



**BRUNEI DARUSSALAM
TREATY SERIES**

Intellectual Property



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F OREWORD

Assalamu `alaikum warahmatullaahi wabarakaatuh

International law is an area of law that we would regard as being important in regulating the relationship between States and other international entities. Its importance has not dwindled over the centuries but has evolved to adapt to emerging issues of the modern world and the rise in new actors in the international plain, particularly international organisations.

Furthermore, international law issues are no longer limited to warfare and diplomatic relations but have now extended to matters such as trade, environment, and transnational organised crime and more are aimed at individuals.

The Brunei Darussalam Treaty Series is a compilation of all multilateral treaties that Brunei Darussalam, has ratified or acceded. The information provided includes the date of entry into force of the treaty, reservations or declarations, an executive summary of the treaty and the text of the treaty.

For this first edition we have covered 3 areas of international law, Counter Terrorism, Intellectual Property, and Law of the Sea and Maritime but we intend to add in more topics in due course covering areas such as international trade, environment, and transnational organised crime.

It is my hope that the Brunei Darussalam Treaty Series would serve as a beneficial resource not only to practitioners in international law, but to policy makers, lawyers, academics and even students. As in any series of publication, the Brunei Darussalam Treaty Series will be updated and improvised from time to time to ensure that it remains a relevant and useful resource.

I commend the International Affairs Division, the Brunei Darussalam Treaty Series Committee, led by the Chairman Hjh Dyg Nor Hashimah binti Haji Mohd Taib, Assistant Solicitor-General, and all others who have contributed to this excellent initiative.

Wabillahit Taufik Walhidayah, Wassalamualaikum Warahmatullahi Wabarakatuh

**DATIN SERI PADUKA HAJAH HAYATI BINTI PEHIN ORANG KAYA
SHAHBANDAR DATO SERI PADUKA HJ MOHD SALLEH
ATTORNEY GENERAL**

BRUNEI DARUSSALAM TREATY SERIES COMMITTEE :

In preparation for this first edition of the Brunei Darussalam Treaty Series, a committee was set up within the International Affairs Division of the Attorney General's Chambers. The members of the committee whose services are gratefully acknowledged are:

Chairman:

Hjh Dyg Nor Hashimah Hj Mohd Taib, Assistant Solicitor General and Head of the International Affairs Division.

Members:

Dyg Elma Darlini Hj Sulaiman, Deputy Senior Counsel, Head of Treaties and Human Rights Unit

Dyg Riana Dewi Hj Aji, Deputy Senior Counsel, Head of the International Organisations and Law of the Sea Unit.

Dyg Nur al-Ain Dr Hj Abdullah, Deputy Senior Counsel, Head of International Trade and Intellectual Property Unit.

Officers and staff of the International Affairs Division, the ICT Unit as well as newly recruited officers on rotation and the students on attachment at the International Affairs Division also contributed tremendously in the publication of this Brunei Darussalam Treaty Series. We would also like to acknowledge the services rendered by the Government Printers Department.

**BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC
WORKS
("BERNE CONVENTION")**

Date and Place of Adoption of Convention	:	9 th September 1886, Berne
Date of Entry into Force of Convention	:	5 th December 1887
Date of Accession by Brunei Darussalam	:	30 th May 2006
Date of Entry into Force for Brunei Darussalam	:	30 th August 2006
Reservations / Declarations	:	None
Applicable Legislation as of 19 th January 2013	:	
		i. Copyright Order, 1999
		ii. Customs Order, 2006
		iii. Broadcasting Act (CAP. 180)

Executive Summary:

In 1878, the *Association Litteraire et Artistique Internationale* (ALAI) was formed and headed by Victor Hugo where one of its objectives was to have an international consensus on authors' rights. ALAI held a Congress in Rome in 1882, where it changed its objective, in favour of a proposal made by a German publisher's association, to form a conference on an international copyright union. In 1883, a conference was held in Berne, Switzerland where a draft was produced. This was followed by 3 Diplomatic Conference in 1884, 1885 and finally in 1886 where the new convention was adopted. The treaty was signed by ten countries i.e. Belgium, France, Germany, Haiti, Italy, Liberia, Spain, Switzerland, Tunisia and the United Kingdom.

The Berne Convention has been revised several times:

- 1) *Berne Convention* signed on 9th September 1886 and came into force on 5th December 1887;
- 2) *Paris Act and Interpretative Declaration* signed on 4th May 1896 and came into force on 9th December 1897;
- 3) *Berlin Act* signed on 13th November 1908 and came into force on 9th September 1910;
- 4) *Berne Additional Protocol* signed on 20th March 1914 and came into force on 20th April 1915;
- 5) *Rome Act* signed on 2nd June 1928 and came into force on 1st August 1931;

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- 6) *Brussels Act* signed on 26th June 1948 and came into force on 1st August 1951;
- 7) *Stockholm Act* signed on 14th July 1967 where Articles 22-38 came into force in 1970; and
- 8) *Paris Act* signed on 24th July 1971 and came into force on 10th October 1974.

The convention only applies to copyright and its main elements are providing protection for authors in literary and artistic works where these authors are given national treatment protection, moral rights (attribution and integrity) and economic rights (reproduction, adaptation, distribution and communication).

The Berne Convention is administered by the World Intellectual Property Organization.

Source of text: http://www.wipo.int/export/sites/www/treaties/en/ip/berne/pdf/trtdocs_wo001.pdf

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Recognizing the importance of the work of the Revision Conference held at Stockholm in 1967, have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1¹

Establishment of a Union

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2

Protected Works: 1. “Literary and artistic works”; 2. Possible requirement of fixation; 3. Derivative works; 4. Official texts; 5. Collections; 6. Obligation to protect; beneficiaries of protection; 7. Works of applied art and industrial designs; 8. News

- (1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.
- (2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

¹ Each Article and the Appendix have been given titles to facilitate their identification. There are no titles in the signed (English) text.

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Berne Convention for the Protection of Literary and Artistic Works

- (3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.
- (4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.
- (5) Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.
- (6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.
- (7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.
- (8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 2^{bis}

Possible Limitation of Protection of Certain Works: 1. Certain speeches; 2. Certain uses of lectures and addresses; 3. Right to make collections of such works

- (1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings.
- (2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11^{bis}(1) of this Convention, when such use is justified by the informatory purpose.

- (3) Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

Article 3

Criteria of Eligibility for Protection: 1. Nationality of author; place of publication of work; 2. Residence of author; 3. “Published” works; 4. “Simultaneously published” works

- (1) The protection of this Convention shall apply to:
- (a) Authors who are nationals of one of the countries of the Union, for their works, whether published or not;
 - (b) Authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.
- (2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.
- (3) The expression “published works” means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.
- (4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

Criteria of Eligibility for Protection of Cinematographic Works, Works of Architecture and Certain Artistic Works

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

- (a) Authors of cinematographic works the maker of which has his headquarters or habitual
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residence in one of the countries of the Union;

- (b) Authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

Rights Guaranteed: 1. and 2. Outside the country of origin; 3. In the country of origin; 4. "Country of origin"

- (1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.
- (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.
- (3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.
- (4) The country of origin shall be considered to be:
- (a) In the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;
- (b) In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;
- (c) In the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:
- (i) When these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be

that country, and

- (ii) When these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6

Possible Restriction of Protection in Respect of Certain Works of Nationals of Certain Countries Outside the Union: 1. In the country of the first publication and in other countries; 2. No retroactivity; 3. Notice

- (1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.
- (2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.
- (3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General") by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Article 6^{bis}

Moral Rights: 1. To claim authorship; to object to certain modifications and other derogatory actions; 2. After the author's death; 3. Means of redress

- (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.
 - (2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be
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exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

- (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

Term of Protection: 1. Generally; 2. For cinematographic works; 3. For anonymous and pseudonymous works; 4. For photographic works and works of applied art; 5. Starting date of computation; 6. Longer terms; 7. Shorter terms;

8. Applicable law; “comparison” of terms

- (1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.
- (2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.
- (3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.
- (4) It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.
- (5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of

the year following the death or such event.

- (6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.
- (7) Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act.
- (8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 7^{bis}

Term of Protection for Works of Joint Authorship

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8

Right of Translation

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9

Right of Reproduction: 1. Generally; 2. Possible exceptions; 3. Sound and visual recordings

- (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.
- (2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

- (3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 10

**Certain Free Uses of Works: 1. Quotations; 2. Illustrations for teaching;
3. Indication of source and author**

- (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.
- (2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.
- (3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

Article 10^{bis}

**Further Possible Free Uses of Works: 1. Of certain articles and broadcast works;
2. Of works seen or heard in connection with current events**

- (1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.
- (2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Article 11

Certain Rights in Dramatic and Musical Works: 1. Right of public performance and of communication to the public of a performance; 2. In respect of translations

- (1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:
- (i) The public performance of their works, including such public performance by any means or process;
 - (ii) Any communication to the public of the performance of their works.
- (2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 11^{bis}

Broadcasting and Related Rights: 1. Broadcasting and other wireless communications, public communication of broadcast by wire or rebroadcast, public communication of broadcast by loudspeaker or analogous instruments; 2. Compulsory licenses; 3. Recording; ephemeral recordings

- (1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:
- (i) The broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
 - (ii) Any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
 - (iii) The public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.
- (2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.
- (3) In the absence of any contrary stipulation, permission granted in accordance with paragraph
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(1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11^{ter}

Certain Rights in Literary Works: 1. Right of public recitation and of communication to the public of a recitation; 2. In respect of translations

- (1) Authors of literary works shall enjoy the exclusive right of authorizing:
- (i) The public recitation of their works, including such public recitation by any means or process;
 - (ii) Any communication to the public of the recitation of their works.
- (2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 12

Right of Adaptation, Arrangement and Other Alteration

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13

Possible Limitation of the Right of Recording of Musical Works and Any Words Pertaining Thereto: 1. Compulsory licenses; 2. Transitory measures; 3. Seizure on importation of copies made without the author's permission

- (1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

- (2) Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Conventions signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act.
- (3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14

Cinematographic and Related Rights: 1. Cinematographic adaptation and reproduction; distribution; public performance and public communication by wire of works thus adapted or reproduced; 2. Adaptation of cinematographic productions; 3. No compulsory licenses

- (1) Authors of literary or artistic works shall have the exclusive right of authorizing:
 - (i) The cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;
 - (ii) The public performance and communication to the public by wire of the works thus adapted or reproduced.
- (2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.
- (3) The provisions of Article 13(1) shall not apply.

Article 14^{bis}

Special Provisions Concerning Cinematographic Works:

1. Assimilation to “original” works; 2. Ownership; limitation of certain rights of certain contributors; 3. Certain other contributors

- (1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

- (2) (a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.
- (b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.
- (c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph (b), be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.
- (d) By “contrary or special stipulation” is meant any restrictive condition which is relevant to the aforesaid undertaking.
- (3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)(b) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Article 14^{ter}

“Droit de suite” in Works of Art and Manuscripts:

1. Right to an interest in resales; 2. Applicable law; 3. Procedure

- (1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

- (2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.
- (3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

Right to Enforce Protected Rights: 1. Where author's name is indicated or where pseudonym leaves no doubt as to author's identity; 2. In the case of cinematographic works; 3. In the case of anonymous and pseudonymous works; 4. In the case of certain unpublished works of unknown authorship

- (1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.
- (2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.
- (3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.
- (4) (a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

(b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

Article 16

Infringing Copies: 1. Seizure; 2. Seizure on importation; 3. Applicable law

- (1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.
- (2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.
- (3) The seizure shall take place in accordance with the legislation of each country.

Article 17

Possibility of Control of Circulation, Presentation and Exhibition of Works

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18

Works Existing on Convention's Entry Into Force: 1. Protectable where protection not yet expired in country of origin; 2. Non-protectable where protection already expired in country where it is claimed; 3. Application of these principles; 4. Special cases

- (1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.
- (2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.
- (3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.
- (4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19

Protection Greater than Resulting from Convention

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20

Special Agreements among Countries of the Union

The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21

**Special Provisions Regarding Developing Countries: 1. Reference to Appendix;
2. Appendix part of Act**

- (1) Special provisions regarding developing countries are included in the Appendix.
- (2) Subject to the provisions of Article 28(1)(b), the Appendix forms an integral part of this Act.

