Office, as leader of the Task Force on Sequence Listings created by the Committee on WIPO Standards, confirmed the timescale outlined in the document to finalize the draft new Standard in summer 2013, ready for adoption by the Committee on WIPO Standards (CWS) in 2014. The Representative ~~stated~~ recalled that, under the mandate given by the CWS as well as by the Working Group, the Task Force would perform an assessment of the transition between the existing WIPO Standard ST.25 and the new Standard after adoption of the new Standard.

105. The Working Group noted the contents of document PCT/WG/6/7.

AGENDA ITEM 24: PCT MINIMUM DOCUMENTATION

106. Discussions were based on document PCT/WG/6/9.

107. All delegations which took the floor agreed on the importance of expanding the scope of documentation available for effective search in order to increase the quality of international searches. A number of factors were noted as being particularly important. The definitions should include effective, commonly used standards (including consideration of WIPO Standard ST.96 as well as ST.36). Collections should be added, recognized and used in a way which maximized the benefits of increased range of disclosures available for search while minimizing the costs of importing and searching the collections, avoiding duplication to the greatest extent possible. The extent of collections needed to be properly documented and that information kept up to date. The work should seek to maximize the availability of different languages of original documentation and allow use to be made of machine translation.

108. The Working Group noted the contents of document PCT/WG/6/9.

AGENDA ITEM 25: REVISION OF WIPO STANDARD ST.14

109. Discussions were based on document PCT/WG/6/8.

110. The Secretariat updated the Working Group on the outcome of the discussions at the third session of the Committee on WIPO Standards of the status report set out in the Annex to the document, as reported in the Summary by the Chair to that session (document CWS/3/13, paragraphs 19 to 23). The Secretariat further reported that the Task Force had met informally during that session of the Committee and had begun discussing details of the necessary transition period for implementation of the revised Standard and the way to reflect the transition in an editorial note in the draft Standard. In determining the length of a transition period, the Task Force had highlighted the time for International Searching Authorities to implement the new citation category codes for use in international search reports as an important factor to take into account.

111. Several delegations expressed support for a clean transition whereby an Office beginning to use citation categories "N" and "I" would cease to use citation category "X" and stated that any transition period should be as short as possible.

112. Several delegations considered that, before discussing the details of the transition period, there was a need to consider whether or not the proposal set out in paragraph 7(a) of the Annex to the document was acceptable to Offices which preferred to continue to use category "X" if indeed a transition period was introduced.

113. The Working Group noted the contents document PCT/WG/6/8.

AGENDA ITEM 26: OTHER MATTERS

PROPOSAL BY BRAZIL

114. Discussions were based on an informal paper reproduced in Annex II to this document.

115. The Delegation of Brazil observed that increased use of international preliminary examination under Chapter II could increase the quality of applications entering the national phase and reduce the burdens on elected Offices in examining the international applications to ensure that the requirements of the national legislation are met. The proposal was that a national Office should be able to require Chapter II international preliminary examination to be conducted before national phase entry.

116. A number of delegations, while agreeing with the underlying principle that use of Chapter II could be beneficial for elected Offices and that incentives should be set for applicants to make best use of the international phase, expressed concerns over whether mandatory use of Chapter II was either compatible with the Treaty or necessarily desirable, noting the burden which would be placed on International Preliminary Examining Authorities if use of Chapter II returned to the levels prior to the modification of Article 22 with effect from April 1, 2002. It was noted that the Patent Prosecution Highway provided an incentive for a more effective use of Chapter II.

117. The International Bureau observed that, while the specific proposal may not be compatible with the Treaty, one of the agreed recommendations of the PCT Roadmap had been related to encouraging the use of Chapter II in appropriate cases to allow applicants to enter the national phase with a "clean" international preliminary report on patentability. The International Bureau indicated that it would be willing to assist Brazil in assessment of the legal limitations and the options available in this regard.

118. The Working Group noted the intention of the delegation of Brazil to confer with the International Bureau on what possibilities of this nature might be possible within the scope of the Articles of the Treaty and, if possible, to present a proposal to the next session of the Working Group.

FUTURE WORK

119. The Working Group agreed to recommend to the Assembly that, subject to the availability of sufficient funds, that one session of the Working Group should be convened between the September/October 2013 and September/October 2014 sessions of the Assembly, and that the same financial assistance that had been made available to enable attendance of certain delegations at this session should be made available at the next session.

120. The International Bureau indicated that the seventh session of the Working Group was tentatively scheduled to be held in Geneva in May/June 2014.

AGENDA ITEM 27: SUMMARY BY THE CHAIR

121. The Working Group noted that the present document was a summary established under the responsibility of the Chair and that the official record would be contained in the report of the session. ~~[ALTERNATIVE A: That report would be a summary style report and would be adopted by the Working Group by correspondence, after having been made available for comments on the Working Group's electronic forum as a draft in both English and French. In addition, a transcript of all the interventions made during the meeting would be made available, in English only, at the time when the draft report was made available for comments, in the form of an informal paper on the Working Group's electronic forum.] [ALTERNATIVE B:~~ That report would reflect all interventions made during the meeting and would be adopted by the Working Group by correspondence, after having been made available for comments on the Working Group's electronic forum as a draft in both English and French.~~]~~

AGENDA ITEM 28: CLOSING OF THE SESSION

122. The Chair closed the session on May 24, 2013.

[Annexes follow]