Article 22

Assembly: 1. Constitution and composition; 2. Tasks; 3. Quorum, voting, observers; 4. Convocation; 5. Rules of procedure

- (1) (a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26.
 - (b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
 - (c) The expenses of each delegation shall be borne by the Government which has appointed it.
- (2) (a) The Assembly shall:

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- (i) Deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;
- (ii) Give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as “the International Bureau”) referred to in the Convention Establishing the World Intellectual Property Organization (hereinafter designated as “the Organization”), due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26;
- (iii) Review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
- (iv) Elect the members of the Executive Committee of the Assembly;
- (v) Review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
- (vi) Determine the program and adopt the biennial budget of the Union, and approve its final accounts;
- (vii) Adopt the financial regulations of the Union;
- (viii) Establish such committees of experts and working groups as may be necessary for the work of the Union;
- (ix) Determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (x) Adopt amendments to Articles 22 to 26;
- (xi) Take any other appropriate action designed to further the objectives of the Union;
- (xii) Exercise such other functions as are appropriate under this Convention;
- (xiii) Subject to its acceptance, exercise such rights as are given to it in the

Convention establishing the Organization.

- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (3) (a) Each country member of the Assembly shall have one vote.
- (b) One-half of the countries members of the Assembly shall constitute a quorum.
 - (c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.
 - (d) Subject to the provisions of Article 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.
 - (e) Abstentions shall not be considered as votes.
 - (f) A delegate may represent, and vote in the name of, one country only.
 - (g) Countries of the Union not members of the Assembly shall be admitted to its meetings as observers.
- (4) (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.
- (b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

- (5) The Assembly shall adopt its own rules of procedure.

Article 23

Executive Committee: 1. Constitution; 2. Composition; 3. Number of members; 4. Geographical distribution; special agreements; 5. Term, limits of re-eligibility, rules of election; 6. Tasks; 7. Convocation; 8. Quorum, voting; 9. Observers; 10. Rules of procedure

- (1) The Assembly shall have an Executive Committee.
- (2) (a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)(b), have an ex officio seat on the Committee.
- (b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
- (c) The expenses of each delegation shall be borne by the Government which has appointed it.
- (3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.
- (4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements which might be established in relation with the Union to be among the countries constituting the Executive Committee.
- (5) (a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.
- (b) Members of the Executive Committee may be re-elected, but not more than two-thirds of them.
- (c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.
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- (6) (a) The Executive Committee shall:
- (i) Prepare the draft agenda of the Assembly;
 - (ii) Submit proposals to the Assembly respecting the draft program and biennial budget of the Union prepared by the Director General;
 - (iii) *[deleted]*
 - (iv) Submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;
 - (v) In accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;
 - (vi) Perform such other functions as are allocated to it under this Convention.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (7) (a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.
- (b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.
- (8) (a) Each country member of the Executive Committee shall have one vote.
- (b) One-half of the members of the Executive Committee shall constitute a quorum.
 - (c) Decisions shall be made by a simple majority of the votes cast.
 - (d) Abstentions shall not be considered as votes.

- (e) A delegate may represent, and vote in the name of, one country only.
- (9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.
- (10) The Executive Committee shall adopt its own rules of procedure.

Article 24

International Bureau: 1. Tasks in general, Director General; 2. General information; 3. Periodical; 4. Information to countries; 5. Studies and services; 6. Participation in meetings; 7. Conferences of revision; 8. Other tasks

- (1) (a) The administrative tasks with respect to the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.
 - (b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.
 - (c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.
- (2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.
- (3) The International Bureau shall publish a monthly periodical.
- (4) The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright.
- (5) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

- (7) (a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26.
- (b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.
- (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.
- (8) The International Bureau shall carry out any other tasks assigned to it.

Article 25

Finances: 1. Budget; 2. Coordination with other Unions; 3. Resources; 4. Contributions; possible extension of previous budget; 5. Fees and charges; 6. Working capital fund; 7. Advances by host Government; 8. Auditing of accounts

- (1) (a) The Union shall have a budget.
- (b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.
- (c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.
- (2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.
- (3) The budget of the Union shall be financed from the following sources:
- (i) Contributions of the countries of the Union;
- (ii) Fees and charges due for services performed by the International Bureau in relation to the Union;
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- (iii) Sale of, or royalties on, the publications of the International Bureau concerning the Union;
- (iv) Gifts, bequests, and subventions;
- (v) Rents, interests, and other miscellaneous income.

(4) (a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

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- (5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.
- (6) (a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, an increase shall be decided by the Assembly.
- (b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the increase decided.
- (c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.
- (7) (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.
- (b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.
- (8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 26

Amendments: 1. Provisions susceptible of amendment by the Assembly; proposals; 2. Adoption; 3. Entry into force

- (1) Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by
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the Assembly.

- (2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four-fifths of the votes cast.
- (3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 27

Revision: 1. Objective; 2. Conferences; 3. Adoption

- (1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.
- (2) For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.
- (3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require the unanimity of the votes cast.

Article 28

Acceptance and Entry Into Force of Act for Countries of the Union: 1. Ratification, accession; possibility of excluding certain provisions; withdrawal of exclusion; 2. Entry into force of Articles 1 to 21 and Appendix; 3. Entry into force of Articles 22 to 38

- (1) (a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country has previously made a declaration under Article VI(1) of

the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20.

- (c) Any country of the Union which, in accordance with subparagraph (b), has excluded provisions therein referred to from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Such declaration shall be deposited with the Director General.
- (2) (a) Articles 1 to 21 and the Appendix shall enter into force three months after both of the following two conditions are fulfilled:
- (i) At least five countries of the Union have ratified or acceded to this Act without making a declaration under paragraph (1)(b),
 - (ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.
- (b) The entry into force referred to in subparagraph (a) shall apply to those countries of the Union which, at least three months before the said entry into force, have deposited instruments of ratification or accession not containing a declaration under paragraph (1)(b).
- (c) With respect to any country of the Union not covered by subparagraph (b) and which ratifies or accedes to this Act without making a declaration under paragraph (1)(b), Articles 1 to 21 and the Appendix shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix shall enter into force with respect to that country on the date thus indicated.
- (d) The provisions of subparagraphs (a) to (c) do not affect the application of Article VI of the Appendix.
- (3) With respect to any country of the Union which ratifies or accedes to this Act with or without a declaration made under paragraph (1)(b), Articles 22 to 38 shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.
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Article 29

Acceptance and Entry Into Force for Countries Outside the Union: 1. Accession; 2. Entry into force

- (1) Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General.
- (2) (a) Subject to subparagraph (b), this Convention shall enter into force with respect to any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention shall enter into force with respect to that country on the date thus indicated.
- (b) If the entry into force according to subparagraph (a) precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a), the said country shall, in the meantime, be bound, instead of by Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

Article 29^{bis}

Effect of Acceptance of Act for the Purposes of Article 14(2) of the WIPO Convention

Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention establishing the Organization, amount to ratification of or accession to the said Stockholm Act with the limitation set forth in Article 28(1)(b)(i) thereof.

Article 30

Reservations: 1. Limits of possibility of making reservations; 2. Earlier reservations; reservation as to the right of translation; withdrawal of reservation

- (1) Subject to the exceptions permitted by paragraph (2) of this Article, by Article 28(1)(b), by Article 33(2), and by the Appendix, ratification or accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention.
- (2) (a) Any country of the Union ratifying or acceding to this Act may, subject to Article V(2) of the Appendix, retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

- (b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)(b) of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.
- (c) Any country may withdraw such reservations at any time by notification addressed to the Director General.

Article 31

Applicability to Certain Territories: 1. Declaration; 2. Withdrawal of declaration; 3. Effective date; 4. Acceptance of factual situations not implied

- (1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification at any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.
- (2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.
- (3) (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Director General.
- (b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.
- (4) This Article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of the factual situation concerning a territory to which this Convention is made applicable by another country of the Union by virtue of a declaration under paragraph (1).

Article 32

Applicability of this Act and of Earlier Acts: 1. As between countries already members of the Union; 2. As between a country becoming a member of the Union and other countries members of the Union; 3. Applicability of the Appendix in Certain Relations

- (1) This Act shall, as regards relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.
- (2) Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)(b). Such countries recognize that the said country of the Union, in its relations with them:
 - (i) May apply the provisions of the most recent Act by which it is bound, and
 - (ii) Subject to Article I(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act.
- (3) Any country which has availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties of which it has availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.

Article 33

Disputes: 1. Jurisdiction of the International Court of Justice; 2. Reservation as to such jurisdiction; 3. Withdrawal of reservation

- (1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.
 - (2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the
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provisions of paragraph (1) shall not apply.

- (3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 34

Closing of Certain Earlier Provisions: 1. Of earlier Acts; 2. Of the Protocol to the Stockholm Act

- (1) Subject to Article 29^{bis} no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.
- (2) Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

Article 35

Duration of the Convention; Denunciation: 1. Unlimited duration; 2. Possibility of denunciation; 3. Effective date of denunciation; 4. Moratorium on denunciation

- (1) This Convention shall remain in force without limitation as to time.
- (2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.
- (3) Denunciation shall take effect one year after the day on which the Director General has received the notification.
- (4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 36

Application of the Convention: 1. Obligation to adopt the necessary measures; 2. Time from which obligation exists

- (1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.
- (2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 37

Final Clauses: 1. Languages of the Act; 2. Signature; 3. Certified copies; 4. Registration; 5. Notifications

- (1) (a) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Portuguese and Spanish languages, and such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.
- (2) This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)(a) shall be deposited with the Government of the French Republic.
- (3) The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.
- (4) The Director General shall register this Act with the Secretariat of the United Nations.
- (5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)(c), 30(2)(a) and (b), and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)(c), 31(1) and (2), 33(3), and 38(1), as well as the Appendix.

Article 38

Transitory Provisions: 1. Exercise of the “five-year privilege”; 2. Bureau of the Union, Director of the Bureau; 3. Succession of Bureau of the Union

- (1) Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said Articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the said date.
- (2) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.
- (3) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

APPENDIX

SPECIAL PROVISIONS REGARDING DEVELOPING COUNTRIES

Article I

Faculties Open to Developing Countries: 1. Availability of certain faculties; declaration: 2. Duration of effect of declaration, 3. Cessation of developing country status; 4. Existing stocks of copies; 5. Declarations concerning certain territories; 6. Limits of reciprocity

- (1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(c), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)(a).
- (2)
 - (a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.
 - (b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph (a).
- (3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.
- (4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be

effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

- (5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.
- (6) (a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not, until the date on which the period applicable under Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1)(a).

Article II

Limitations on the Right of Translation: 1. Licenses grantable by competent authority; 2. to 4. Conditions allowing the grant of such licenses; 5. Purposes for which licenses may be granted; 6. Termination of licenses; 7. Works composed mainly of illustrations; 8. Works withdrawn from circulation; 9. Licenses for broadcasting organizations

- (1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.
 - (2) (a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(b) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.
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- (3) (a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(a).
- (b) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)(a) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.
- (4) (a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed
- (i) From the date on which the applicant complies with the requirements mentioned in Article IV(1), or
- (ii) Where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.
- (b) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.
- (5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.
- (6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.
- (7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.
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- (8) No license shall be granted under this Article when the author has withdrawn from circulation all copies of his work.
- (9) (a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:
- (i) The translation is made from a copy made and acquired in accordance with the laws of the said country;
 - (ii) The translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
 - (iii) The translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
 - (iv) All uses made of the translation are without any commercial purpose.
- (b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.
- (c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.
- (d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

Article III

Limitation on the Right of Reproduction: 1. Licenses grantable by competent authority; 2. to 5. Conditions allowing the grant of such licenses; 6. Termination of licenses; 7. Works to which this Article applies

- (1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non- exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.
- (2) (a) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of;
- (i) The relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or
 - (ii) Any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date, copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.
- (b) A license to reproduce and publish an edition which has been distributed as described in subparagraph (a) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.
- (3) The period referred to in paragraph (2)(a)(i) shall be five years, except that;
- (i) For works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
 - (ii) For works of fiction, poetry, drama and music, and for art books, the period shall be seven years.
- (4) (a) No license obtainable after three years shall be granted under this Article until a period

of six months has elapsed;

- (i) From the date on which the applicant complies with the requirements mentioned in Article IV(1), or
 - (ii) Where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.
- (b) Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.
- (c) If, during the period of six or three months referred to in subparagraphs (a) and (b), a distribution as described in paragraph (2)(a) has taken place, no license shall be granted under this Article.
- (d) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.
- (5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:
- (i) Where the translation was not published by the owner of the right of translation or with his authorization, or
 - (ii) Where the translation is not in a language in general use in the country in which the license is applied for.
- (6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.
- (7) (a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV

Provisions Common to Licenses Under Articles II and III: 1 and 2. Procedure; 3. Indication of author and title of work; 4. Exportation of copies; 5. Notice; 6. Compensation

- (1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2).
- (2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.
- (3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.
- (4) (a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

(b) For the purposes of subparagraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).

(c) Where a governmental or other public entity of a country which has granted a license

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to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (a), be considered to constitute export if all of the following conditions are met:

- (i) The recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;
- (ii) The copies are to be used only for the purpose of teaching, scholarship or research;
- (iii) The sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and
- (iv) The country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Government of the country in which the license has been granted.

(5) All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6) (a) Due provision shall be made at the national level to ensure,

- (i) That the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and
- (ii) Payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

Article V

Alternative Possibility for Limitation of the Right of Translation: 1. Regime provided for under the 1886 and 1896 Acts; 2. No possibility of change to regime under Article II; 3. Time limit for choosing the alternative possibility

- (1) (a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:
- (i) If it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;
 - (ii) If it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence.
- (b) In the case of a country which ceases to be regarded as a developing country as referred to in Article I(1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I(3) expires.
- (c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.
- (2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).
- (3) Any country which has ceased to be regarded as a developing country as referred to in Article I(1) may, not later than two years prior to the expiration of the period applicable under Article I(3), make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I (3) expires.

Article VI

Possibilities of applying, or admitting the application of, certain provisions of the Appendix before becoming bound by it: 1. Declaration; 2. Depository and effective date of declaration

- (1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:
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- (i) If it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;
 - (ii) That it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.
- (2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

**BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE
DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT
PROCEDURE
("BUDAPEST TREATY")**

Date and Place of Adoption of Treaty	:	28 th April 1977, Budapest
Date of Entry into Force of Treaty	:	9 th August 1980 26 th September 1980 (amended)
Date of Accession by Brunei Darussalam	:	24 th April 2012
Date of Entry into Force for Brunei Darussalam	:	24 th July 2012
Reservations / Declarations	:	None
Applicable Legislation as of 19 th January 2013	:	

- i. Patents Order, 2011

Executive Summary:

The Budapest Treaty was established for the purposes of protecting invention in the form of mechanical or chemical substances that are easy to describe but not for genetically engineered organisms or method for using novel culture. This Treaty is also another special agreement under the Paris Convention.

Under this system, it allows the applicant to provide a sample of the microorganisms to the depository authority. Similar to the PCT, the applicant can apply a single depository to any designated Member State. Here, the applicant will deposit the microorganism to any 'international depository authority' who will then issue a receipt with an international deposit number. This deposit number is recognized by all Member States' Patent Offices.

The Budapest Treaty is administered by the World Intellectual Property Organization.

Source of text: http://www.wipo.int/export/sites/www/treaties/en/registration/budapest/pdf/trtdocs_wo002.pdf

INTRODUCTORY PROVISIONS

Article 1

Establishment of a Union

The States party to this Treaty (hereinafter called “the Contracting States”) constitute a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedure.

Article 2

Definitions

For the purposes of this Treaty and the Regulations:

- (i) References to a “patent” shall be construed as references to patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;
- (ii) “Deposit of a microorganism” means, according to the context in which these words appear, the following acts effected in accordance with this Treaty and the Regulations; the transmittal of a microorganism to an international depositary authority, which receives and accepts it, or the storage of such a microorganism by the international depositary authority, or both the said transmittal and the said storage;
- (iii) “Patent procedure” means any administrative or judicial procedure relating to a patent application or a patent;
- (iv) “Publication for the purposes of patent procedure” means the official publication, or the official laying open for public inspection, of a patent application or a patent;
- (v) “Intergovernmental industrial property organization” means an organization that has filed a declaration under Article 9(1);
- (vi) “Industrial property office” means an authority of a Contracting State or an intergovernmental industrial property organization competent for the grant of patents;
- (vii) “Depositary institution” means an institution which provides for the receipt, acceptance and storage of microorganisms and the furnishing of samples thereof;

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- (viii) "International depositary authority" means a depositary institution which has acquired the status of international depositary authority as provided in Article 7;
- (ix) "Depositor" means the natural person or legal entity transmitting a microorganism to an international depositary authority, which receives and accepts it, and any successor in title of the said natural person or legal entity;
- (x) "Union" means the Union referred to in Article 1;
- (xi) "Assembly" means the Assembly referred to in Article 10;
- (xii) "Organization" means the World Intellectual Property Organization;
- (xiii) "International Bureau" means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);
- (xiv) "Director General" means the Director General of the Organization;
- (xv) "Regulations" means the Regulations referred to in Article 12.

CHAPTER I

SUBSTANTIVE PROVISIONS

Article 3

Recognition and Effect of the Deposit of Microorganisms

- (1) (a) Contracting States which allow or require the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the deposit of a microorganism with any international depositary authority. Such recognition shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority as well as the recognition of the fact that what is furnished as a sample is a sample of the deposited microorganism.

(b) Any Contracting State may require a copy of the receipt of the deposit referred to in subparagraph (a), issued by the international depositary authority.
- (2) As far as matters regulated in this Treaty and the Regulations are concerned, no

Contracting State may require compliance with requirements different from or additional to those which are provided in this Treaty and the Regulations.

Article 4
New Deposit

- (1) (a) Where the international depositary authority cannot furnish samples of the deposited microorganism for any reason, in particular,
- (i) Where such microorganism is no longer viable, or
 - (ii) Where the furnishing of samples would require that they be sent abroad and the sending or the receipt of the samples abroad is prevented by export or import restrictions, that authority shall, promptly after having noted its inability to furnish samples, notify the depositor of such inability, indicating the cause thereof, and the depositor, subject to paragraph (2) and as provided in this paragraph, shall have the right to make a new deposit of the microorganism which was originally deposited.
- (b) The new deposit shall be made with the international depositary authority with which the original deposit was made, provided that:
- (i) It shall be made with another international depositary authority where the institution with which the original deposit was made has ceased to have the status of international depositary authority, either entirely or in respect of the kind of microorganism to which the deposited microorganism belongs, or where the international depositary authority with which the original deposit was made discontinues, temporarily or definitively, the performance of its functions in respect of deposited microorganisms;
 - (ii) It may be made with another international depositary authority in the case referred to in subparagraph (a)(ii).
- (c) Any new deposit shall be accompanied by a statement signed by the depositor alleging that the newly deposited microorganism is the same as that originally deposited. If the allegation of the depositor is contested, the burden of proof shall be governed by the applicable law.
- (d) Subject to subparagraphs (a) to (c) and (e), the new deposit shall be treated as if it had been made on the date on which the original deposit was made where all the preceding statements concerning the viability of the originally deposited microorganism indicated that the microorganism was viable and where the new

deposit was made within three months after the date on which the depositor received the notification referred to in subparagraph (a).

- (e) Where subparagraph (b)(i) applies and the depositor does not receive the notification referred to in subparagraph (a) within six months after the date on which the termination, limitation or discontinuance referred to in subparagraph (b)(i) was published by the International Bureau, the three-month time limit referred to in subparagraph (d) shall be counted from the date of the said publication.
- (2) The right referred to in paragraph (1)(a) shall not exist where the deposited microorganism has been transferred to another international depositary authority as long as that authority is in a position to furnish samples of such microorganism.

Article 5

Export and Import Restrictions

Each Contracting State recognizes that it is highly desirable that, if and to the extent to which the export from or import into its territory of certain kinds of microorganisms is restricted, such restriction should apply to microorganisms deposited, or destined for deposit, under this Treaty only where the restriction is necessary in view of national security or the dangers for health or the environment.

Article 6

Status of International Depositary Authority

- (1) In order to qualify for the status of international depositary authority, any depositary institution must be located on the territory of a Contracting State and must benefit from assurances furnished by that State to the effect that the said institution complies and will continue to comply with the requirements specified in paragraph (2). The said assurances may be furnished also by an intergovernmental industrial property organization; in that case, the depositary institution must be located on the territory of a state member of the said organization.
- (2) The depositary institution must, in its capacity of international depositary authority:
- (i) Have a continuous existence;
 - (ii) Have the necessary staff and facilities, as prescribed in the Regulations, to perform its scientific and administrative tasks under this Treaty;
 - (iii) Be impartial and objective;

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- (iv) Be available, for the purposes of deposit, to any depositor under the same conditions;
 - (v) Accept for deposit any or certain kinds of microorganisms, examine their viability and store them, as prescribed in the Regulations;
 - (vi) Issue a receipt to the depositor, and any required viability statement, as prescribed in the Regulations;
 - (vii) Comply, in respect of the deposited microorganisms, with the requirement of secrecy, as prescribed in the Regulations;
 - (viii) Furnish samples of any deposited microorganism under the conditions and in conformity with the procedure prescribed in the Regulations.
- (3) The Regulations shall provide the measures to be taken:
- (i) Where an international depositary authority discontinues, temporarily or definitively, the performance of its functions in respect of deposited microorganisms or refuses to accept any of the kinds of microorganisms which it should accept under the assurances furnished;
 - (ii) In case of the termination or limitation of the status of international depositary authority of an international depositary authority.

Article 7

Acquisition of the Status of International Depositary Authority

- (1) (a) A depositary institution shall acquire the status of international depositary authority by virtue of a written communication addressed to the Director General by the Contracting State on the territory of which the depositary institution is located and including a declaration of assurances to the effect that the said institution complies and will continue to comply with the requirements specified in Article 6(2). The said status may be acquired also by virtue of a written communication addressed to the Director General by an intergovernmental industrial property organization and including the said declaration.
- (b) The communication shall also contain information on the depositary institution as provided in the Regulations and may indicate the date on which the status of international depositary authority should take effect.
- (2) (a) If the Director General finds that the communication includes the required

declaration and that all the required information has been received, the communication shall be promptly published by the International Bureau.

(b) The status of international depositary authority shall be acquired as from the date of publication of the communication or, where a date has been indicated under paragraph (1)(b) and such date is later than the date of publication of the communication, as from such date.

(3) The details of the procedure under paragraphs (1) and (2) are provided in the Regulations.

Article 8

Termination and Limitation of the Status of International Depositary Authority

- (1) (a) Any Contracting State or any intergovernmental industrial property organization may request the Assembly to terminate, or to limit to certain kinds of microorganisms, any authority's status of international depositary authority on the ground that the requirements specified in Article 6 have not been or are no longer complied with. However, such a request may not be made by a Contracting State or intergovernmental industrial property organization in respect of an international depositary authority for which it has made the declaration referred to in Article 7(1)(a).
- (b) Before making the request under subparagraph (a), the Contracting State or the intergovernmental industrial property organization shall, through the intermediary of the Director General, notify the reasons for the proposed request to the Contracting State or the intergovernmental industrial property organization which has made the communication referred to in Article 7(1) so that that State or organization may, within six months from the date of the said notification, take appropriate action to obviate the need for making the proposed request.
- (c) Where the Assembly finds that the request is well founded, it shall decide to terminate, or to limit to certain kinds of microorganisms, the status of international depositary authority of the authority referred to in subparagraph (a). The decision of the Assembly shall require that a majority of two-thirds of the votes cast be in favor of the request.
- (2) (a) The Contracting State or intergovernmental industrial property organization having made the declaration referred to in Article 7(1)(a) may, by a communication addressed to the Director General, withdraw its declaration either entirely or in respect only of certain kinds of microorganisms and in any event shall do so when and to the extent that its assurances are no longer applicable.

- (b) Such a communication shall, from the date provided for in the Regulations, entail, where it relates to the entire declaration, the termination of the status of international depositary authority or, where it relates only to certain kinds of microorganisms, a corresponding limitation of such status.
- (3) The details of the procedure under paragraphs (1) and (2) are provided in the Regulations.

Article 9

Intergovernmental Industrial Property Organizations

- (1) (a) Any intergovernmental organization to which several States have entrusted the task of granting regional patents and of which all the member States are members of the International (Paris) Union for the Protection of Industrial Property may file with the Director General a declaration that it accepts the obligation of recognition provided for in Article 3(1)(a), the obligation concerning the requirements referred to in Article 3(2) and all the effects of the provisions of this Treaty and the Regulations applicable to intergovernmental industrial property organizations. If filed before the entry into force of this Treaty according to Article 16(1), the declaration referred to in the preceding sentence shall become effective on the date of the said entry into force. If filed after such entry into force, the said declaration shall become effective three months after its filing unless a later date has been indicated in the declaration. In the latter case, the declaration shall take effect on the date thus indicated.
- (b) The said organization shall have the right provided for in Article 3(1)(b).
- (2) Where any provision of this Treaty or of the Regulations affecting intergovernmental industrial property organizations is revised or amended, any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1) by notification addressed to the Director General. The withdrawal shall take effect:
- (i) Where the notification has been received before the date on which the revision or amendment enters into force, on that date;
- (ii) Where the notification has been received after the date referred to in (i), on the date indicated in the notification or, in the absence of such indication, three months after the date on which the notification was received.
- (3) In addition to the case referred to in paragraph (2), any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1)(a) by notification addressed to the Director General. The withdrawal shall take effect two years after the date on which the Director General has received the notification. No notification of withdrawal under this paragraph shall be receivable during a period of five years from

the date on which the declaration took effect.

- (4) The withdrawal referred to in paragraph (2) or (3) by an intergovernmental industrial property organization whose communication under Article 7(1) has led to the acquisition of the status of international depositary authority by a depositary institution shall entail the termination of such status one year after the date on which the Director General has received the notification of withdrawal.
- (5) Any declaration referred to in paragraph (1)(a), notification of withdrawal referred to in paragraph (2) or (3), assurances furnished under Article 6(1), second sentence, and included in a declaration made in accordance with Article 7(1)(a), request made under Article 8(1) and communication of withdrawal referred to in Article 8(2) shall require the express previous approval of the supreme governing organ of the intergovernmental industrial property organization whose members are all the States members of the said organization and in which decisions are made by the official representatives of the governments of such States.

CHAPTER II

ADMINISTRATIVE PROVISIONS

Article 10 **Assembly**

- (1)(a) The Assembly shall consist of the Contracting States.
- (b) Each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
- (c) Each intergovernmental industrial property organization shall be represented by special observers in the meetings of the Assembly and any committee and working group established by the Assembly.
- (d) Any State not member of the Union which is a member of the Organization or of the International (Paris) Union for the Protection of Industrial Property and any intergovernmental organization specialized in the field of patents other than an intergovernmental industrial property organization as defined in Article 2(v) may be represented by observers in the meetings of the Assembly and, if the Assembly so decides, in the meetings of any committee or working group established by the Assembly.

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- (2) (a) The Assembly shall:
- (i) Deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;
 - (ii) Exercise such rights and perform such tasks as are specially conferred upon it or assigned to it under this Treaty;
 - (iii) Give directions to the Director General concerning the preparations for revision conferences;
 - (iv) Review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
 - (v) Establish such committees and working groups as it deems appropriate to facilitate the work of the Union;
 - (vi) Determine, subject to paragraph (1)(d), which States other than Contracting States, which intergovernmental organizations other than intergovernmental industrial property organizations as defined in Article 2(v) and which international non-governmental organizations shall be admitted to its meetings as observers and to what extent international depositary authorities shall be admitted to its meetings as observers;
 - (vii) Take any other appropriate action designed to further the objectives of the Union;
 - (viii) Perform such other functions as are appropriate under this Treaty.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (3) A delegate may represent, and vote in the name of, one State only.
- (4) Each Contracting State shall have one vote.
- (5) (a) One-half of the Contracting States shall constitute a quorum.

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- (b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.
- (6) (a) Subject to Articles 8(1)(c), 12(4) and 14(2)(b), the decisions of the Assembly shall require a majority of the votes cast.
- (b) Abstentions shall not be considered as votes.
- (7) (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organization.
- (b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either on his own initiative or at the request of one-fourth of the Contracting States.
- (8) The Assembly shall adopt its own rules of procedure.

Article 11

International Bureau

- (1) The International Bureau shall:
- (i) Perform the administrative tasks concerning the Union, in particular such tasks as are specifically assigned to it under this Treaty and the Regulations or by the Assembly;
- (ii) Provide the secretariat of revision conferences, of the Assembly, of committees and working groups established by the Assembly, and of any other meeting convened by the Director General and dealing with matters of concern to the Union.
- (2) The Director General shall be the chief executive of the Union and shall represent the Union.
- (3) The Director General shall convene all meetings dealing with matters of concern to the Union.
- (4) (a) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and
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working groups established by the Assembly, and any other meeting convened by the Director General and dealing with matters of concern to the Union.

- (b) The Director General, or a staff member designated by him, shall be ex officio secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).
- (5) (a) The Director General shall, in accordance with the directions of the Assembly, make the preparations for revision conferences.
- (b) The Director General may consult with intergovernmental and international non-governmental organizations concerning the preparations for revision conferences.
- (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.
- (d) The Director General, or a staff member designated by him, shall be ex officio secretary of any revision conference.

Article 12
Regulations

- (1) The Regulations provide rules concerning:
- (i) Matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed;
 - (ii) Any administrative requirements, matters or procedures;
 - (iii) Any details useful in the implementation of this Treaty.
- (2) The Regulations adopted at the same time as this Treaty are annexed to this Treaty.
- (3) The Assembly may amend the Regulations.
- (4) (a) Subject to subparagraph (b), adoption of any amendment of the Regulations shall require two-thirds of the votes cast.
- (b) Adoption of any amendment concerning the furnishing of samples of deposited

microorganisms by the international depositary authorities shall require that no Contracting State vote against the proposed amendment.

- (5) In the case of conflict between the provisions of this Treaty and those of the Regulations, the provisions of this Treaty shall prevail.

CHAPTER III

REVISION AND AMENDMENT

Article 13

Revision of the Treaty

- (1) This Treaty may be revised from time to time by conferences of the Contracting States.
- (2) The convocation of any revision conference shall be decided by the Assembly.
- (3) Articles 10 and 11 may be amended either by a revision conference or according to Article 14.

Article 14

Amendment of Certain Provisions of the Treaty

- (1) (a) Proposals under this Article for the amendment of Articles 10 and 11 may be initiated by Contracting State or by the Director General.
- (b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.
- (2) (a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.
- (b) Adoption of any amendment to Article 10 shall require four-fifths of the votes cast; adoption of any amendment to Article 11 shall require three-fourths of the votes cast.
- (3) (a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from

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three-fourths of the Contracting States members of the Assembly at the time the Assembly adopted the amendment.

- (b) Any amendment to the said Articles thus accepted shall bind all the Contracting States which were Contracting States at the time the amendment was adopted by the Assembly, provided that any amendment creating financial obligations for the said Contracting States or increasing such obligations shall bind only those Contracting States which have notified their acceptance of such amendment.
- (c) Any amendment which has been accepted and which has entered into force in accordance with subparagraph (a) shall bind all States which become Contracting States after the date on which the amendment was adopted by the Assembly.

CHAPTER IV

FINAL PROVISIONS

Article 15

Becoming Party to the Treaty

- (1) Any State member of the International (Paris) Union for the Protection of Industrial Property may become party to this Treaty by:
 - (i) Signature followed by the deposit of an instrument of ratification, or
 - (ii) Deposit of an instrument of accession.
- (2) Instruments of ratification or accession shall be deposited with the Director General.

Article 16

Entry Into Force of the Treaty

- (1) This Treaty shall enter into force, with respect to the first five States which have deposited their instruments of ratification or accession, three months after the date on which the fifth instrument of ratification or accession has been deposited.
- (2) This Treaty shall enter into force with respect to any other State three months after the date on which that State has deposited its instrument of ratification or accession unless a later date has been indicated in the instrument of ratification or accession. In the latter

case, this Treaty shall enter into force with respect to that State on the date thus indicated.

Article 17

Denunciation of the Treaty

- (1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.
- (2) Denunciation shall take effect two years after the day on which the Director General has received the notification.
- (3) The right of denunciation provided for in paragraph (1) shall not be exercised by any Contracting State before the expiration of five years from the date on which it becomes party to this Treaty.
- (4) The denunciation of this Treaty by a Contracting State that has made a declaration referred to in Article 7(1)(a) with respect to a depositary institution which thus acquired the status of international depositary authority shall entail the termination of such status one year after the day on which the Director General received the notification referred to in paragraph (1).

Article 18

Signature and Languages of the Treaty

- (1) (a) This Treaty shall be signed in a singles original in the English and French languages, both texts being equally authentic.

(b) Official texts of this Treaty shall be established by the Director General, after consultation with the interested Governments and within two months from the date of signature of this Treaty, in the other languages in which the Convention Establishing the World Intellectual Property Organization was signed.

(c) Official texts of this Treaty shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Japanese and Portuguese languages, and such other languages as the Assembly may designate.
- (2) This Treaty shall remain open for signature at Budapest until December 31, 1977.

Article 19

Deposit of the Treaty; Transmittal of Copies; Registration of the Treaty

- (1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.
- (2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations to the Governments of all the States referred to in Article 15(1), to the intergovernmental organizations that may file a declaration under Article 9(1)(a) and, on request, to the Government of any other State.
- (3) The Director General shall register this Treaty with the Secretariat of the United Nations.
- (4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and to the Regulations to all Contracting States, to all intergovernmental industrial property organizations and, on request, to the Government of any other State and to any other intergovernmental organization that may file a declaration under Article 9(1)(a).

Article 20

Notifications

The Director General shall notify the Contracting States, the intergovernmental industrial property organizations and those States not members of the Union which are members of the International (Paris) Union for the Protection of Industrial Property of:

- (i) Signatures under Article 18;
- (ii) Deposits of instruments of ratification or accession under Article 15(2);
- (iii) Declarations filed under Article 9(1)(a) and notifications of withdrawal under Article 9(2) or (3);
- (iv) The date of entry into force of this Treaty under Article 16(1);
- (v) The communications under Articles 7 and 8 and the decisions under Article 8;
- (vi) Acceptance of amendments to this Treaty under Article 14(3);
- (vii) Any amendment of the Regulations;

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- (viii) The dates on which amendments to the Treaty or the Regulations enter into force;
- (ix) Denunciations received under Article 17.

**PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY
("PARIS CONVENTION")**

Date and Place of Adoption of Convention	:	20 th March 1883, Paris
Date of Entry into Force of Convention	:	7 th July 1884
Date of Accession by Brunei Darussalam	:	30 th May 2006
Date of Entry into Force for Brunei Darussalam	:	30 th August 2006
Reservations / Declarations	:	None
Applicable Legislation as of 19 th January 2013	:	
		i. Trade Marks Act (CAP. 98)
		ii. Industrial Designs Order, 2000
		iii. Patents Order, 2011
		iv. Trade Marks Act, (CAP. 98)

Executive Summary:

Before any international intellectual property convention were established, there were inconsistencies to obtain application and protection on industrial properties especially patent since different countries have different laws. As the development of new technologies progresses and the increase of international trade, there was a need to harmonize the laws on industrial property. In 1873, the Vienna Congress for Patent Reform was convened to set, inter alia, an international protection on patent which is effective and useful. By 1878, an International Congress on Industrial Property was convened in Paris to set up a diplomatic conference on harmonizing the industrial property law. Following that Congress, in 1880, an International Conference was convened in Paris to adopt a convention on the protection of industrial property. In 1883, the Paris Convention was signed by eleven states: Belgium, Brazil, El Salvador, France, Guatemala, Italy, the Netherlands, Portugal, Serbia, Spain and Switzerland. The Paris Convention came into effect on 7th July 1884.

The Convention, which was signed on 20th March 1883, has since then been revised several time:

1. 14th December 1900 at Brussels;
2. 2nd June 1911 at Washington;
3. 6th November 1925 at the Hague;
4. 2nd June 1934 at London;
5. 31st October 1958 at Lisbon;
6. 14th July 1967 at Stockholm; and

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Paris Convention for the Protection of Industrial Property

7. As amended on 28th September 1979.

This Convention is the first international convention on the protection of intellectual property. It established the Paris Union, an international union, to protect industrial property. In short, the Convention addresses patents, trademarks, well known marks, names, industrial design rights and unfair competition.

The Stockholm Revision of 1967 is the most significant revision to which most member countries were party. The main elements of the Paris Convention are:

- a. National Treatment;
- b. Priority Right for patent, trademarks or designs within a specified time;
- c. Establishment of rights and obligations to ensure uniformity; and
- d. The Convention's Administrative framework.

The Paris Convention is administered by the World Intellectual Property Organization.

Source of text: http://www.wipo.int/export/sites/www/treaties/en/ip/paris/pdf/trtdocs_wo020.pdf

Article 1

Establishment of the Union; Scope of Industrial Property¹

- (1) The countries to which this Convention applies constitute a Union for the protection of industrial property.
- (2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.
- (3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.
- (4) Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

Article 2

National Treatment for Nationals of Countries of the Union

- (1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.
- (2) However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.
- (3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedures and to jurisdiction, and to the designation of an address for

¹ Articles have been given titles to facilitate their identification. There are no titles in the signed (French) text.

service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

Article 3

Same Treatment for Certain Categories of Persons as for Nationals of Countries of the Union

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Article 4

A to I. Patents, Utility Models, Industrial Designs, Marks, Inventors’ Certificates: Right of Priority. – G. Patents: Division of the Application

- A.** (1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.
- (2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.
- (3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.
- B.** Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union.
- C.** (1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.
- (2) These periods shall start from the date of filing of the first application; the day of

filing shall not be included in the period.

- (3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.
 - (4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.
- D.** (1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.
- (2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating there to.
 - (3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.
 - (4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.
 - (5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E. (1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

F. No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

G. (1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

H. Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

I. (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's

certificate.

Article 4^{bis}

Patents: Independence of Patents Obtained for the Same Invention in Different Countries

- (1) Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not. (2) The foregoing provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for nullity and forfeiture, and as regards their normal duration.
- (2) The provision shall apply to all patents existing at the time when it comes into effect.
- (3) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.
- (4) Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

Article 4^{ter}

Patents: Mention of the Inventor in the Patent

The inventor shall have the right to be mentioned as such in the patent.

Article 4^{quater}

Patents: Patentability in Case of Restrictions of Sale by Law

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

Article 5

A. Patents: Importation of Articles; Failure to Work or Insufficient Working; Compulsory Licenses. — B. Industrial Designs: Failure to Work; Importation of Articles. — C. Marks: Failure to Use; Different Forms; Use by Co-proprietors. — D. Patents, Utility Models, Marks, Industrial Designs: Marking

- A. (1) Importation by the patentee into the country where the patent has been granted of
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- articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.
- (2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.
 - (3) Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.
 - (4) A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.
 - (5) The foregoing provisions shall be applicable, *mutatis mutandis*, to utility models.
- B.** The protection of industrial designs shall not, under any circumstance, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.
- C.** (1) If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction.
- (2) Use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.
 - (3) Concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the domestic law of the country where protection is claimed shall not prevent registration or diminish in any way the protection granted to the said mark in any country of the Union, provided that such use does not result in misleading the public and is not contrary to the public interest.
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- D. No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the goods as a condition of recognition of the right to protection.

Article 5^{bis}

All Industrial Property Rights: Period of Grace for the Payment of Fees for the Maintenance of Rights; Patents: Restoration

- (1) A period of grace of not less than six months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge.
- (2) The countries of the Union shall have the right to provide for the restoration of patents which have lapsed by reason of non-payment of fees.

Article 5^{ter}

Patents: Patented Devices Forming Part of Vessels, Aircraft, or Land Vehicles

In any country of the Union the following shall not be considered as infringements of the rights of a patentee:

- (i) the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of the said country, provided that such devices are used there exclusively for the needs of the vessel;
- (ii) the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the said country.

Article 5^{quater}

Patents: Importation of Products Manufactured by a Process Patented in the Importing Country

When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent, with respect to products manufactured in that

country.

**Article 5^{quinquies}
Industrial Designs**

Industrial designs shall be protected in all the countries of the Union.

**Article 6
Marks: Conditions of Registration; Independence of Protection of Same Mark in
Different Countries**

- (1) The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.
- (2) However, an application for the registration of a mark filed by a national of a country of the Union in any country of the Union may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin.
- (3) A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

**Article 6^{bis}
Marks: Well-Known Marks**

- (1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.
- (2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.
- (3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

Article 6^{ter}

Marks: Prohibitions concerning State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations

- (1) (a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.
- (b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.
- (c) No country of the Union shall be required to apply the provisions of subparagraph (b), above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration referred to in subparagraph (a), above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.
- (2) Prohibition of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.
- (3) (a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated. Nevertheless such communication is not obligatory in respect of flags of States.
- (b) The provisions of subparagraph (b) of paragraph (1) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the latter have communicated to the countries of the

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Union through the intermediary of the International Bureau.

- (4) Any country of the Union may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country or international intergovernmental organization concerned.
- (5) In the case of State flags, the measures prescribed by paragraph (1), above, shall apply solely to marks registered after November 6, 1925.
- (6) In the case of State emblems other than flags, and of official signs and hallmarks of the countries of the Union, and in the case of armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations, these provisions shall apply only to marks registered more than two months after receipt of the communication provided for in paragraph (3), above.
- (7) In cases of bad faith, the countries shall have the right to cancel even those marks incorporating State emblems, signs, and hallmarks, which were registered before November 6, 1925.
- (8) Nationals of any country who are authorized to make use of the State emblems, signs, and hallmarks, of their country may use them even if they are similar to those of another country.
- (9) The countries of the Union undertake to prohibit the unauthorized use in trade of the State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.
- (10) The above provisions shall not prevent the countries from exercising the right given in paragraph (3) of Article 6^{quinquies}, Section B, to refuse or to invalidate the registration of marks incorporating, without authorization, armorial bearings, flags, other State emblems, or official signs and hallmarks adopted by a country of the Union, as well as the distinctive signs of international intergovernmental organizations referred to in paragraph (1), above.

Article 6^{quater}

Marks: Assignment of Marks

- (1) When, in accordance with the law of a country of the Union, the assignment of a mark is valid only if it takes place at the same time as the transfer of the business or goodwill to which the mark belongs, it shall suffice for the recognition of such validity that the portion of the business or goodwill located in that country be transferred to the assignee,

together with the exclusive right to manufacture in the said country, or to sell therein, the goods bearing the mark assigned.

- (2) The foregoing provision does not impose upon the countries of the Union any obligation to regard as valid the assignment of any mark the use of which by the assignee would, in fact, be of such a nature as to mislead the public, particularly as regards the origin, nature, or essential qualities, of the goods to which the mark is applied.

Article 6^{quinquies}

Marks: Protection of Marks Registered in One Country of the Union in the Other Countries of the Union

- A.** (1) Every trademark duly registered in the country of origin shall be accepted for filing and protected as is in the other countries of the Union, subject to the reservations indicated in this Article. Such countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(2) Shall be considered the country of origin the country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union, the country of the Union where he has his domicile, or, if he has no domicile within the Union but is a national of a country of the Union, the country of which he is a national.

- B.** Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases:
1. When they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed;
 2. When they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;
 3. When they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order.

This provision is subject, however, to the application of Article 10^{bis}.

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- C. (1) In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.
- (2) No trademark shall be refused in the other countries of the Union for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin.
- D. No person may benefit from the provisions of this Article if the mark for which he claims protection is not registered in the country of origin.
- E. However, in no case shall the renewal of the registration of the mark in the country of origin involve an obligation to renew the registration in the other countries of the Union in which the mark has been registered.
- F. The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period fixed by Article 4, even if registration in the country of origin is effected after the expiration of such period.

Article 6^{sexies}

Marks: Service Marks

The countries of the Union undertake to protect service marks. They shall not be required to provide for the registration of such marks.

Article 6^{septies}

Marks: Registration in the Name of the Agent or Representative of the Proprietor without the Latter’s Authorization

- (1) If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor’s authorization, for the registration of the mark in his own name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favor of the said registration, unless such agent or representative justifies his action.
- (2) The proprietor of the mark shall, subject to the provisions of paragraph (1), above, be entitled to oppose the use of his mark by his agent or representative if he has not authorized such use.

- (3) Domestic legislation may provide an equitable time limit within which the proprietor of a mark must exercise the rights provided for in this Article.

Article 7

Marks: Nature of the Goods to which the Mark is Applied

The nature of the goods to which a trademark is to be applied shall in no case form an obstacle to the registration of the mark.

Article 7^{bis}

Marks: Collective Marks

- (1) The countries of the Union undertake to accept for filing and to protect collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.
- (2) Each country shall be the judge of the particular conditions under which a collective mark shall be protected and may refuse protection if the mark is contrary to the public interest.
- (3) Nevertheless, the protection of these marks shall not be refused to any association the existence of which is not contrary to the law of the country of origin, on the ground that such association is not established in the country where protection is sought or is not constituted according to the law of the latter country.

Article 8

Trade Names

A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.

Article 9

Marks, Trade Names: Seizure, on Importation, etc., of Goods Unlawfully Bearing a Mark or Trade Name

- (1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection.
- (2) Seizure shall likewise be effected in the country where the unlawful affixation occurred or

in the country into which the goods were imported.

- (3) Seizure shall take place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country.
- (4) The authorities shall not be bound to effect seizure of goods in transit.
- (5) If the legislation of a country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country.
- (6) If the legislation of a country permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

Article 10

False Indications: Seizure, on Importation, etc., of Goods Bearing False Indications as to their Source or the Identity of the Producer

- (1) The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.
- (2) Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.

Article 10^{bis}

Unfair Competition

- (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.
 - (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.
 - (3) The following in particular shall be prohibited:
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- (i) All acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
- (ii) False allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
- (iii) Indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

Article 10^{ter}

Marks, Trade Names, False Indications, Unfair Competition: Remedies, Right to Sue

- (1) The countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies effectively to repress all the acts referred to in Articles 9, 10, and 10^{bis}.
- (2) They undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to in Articles 9, 10, and 10^{bis}, in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.

Article 11

Inventions, Utility Models, Industrial Designs, Marks: Temporary Protection at Certain International Exhibitions

- (1) The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them.
- (2) Such temporary protection shall not extend the periods provided by Article 4. If, later, the right of priority is invoked, the authorities of any country may provide that the period shall start from the date of introduction of the goods into the exhibition.
- (3) Each country may require, as proof of the identity of the article exhibited and of the date of its introduction, such documentary evidence as it considers necessary.

Article 12

Special National Industrial Property Services

- (1) Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks.
- (2) This service shall publish an official periodical journal. It shall publish regularly:
 - (a) The names of the proprietors of patents granted, with a brief designation of the inventions patented;
 - (b) The reproductions of registered trademarks.

Article 13

Assembly of the Union

- (1) (a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 13 to 17.
 - (b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
 - (c) The expenses of each delegation shall be borne by the Government which has appointed it.
- (2) (a) The Assembly shall:
 - i) Deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;
 - ii) Give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as “the International Bureau”) referred to in the Convention establishing the world Intellectual Property Organization (hereinafter designated as “the Organization”), due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 17;
 - iii) Review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

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- iv) Elect the members of the Executive Committee of the Assembly;
 - v) Review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
 - vi) Determine the program and adopt the biennial budget of the Union, and approve its final accounts;
 - vii) Adopt the financial regulations of the Union;
 - viii) Establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union;
 - ix) Determine which countries not members of the Union and which intergovernmental and international nongovernmental organizations shall be admitted to its meetings as observers;
 - x) Adopt amendments to Articles 13 to 17;
 - xi) Take any other appropriate action designed to further the objectives of the Union; (xii) perform such other functions as are appropriate under this Convention;
 - xii) Subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (3) (a) Subject to the provisions of subparagraph (b), a delegate may represent one country only.
- (b) Countries of the Union grouped under the terms of a special agreement in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 may be jointly represented during discussions by one of their number.
- (4) (a) Each country member of the Assembly shall have one vote.
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- (b) One-half of the countries members of the Assembly shall constitute a quorum.
- (c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions, set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.
- (d) Subject to the provisions of Article 17(2), the decisions of the Assembly shall require two-thirds of the votes cast.
- (e) Abstentions shall not be considered as votes.
- (5) (a) Subject to the provisions of subparagraph (b), a delegate may vote in the name of one country only.
- (b) The countries of the Union referred to in paragraph (3)(b) shall, as a general rule, endeavor to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any such country cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name, provided that each delegation may vote by proxy for one country only. Such power to vote shall be granted in a document signed by the Head of State or the competent Minister.
- (6) Countries of the Union not members of the Assembly shall be admitted to the meetings of the latter as observers.
- (7) (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.
- (b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

- (8) The Assembly shall adopt its own rules of procedure.

Article 14
Executive Committee

- (1) The Assembly shall have an Executive Committee.
- (2) (a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 16(7)(b), have an ex officio seat on the Committee.
- (b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
- (c) The expenses of each delegation shall be borne by the Government which has appointed it.
- (3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.
- (4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements established in relation with the Union to be among the countries constituting the Executive Committee.
- (5) (a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.
- (b) Members of the Executive Committee may be re-elected, but only up to a maximum of two-thirds of such members.
- (c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.
- (6) (a) The Executive Committee shall:

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- (i) Prepare the draft agenda of the Assembly;
 - (ii) Submit proposals to the Assembly in respect of the draft program and biennial budget of the Union prepared by the Director General;
 - (iii) *[deleted]*
 - (iv) Submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;
 - (v) Take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;
 - (vi) Perform such other functions as are allocated to it under this Convention.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (7) (a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.
- (b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.
- (8) (a) Each country member of the Executive Committee shall have one vote.
- (b) One-half of the members of the Executive Committee shall constitute a quorum.
- (c) Decisions shall be made by a simple majority of the votes cast.
- (d) Abstentions shall not be considered as votes.
- (e) A delegate may represent, and vote in the name of, one country only.
- (9) Countries of the Union not members of the Executive Committee shall be admitted to its
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meetings as observers.

- (10) The Executive Committee shall adopt its own rules of procedure.

Article 15
International Bureau

- (1) (a) Administrative tasks concerning the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works.
- (b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.
- (c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.
- (2) The International Bureau shall assemble and publish information concerning the protection of industrial property. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property. Furthermore, it shall furnish the International Bureau with all the publications of its industrial property service of direct concern to the protection of industrial property which the International Bureau may find useful in its work.
- (3) The International Bureau shall publish a monthly periodical.
- (4) The International Bureau shall, on request, furnish any country of the Union with information on matters concerning the protection of industrial property.
- (5) The International Bureau shall conduct Studies, and shall provide services, designed to facilitate the protection of industrial property.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.
- (7) (a) The International Bureau shall, in accordance with the directions of the assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 13 to 17.

- (b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.
 - (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.
- (8) The International Bureau shall carry out any other tasks assigned to it.

Article 16
Finances

- (1) (a) The Union shall have a budget.
- (b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.
 - (c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.
- (2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.
- (3) The budget of the Union shall be financed from the following sources:
- (i) Contributions of the countries of the Union;
 - (ii) Fees and charges due for services rendered by the International Bureau in relation to the Union;
 - (iii) Sale of, or royalties on, the publications of the International Bureau concerning the Union;
 - (iv) Gifts, bequests, and subventions;
 - (v) Rents, interests, and other miscellaneous income
- (4) (a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number

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of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII.....	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6) (a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that

- country for the year in which the fund is established or the decision to increase it is made.
- (c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.
- (7) (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.
- (b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.
- (8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 17

Amendment of Articles 13 to 17

- (1) Proposals for the amendment of Articles 13, 14, 15, 16, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.
- (2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 13, and to the present paragraph, shall require four-fifths of the votes cast.
- (3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the

amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 18

Revision of Articles 1 to 12 and 18 to 30

- (1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.
- (2) For that purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.
- (3) Amendments to Articles 13 to 17 are governed by the provisions of Article 17.

Article 19

Special Agreements

It is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention.

Article 20

Ratification or Accession by Countries of the Union; Entry Into Force

- (1) (a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:
 - (i) To Articles 1 to 12, or
 - (ii) To Articles 13 to 17.
(c) Any country of the Union which, in accordance with subparagraph (b), has excluded from the effects of its ratification or accession one of the two groups of Articles

referred to in that subparagraph may at any later time declare that it extends the effects of its ratification or accession to that group of Articles. Such declaration shall be deposited with the Director General.

- (2) (a) Articles 1 to 12 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)(b)(i), three months after the deposit of the tenth such instrument of ratification or accession.
- (b) Articles 13 to 17 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)(b)(ii), three months after the deposit of the tenth such instrument of ratification or accession.
- (c) Subject to the initial entry into force, pursuant to the provisions of subparagraphs (a) and (b), of each of the two groups of Articles referred to in paragraph (1)(b)(i) and (ii), and subject to the provisions of paragraph (1)(b), Articles 1 to 17 shall, with respect to any country of the Union, other than those referred to in subparagraphs (a) and (b), which deposits an instrument of ratification or accession or any country of the Union which deposits a declaration pursuant to paragraph (1)(c), enter into force three months after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument or declaration deposited. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.
- (3) With respect to any country of the Union which deposits an instrument of ratification or accession, Articles 18 to 30 shall enter into force on the earlier of the dates on which any of the groups of Articles referred to in paragraph (1)(b) enters into force with respect to that country pursuant to paragraph (2)(a), (b), or (c).

Article 21

Accession by Countries outside the Union; Entry Into Force

- (1) Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.
- (2) (a) With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force, unless a subsequent date has been indicated in the instrument of accession, on the date upon which provisions first enter into force pursuant to Article 20(2)(a) or (b); provided that:

- (i) If Articles 1 to 12 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 12 of the Lisbon Act,
- (ii) If Articles 13 to 17 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 13 and 14(3), (4), and (5), of the Lisbon Act.

If a country indicates a subsequent date in its instrument of accession, this Act shall enter into force with respect to that country on the date thus indicated.

- (b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of one group of Articles of the present Act, this Act shall, subject to the proviso of subparagraph (a), enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.
- (3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

Article 22

Consequences of Ratification or Accession

Subject to the possibilities of exceptions provided for in Articles 20(1)(b) and 28(2), ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

Article 23

Accession to Earlier Acts

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

Article 24
Territories

- (1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.
- (2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.
- (3) (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

Article 25
Implementation of the Convention on the Domestic Level

- (1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.
- (2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 26
Denunciation

- (1) This Convention shall remain in force without limitation as to time.
 - (2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.
 - (3) Denunciation shall take effect one year after the day on which the Director General has
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received the notification

- (4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 27

Application of Earlier Acts

- (1) The present Act shall, as regards the relations between the countries to which it applies, and to the extent that it applies, replace the Convention of Paris of March 20, 1883 and the subsequent Acts of revision.
- (2) (a) As regards the countries to which the present Act does not apply, or does not apply in its entirety, but to which the Lisbon Act of October 31, 1958, applies, the latter shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).
- (b) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act applies, the London Act of June 2, 1934, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).
- (c) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act, nor the London Act applies, the Hague Act of November 6, 1925, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).
- (3) Countries outside the Union which become party to this Act shall apply it with respect to any country of the Union not party to this Act or which, although party to this Act, has made a declaration pursuant to Article 20(1)(b)(i). Such countries recognize that the said country of the Union may apply, in its relations with them, the provisions of the most recent Act to which it is party.

Article 28

Disputes

- (1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall

inform the International Bureau; the

- (2) International Bureau shall bring the matter to the attention of the other countries of the Union.
- (3) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.
- (4) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 29

Signature, Languages, Depositary Functions

- (1) (a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.
 - (b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the English, German, Italian, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.
 - (c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.
- (2) This Act shall remain open for signature at Stockholm until January 13, 1968.
- (3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.
- (4) The Director General shall register this Act with the Secretariat of the United Nations.
- (5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Article 20(1)(c), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 24.

Article 30
Transitional Provisions

- (1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the Bureau of the Union or its Director, respectively.
- (2) Countries of the Union not bound by Articles 13 to 17 may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under Articles 13 to 17 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.
- (3) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.
- (4) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

**PARIS COOPERATION TREATY
(PCT)**

Date and Place of Adoption of Treaty	:	19 th June 1970, Washington
Date of Entry into Force of Treaty	:	24 th January 1978
Date of Accession by Brunei Darussalam	:	24 th April 2012
Date of Entry into Force for Brunei Darussalam	:	24 th July 2012
Reservations / Declarations	:	None
Applicable Legislation as of 19 th January 2013	:	
		i. Patents Order, 2011

Executive Summary:

This Treaty was established in order to avoid double work for the applicant and the national patent office. It was adopted and signed on 19th June 1970 in Washington and came into operation on 24th January 1978. It has been amended in 1979 and modified in 1984 and 2001. The PCT is a special agreement under the Paris Convention.

Under the PCT, it allows an international patent application and preliminary examination procedure but does not grant (or refuse) patent protection as this is left to the national patent office. The Treaty enables an applicant to file a single patent application to any designated Member State where its effect has the same as if filing separate national applications for all the states that the applicant designates in the international application. The benefit of using this system is reduction on application and translation costs.

The PCT is administered by the World Intellectual Property Organization.

Source of text: <http://www.wipo.int/pct/en/texts/articles/atoc.htm>

The Contracting States,

Desiring to make a contribution to the progress of science and technology,

Desiring to perfect the legal protection of inventions,

Desiring to simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries,

Desiring to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions,

Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology,

Convinced that cooperation among nations will greatly facilitate the attainment of these aims,

Have concluded the present Treaty;

INTRODUCTORY PROVISIONS

Article 1

Establishment of a Union

- (1) The States party to this Treaty (hereinafter called “the Contracting States”) constitute a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services. The Union shall be known as the International Patent Cooperation Union.
- (2) No provision of this Treaty shall be interpreted as diminishing the rights under the Paris Convention for the Protection of Industrial Property of any national or resident of any country party to that Convention.

Article 2
Definitions

For the purposes of this Treaty and the Regulations and unless expressly stated otherwise:

- (i) “application” means an application for the protection of an invention; references to an “application” shall be construed as references to applications for patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;
- (ii) references to a “patent” shall be construed as references to patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;
- (iii) “national patent” means a patent granted by a national authority;
- (iv) “regional patent” means a patent granted by a national or an intergovernmental authority having the power to grant patents effective in more than one State;
- (v) “regional application” means an application for a regional patent;
- (vi) references to a “national application” shall be construed as references to applications for national patents and regional patents, other than applications filed under this Treaty;
- (vii) “international application” means an application filed under this Treaty;
- (viii) references to an “application” shall be construed as references to international applications and national applications;
- (ix) references to a “patent” shall be construed as references to national patents and regional patents;
- (x) references to “national law” shall be construed as references to the national law of a Contracting State or, where a regional application or a regional patent is involved, to the treaty providing for the filing of regional applications or the granting of regional patents;
- (xi) “priority date,” for the purposes of computing time limits, means:

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Paris Cooperation Treaty (PCT)

- (a) where the international application contains a priority claim under Article 8, the filing date of the application whose priority is so claimed;
- (b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;
- (c) where the international application does not contain any priority claim under Article 8, the international filing date of such application;
- (xii) “national Office” means the government authority of a Contracting State entrusted with the granting of patents; references to a “national Office” shall be construed as referring also to any intergovernmental authority which several States have entrusted with the task of granting regional patents, provided that at least one of those States is a Contracting State, and provided that the said States have authorized that authority to assume the obligations and exercise the powers which this Treaty and the Regulations provide for in respect of national Offices;
- (xiii) “designated Office” means the national Office of or acting for the State designated by the applicant under Chapter I of this Treaty;
- (xiv) “elected Office” means the national Office of or acting for the State elected by the applicant under Chapter II of this Treaty;
- (xv) “receiving Office” means the national Office or the intergovernmental organization with which the international application has been filed;
- (xvi) “Union” means the International Patent Cooperation Union;
- (xvii) “Assembly” means the Assembly of the Union;
- (xviii) “Organization” means the World Intellectual Property Organization;
- (xix) “International Bureau” means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);
- (xx) “Director General” means the Director General of the Organization and, as long as BIRPI subsists, the Director of BIRPI.

CHAPTER I

INTERNATIONAL APPLICATION AND INTERNATIONAL SEARCH

Article 3

The International Application

- (1) Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.
- (2) An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.
- (3) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.
- (4) The international application shall:
 - (i) be in a prescribed language;
 - (ii) comply with the prescribed physical requirements;
 - (iii) comply with the prescribed requirement of unity of invention;
 - (iv) be subject to the payment of the prescribed fees.

Article 4

The Request

- (1) The request shall contain:
 - (i) a petition to the effect that the international application be processed according to this Treaty;
 - (ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application (“designated States”); if for any designated State a regional patent is available and the applicant

wishes to obtain a regional patent rather than a national patent, the request shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty; if, under the national law of the designated State, the designation of that State has the effect of an application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent;

- (iii) the name of and other prescribed data concerning the applicant and the agent (if any);
 - (iv) the title of the invention;
 - (v) the name of and other prescribed data concerning the inventor where the national law of at least one of the designated States requires that these indications be furnished at the time of filing a national application. Otherwise, the said indications may be furnished either in the request or in separate notices addressed to each designated Office whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application.
- (2) Every designation shall be subject to the payment of the prescribed fee within the prescribed time limit.
- (3) Unless the applicant asks for any of the other kinds of protection referred to in Article 43, designation shall mean that the desired protection consists of the grant of a patent by or for the designated State. For the purposes of this paragraph, Article 2(ii) shall not apply.
- (4) Failure to indicate in the request the name and other prescribed data concerning the inventor shall have no consequence in any designated State whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application. Failure to furnish the said indications in a separate notice shall have no consequence in any designated State whose national law does not require the furnishing of the said indications.

Article 5 **The Description**

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Article 6
The Claims

The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

Article 7
The Drawings

- (1) Subject to the provisions of paragraph (2) (ii), drawings shall be required when they are necessary for the understanding of the invention.
- (2) Where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings:
 - (i) the applicant may include such drawings in the international application when filed,
 - (ii) any designated Office may require that the applicant file such drawings with it within the prescribed time limit.

Article 8
Claiming Priority

- (1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property.
- (2) (a) Subject to the provisions of subparagraph (b), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property.

(b) The international application for which the priority of one or more earlier applications filed in or for a Contracting State is claimed may contain the designation of that State. Where, in the international application, the priority of one or more national applications filed in or for a designated State is claimed, or where the priority of an international application having designated only one State is claimed, the conditions for, and the effect of, the priority claim in that State shall be governed by the national law of that State.

Article 9
The Applicant

- (1) Any resident or national of a Contracting State may file an international application.
- (2) The Assembly may decide to allow the residents and the nationals of any country party to the Paris Convention for the Protection of Industrial Property which is not party to this Treaty to file international applications.
- (3) The concepts of residence and nationality, and the application of those concepts in cases where there are several applicants or where the applicants are not the same for all the designated States, are defined in the Regulations.

Article 10
The Receiving Office

The international application shall be filed with the prescribed receiving Office, which will check and process it as provided in this Treaty and the Regulations.

Article 11
Filing Date and Effects of the International Application

- (1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:
 - (i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office,
 - (ii) the international application is in the prescribed language,
 - (iii) the international application contains at least the following elements:
 - (a) an indication that it is intended as an international application,
 - (b) the designation of at least one Contracting State,
 - (c) the name of the applicant, as prescribed,

- (d) a part which on the face of it appears to be a description,
- (e) a part which on the face of it appears to be a claim or claims.
- (2) (a) If the receiving Office finds that the international application did not, at the time of receipt, fulfill the requirements listed in paragraph (1), it shall, as provided in the Regulations, invite the applicant to file the required correction.
- (b) If the applicant complies with the invitation, as provided in the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction.
- (3) Subject to Article 64(4), any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) and accorded an international filing date shall have the effect of a regular national application in each designated State as of the international filing date, which date shall be considered to be the actual filing date in each designated State.
- (4) Any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) shall be equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of Industrial Property.

Article 12

Transmittal of the International Application to the International Bureau and the International Searching Authority

- (1) One copy of the international application shall be kept by the receiving Office (“home copy”), one copy (“record copy”) shall be transmitted to the International Bureau, and another copy (“search copy”) shall be transmitted to the competent International Searching Authority referred to in Article 16, as provided in the Regulations.
- (2) The record copy shall be considered the true copy of the international application.
- (3) The international application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit.

Article 13

Availability of Copy of the International Application to Designated Offices

- (1) Any designated Office may ask the International Bureau to transmit to it a copy of the international application prior to the communication provided for in Article 20, and the
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International Bureau shall transmit such copy to the designated Office as soon as possible after the expiration of one year from the priority date.

(2) (a) The applicant may, at any time, transmit a copy of his international application to any designated Office.

(b) The applicant may, at any time, ask the International Bureau to transmit a copy of his international application to any designated Office, and the International Bureau shall transmit such copy to the designated Office as soon as possible.

(c) Any national Office may notify the International Bureau that it does not wish to receive copies as provided for in subparagraph (b), in which case that subparagraph shall not be applicable in respect of that Office.

Article 14

Certain Defects in the International Application

(1) (a) The receiving Office shall check whether the international application contains any of the following defects, that is to say:

- (i) it is not signed as provided in the Regulations;
- (ii) it does not contain the prescribed indications concerning the applicant;
- (iii) it does not contain a title;
- (iv) it does not contain an abstract;
- (v) it does not comply to the extent provided in the Regulations with the prescribed physical requirements.

(b) If the receiving Office finds any of the said defects, it shall invite the applicant to correct the international application within the prescribed time limit, failing which that application shall be considered withdrawn and the receiving Office shall so declare.

(2) If the international application refers to drawings which, in fact, are not included in that application, the receiving Office shall notify the applicant accordingly and he may furnish them within the prescribed time limit and, if he does, the international filing date shall be the date on which the drawings are received by the receiving Office. Otherwise, any reference to the said drawings shall be considered non-existent.

- (3) (a) If the receiving Office finds that, within the prescribed time limits, the fees prescribed under Article 3(4)(iv) have not been paid, or no fee prescribed under Article 4(2) has been paid in respect of any of the designated States, the international application shall be considered withdrawn and the receiving Office shall so declare.
- (b) If the receiving Office finds that the fee prescribed under Article 4(2) has been paid in respect of one or more (but less than all) designated States within the prescribed time limit, the designation of those States in respect of which it has not been paid within the prescribed time limit shall be considered withdrawn and the receiving Office shall so declare.
- (4) If, after having accorded an international filing date to the international application, the receiving Office finds, within the prescribed time limit, that any of the requirements listed in items (i) to (iii) of Article 11(1) was not complied with at that date, the said application shall be considered withdrawn and the receiving Office shall so declare.

Article 15

The International Search

- (1) Each international application shall be the subject of international search.
- (2) The objective of the international search is to discover relevant prior art.
- (3) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any).
- (4) The International Searching Authority referred to in Article 16 shall endeavor to discover as much of the relevant prior art as its facilities permit, and shall, in any case, consult the documentation specified in the Regulations.
- (5) (a) If the national law of the Contracting State so permits, the applicant who files a national application with the national Office of or acting for such State may, subject to the conditions provided for in such law, request that a search similar to an international search (“international-type search”) be carried out on such application.
- (b) If the national law of the Contracting State so permits, the national Office of or acting for such State may subject any national application filed with it to an international-type search.
- (c) The international-type search shall be carried out by the International Searching Authority referred to in Article 16 which would be competent for an international search if the national application were an international application and were filed with the Office referred to in subparagraphs (a) and (b). If the national application is in a language which the International Searching Authority considers it is not equipped to

handle, the international-type search shall be carried out on a translation prepared by the applicant in a language prescribed for international applications and which the International Searching Authority has undertaken to accept for international applications. The national application and the translation, when required, shall be presented in the form prescribed for international applications

Article 16

The International Searching Authority

- (1) International search shall be carried out by an International Searching Authority, which may be either a national Office or an intergovernmental organization, such as the International Patent Institute, whose tasks include the establishing of documentary search reports on prior art with respect to inventions which are the subject of applications.
- (2) If, pending the establishment of a single International Searching Authority, there are several International Searching Authorities, each receiving Office shall, in accordance with the provisions of the applicable agreement referred to in paragraph (3)(b), specify the International Searching Authority or Authorities competent for the searching of international applications filed with such Office.
- (3) (a) International Searching Authorities shall be appointed by the Assembly. Any national Office and any intergovernmental organization satisfying the requirements referred to in subparagraph (c) may be appointed as International Searching Authority.

(b) Appointment shall be conditional on the consent of the national Office or intergovernmental organization to be appointed and the conclusion of an agreement, subject to approval by the Assembly, between such Office or organization and the International Bureau. The agreement shall specify the rights and obligations of the parties, in particular, the formal undertaking by the said Officer or organization to apply and observe all the common rules of international search.

(c) The Regulations prescribe the minimum requirements, particularly as to manpower and documentation, which any Office or organization must satisfy before it can be appointed and must continue to satisfy while it remains appointed.

(d) Appointment shall be for a fixed period of time and may be extended for further periods.

(e) Before the Assembly makes a decision on the appointment of any national Office or intergovernmental organization, or on the extension of its appointment, or before it allows any such appointment to lapse, the Assembly shall hear the interested Office or organization and seek the advice of the Committee for Technical Cooperation referred to in Article 6 once that Committee has been established.

Article 17

Procedure before the International Searching Authority

- (1) Procedure before the International Searching Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.
- (2) (a) If the International Searching Authority considers;
- (i) that the international application relates to a subject matter which the International Searching Authority is not required, under the Regulations, to search, and in the particular case decides not to search, or
 - (ii) that the description, the claims, or the drawings, fail to comply with the prescribed requirements to such an extent that a meaningful search could not be carried out, the said Authority shall so declare and shall notify the applicant and the International Bureau that no international search report will be established.
- (b) If any of the situations referred to in subparagraph (a) is found to exist in connection with certain claims only, the international search report shall so indicate in respect of such claims, whereas, for the other claims, the said report shall be established as provided in Article 18.
- (3) (a) If the International Searching Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it shall invite the applicant to pay additional fees. The International Searching Authority shall establish the international search report on those parts of the international application which relate to the invention first mentioned in the claims (“main invention”) and, provided the required additional fees have been paid within the prescribed time limit, on those parts of the international application which relate to inventions in respect of which the said fees were paid.
- (b) The national law of any designated State may provide that, where the national Office of that State finds the invitation, referred to in subparagraph (a), of the International Searching Authority justified and where the applicant has not paid all additional fees, those parts of the international application which consequently have not been searched shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

Article 18

The International Search Report

- (1) The international search report shall be established within the prescribed time limit and in the prescribed form.
- (2) The international search report shall, as soon as it has been established, be transmitted by the International Searching Authority to the applicant and the International Bureau.
- (3) The international search report or the declaration referred to in Article 17(2)(a) shall be translated as provided in the Regulations. The translations shall be prepared by or under the responsibility of the International Bureau.

Article 19

Amendment of the Claims before the International Bureau

- (1) The applicant shall, after having received the international search report, be entitled to one opportunity to amend the claims of the international application by filing amendments with the International Bureau within the prescribed time limit. He may, at the same time, file a brief statement, as provided in the Regulations, explaining the amendments and indicating any impact that such amendments might have on the description and the drawings.
- (2) The amendments shall not go beyond the disclosure in the international application as filed.
- (3) If the national law of any designated State permits amendments to go beyond the said disclosure, failure to comply with paragraph (2) shall have no consequence in that State.

Article 20

Communication to Designated Offices

- (1) (a) The international application, together with the international search report (including any indication referred to in Article 17(2)(b)) or the declaration referred to in Article 17(2)(a), shall be communicated to each designated Office, as provided in the Regulations, unless the designated Office waives such requirement in its entirety or in part.

(b) The communication shall include the translation (as prescribed) of the said report or declaration.

- (2) If the claims have been amended by virtue of Article 19(1), the communication shall either contain the full text of the claims both as filed and as amended or shall contain the full text of the claims as filed and specify the amendments, and shall include the statement, if any, referred to in Article 19(1).
- (3) At the request of the designated Office or the applicant, the International Searching Authority shall send to the said Office or the applicant, respectively, copies of the documents cited in the international search report, as provided in the Regulations.

Article 21

International Publication

- (1) The International Bureau shall publish international applications.
- (2) (a) Subject to the exceptions provided for in subparagraph (b) and in Article 64(3), the international publication of the international application shall be effected promptly after the expiration of 18 months from the priority date of that application.

(b) The applicant may ask the International Bureau to publish his international application any time before the expiration of the time limit referred to in subparagraph (a). The International Bureau shall proceed accordingly, as provided in the Regulations.
- (3) The international search report or the declaration referred to in Article 17(2)(a) shall be published as prescribed in the Regulations.
- (4) The language and form of the international publication and other details are governed by the Regulations.
- (5) There shall be no international publication if the international application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.
- (6) If the international application contains expressions or drawings which, in the opinion of the International Bureau, are contrary to morality or public order, or if, in its opinion, the international application contains disparaging statements as defined in the Regulations, it may omit such expressions, drawings, and statements, from its publications, indicating the place and number of words or drawings omitted, and furnishing, upon request, individual copies of the passages omitted.

Article 22

Copy, Translation, and Fee, to Designated Offices

- (1) The applicant shall furnish a copy of the international application (unless the communication provided for in Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each designated Office not later than at the expiration of 30¹ months from the priority date. Where the national law of the designated State requires the indication of the name of and other prescribed data concerning the inventor but allows that these indications be furnished at a time later than that of the filing of a national application, the applicant shall, unless they were contained in the request, furnish the said indications to the national Office of or acting for the State not later than at the expiration of 30 months from the priority date.
- (2) Where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be the same as that provided for in paragraph (1).
- (3) Any national law may, for performing the acts referred to in paragraphs (1) or (2), fix time limits which expire later than the time limit provided for in those paragraphs.

Article 23

Delaying of National Procedure

- (1) No designated Office shall process or examine the international application prior to the expiration of the applicable time limit under Article 22.
- (2) Notwithstanding the provisions of paragraph (1), any designated Office may, on the express request of the applicant, process or examine the international application at any time.

Article 24

Possible Loss of Effect in Designated States

- (1) Subject, in case (ii) below, to the provisions of Article 25, the effect of the

¹ *Editor's Note:* The 30-month time limit, as in force from April 1, 2002, does not apply in respect of any designated Office which has notified the International Bureau of incompatibility with the national law applied by that Office. The 20-month time limit, as in force until March 31, 2002, continues to apply after that date in respect of any such designated Office for as long as Article 22(1), as modified, continues not to be compatible with the applicable national law. Information received by the International Bureau concerning any such incompatibility is published in the Gazette and on the WIPO website at: www.wipo.int/pct/en/texts/reservations/res_incomp.html.

international application provided for in Article 11(3) shall cease in any designated State with the same consequences as the withdrawal of any national application in that State:

- (i) if the applicant withdraws his international application or the designation of that State;
 - (ii) if the international application is considered withdrawn by virtue of Articles 12(3), 14(1)(b), 14(3)(a), or 14(4), or if the designation of that State is considered withdrawn by virtue of Article 14(3)(b);
 - (iii) if the applicant fails to perform the acts referred to in Article 22 within the applicable time limit.
- (2) Notwithstanding the provisions of paragraph (1), any designated Office may maintain the effect provided for in Article 11(3) even where such effect is not required to be maintained by virtue of Article 25(2).

Article 25

Review by Designated Offices

- (1) (a) Where the receiving Office has refused to accord an international filing date or has declared that the international application is considered withdrawn, or where the International Bureau has made a finding under Article 12(3), the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to any of the designated Offices named by the applicant.
- (b) Where the receiving Office has declared that the designation of any given State is considered withdrawn, the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to the national Office of such State.
- (c) The request under subparagraphs (a) or (b) shall be presented within the prescribed time limit.
- (2) (a) Subject to the provisions of subparagraph (b), each designated Office shall, provided that the national fee (if any) has been paid and the appropriate translation (as prescribed) has been furnished within the prescribed time limit, decide whether the refusal, declaration, or finding, referred to in paragraph (1) was justified under the provisions of this Treaty and the Regulations, and, if it finds that the refusal or declaration was the result of an error or omission on the part of the receiving Office or that the finding was the result of an error or omission on the part of the International Bureau, it shall, as far as effects in the State of the designated Office are concerned, treat the international application as if such error or omission had not occurred.

(b) Where the record copy has reached the International Bureau after the expiration of the time limit prescribed under Article 12(3) on account of any error or omission on the part of the applicant, the provisions of subparagraph (a) shall apply only under the circumstances referred to in Article 48(2).

Article 26

Opportunity to Correct before Designated Offices

No designated Office shall reject an international application on the grounds of non-compliance with the requirements of this Treaty and the Regulations without first giving the applicant the opportunity to correct the said application to the extent and according to the procedure provided by the national law for the same or comparable situations in respect of national applications.

Article 27

National Requirements

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.
- (2) The provisions of paragraph (1) neither affect the application of the provisions of Article 7(2) nor preclude any national law from requiring, once the processing of the international application has started in the designated Office, the furnishing:
 - (i) when the applicant is a legal entity, of the name of an officer entitled to represent such legal entity,
 - (ii) of documents not part of the international application but which constitute proof of allegations or statements made in that application, including the confirmation of the international application by the signature of the applicant when that application, as filed, was signed by his representative or agent.
- (3) Where the applicant, for the purposes of any designated State, is not qualified according to the national law of that State to file a national application because he is not the inventor, the international application may be rejected by the designated Office.
- (4) Where the national law provides, in respect of the form or contents of national applications, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for by this Treaty and the Regulations in respect of international applications, the national Office, the courts and any other competent organs of or acting for the designated State may apply the former

requirements, instead of the latter requirements, to international applications, except where the applicant insists that the requirements provided for by this Treaty and the Regulations be applied to his international application.

- (5) Nothing in this Treaty and the Regulations is intended to be construed as prescribing anything that would limit the freedom of each Contracting State to prescribe such substantive conditions of patentability as it desires. In particular, any provision in this Treaty and the Regulations concerning the definition of prior art is exclusively for the purposes of the international procedure and, consequently, any Contracting State is free to apply, when determining the patentability of an invention claimed in an international application, the criteria of its national law in respect of prior art and other conditions of patentability not constituting requirements as to the form and contents of applications.
- (6) The national law may require that the applicant furnish evidence in respect of any substantive condition of patentability prescribed by such law.
- (7) Any receiving Office or, once the processing of the international application has started in the designated Office, that Office may apply the national law as far as it relates to any requirement that the applicant be represented by an agent having the right to represent applicants before the said Office and/or that the applicant have an address in the designated State for the purpose of receiving notifications.
- (8) Nothing in this Treaty and the Regulations is intended to be construed as limiting the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security or to limit, for the protection of the general economic interests of that State, the right of its own residents or nationals to file international applications.

Article 28

Amendments of the Claims, the Descriptions, and the Drawings, before Designated Offices

- (1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit. No designated Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired except with the express consent of the applicant.
 - (2) The amendments shall not go beyond the disclosure in the international application as filed unless the national law of the designated State permits them to go beyond the said disclosure.
 - (3) The amendments shall be in accordance with the national law of the designated State in all respects not provided for in this Treaty and the Regulations.
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- (4) Where the designated Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 29

Effects of the International Publication

- (1) As far as the protection of any rights of the applicant in a designated State is concerned, the effects, in that State, of the international publication of an international application shall, subject to the provisions of paragraphs (2) to (4), be the same as those which the national law of the designated State provides for the compulsory national publication of unexamined national applications as such.
- (2) If the language in which the international publication has been effected is different from the language in which publications under the national law are effected in the designated State, the said national law may provide that the effects provided for in paragraph (1) shall be applicable only from such time as:
- (i) a translation into the latter language has been published as provided by the national law, or
 - (ii) a translation into the latter language has been made available to the public, by laying open for public inspection as provided by the national law, or
 - (iii) a translation into the latter language has been transmitted by the applicant to the actual or prospective unauthorized user of the invention claimed in the international application, or
 - (iv) both the acts described in (i) and (iii), or both the acts described in (ii) and (iii), have taken place.
- (3) The national law of any designated State may provide that, where the international publication has been effected, on the request of the applicant, before the expiration of 18 months from the priority date, the effects provided for in paragraph (1) shall be applicable only from the expiration of 18 months from the priority date.
- (4) The national law of any designated State may provide that the effects provided for in paragraph (1) shall be applicable only from the date on which a copy of the international application as published under Article 21 has been received in the national Office or acting for such State. The said Office shall publish the date of receipt in its gazette as soon as possible.
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Article 30

Confidential Nature of the International Application

- (1) (a) Subject to the provisions of subparagraph(b), the International Bureau and the International Searching Authorities shall not allow access by any person or authority to the international application before the international publication of that application, unless requested or authorized by the applicant.
- (b) The provisions of subparagraph (a) shall not apply to any transmittal to the competent International Searching Authority, to transmittals provided for under Article 13, and to communications provided for under Article 20.
- (2) (a) No national Office shall allow access to the international application by third parties, unless requested or authorized by the applicant, before the earliest of the following dates:
- (i) date of the international publication of the international application,
 - (ii) date of the receipt of the communication of the international application under Article 20,
 - (iii) date of the receipt of a copy of the international application under Article 22.
- (b) The provisions of subparagraph (a) shall not prevent any national Office from informing third parties that it has been designated, or from publishing that fact. Such information or publication may, however, contain only the following data: identification of the receiving Office, name of the applicant, international filing date, international application number, and title of the invention.
- (c) The provisions of subparagraph (a) shall not prevent any designated Office from allowing access to the international application for the purposes of the judicial authorities.
- (3) The provisions of paragraph (2)(a) shall apply to any receiving Office except as far as transmittals provided for under Article 12(1) are concerned.
- (4) For the purposes of this Article, the term “access” covers any means by which third parties may acquire cognizance, including individual communication and general publication, provided, however, that no national Office shall generally publish an international application or its translation before the international publication or, if international publication has not taken place by the expiration of 20 months from the priority date, before the expiration of 20 months from the said priority date.

CHAPTER II

INTERNATIONAL PRELIMINARY EXAMINATION

Article 31

Demand for International Preliminary Examination

- (1) On the demand of the applicant, his international application shall be the subject of an international preliminary examination as provided in the following provisions and the Regulations.
- (2) (a) Any applicant who is a resident or national, as defined in the Regulations, of a Contracting State bound by Chapter II, and whose international application has been filed with the receiving Office of or acting for such State, may make a demand for international preliminary examination.

(b) The Assembly may decide to allow persons entitled to file international applications to make a demand for international preliminary examination even if they are residents or nationals of a State not party to this Treaty or not bound by Chapter II.
- (3) The demand for international preliminary examination shall be made separately from the international application. The demand shall contain the prescribed particulars and shall be in the prescribed language and form.
- (4) (a) The demand shall indicate the Contracting State or States in which the applicant intends to use the results of the international preliminary examination (“elected States”). Additional Contracting States may be elected later. Election may relate only to Contracting States already designated under Article 4.
(b) Applicants referred to in paragraph (2)(a) may elect any Contracting State bound by Chapter II. Applicants referred to in paragraph (2)(b) may elect only such Contracting States bound by Chapter II as have declared that they are prepared to be elected by such applicants.ā
- (5) The demand shall be subject to the payment of the prescribed fees within the prescribed time limit.
- (6) (a) The demand shall be submitted to the competent International Preliminary Examining Authority referred to in Article 32.

(b) Any later election shall be submitted to the International Bureau. (7) Each elected Office shall be notified of its election.

Article 32

The International Preliminary Examining Authority

- (1) International preliminary examination shall be carried out by the International Preliminary Examining Authority.
- (2) In the case of demands referred to in Article 31(2)(a), the receiving Office, and, in the case of demands referred to in Article 31(2)(b), the Assembly, shall, in accordance with the applicable agreement between the interested International Preliminary Examining Authority or Authorities and the International Bureau, specify the International Preliminary Examining Authority or Authorities competent for the preliminary examination.
- (3) The provisions of Article 16(3) shall apply, *mutatis mutandis*, in respect of International Preliminary Examining Authorities.

Article 33

The International Preliminary Examination

- (1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.
- (2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.
- (3) For the purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it is not, at the prescribed relevant date, obvious to a person skilled in the art.
- (4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.
- (5) The criteria described above merely serve the purposes of international preliminary examination. Any Contracting State may apply additional or different criteria for the purpose of deciding whether, in that State, the claimed invention is patentable or not.
- (6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

Article 34

Procedure before the International Preliminary Examining Authority

- (1) Procedure before the International Preliminary Examining Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.
- (2) (a) The applicant shall have a right to communicate orally and in writing with the International Preliminary Examining Authority.
- (b) The applicant shall have a right to amend the claims, the description, and the drawings, in the prescribed manner and within the prescribed time limit, before the international preliminary examination report is established. The amendment shall not go beyond the disclosure in the international application as filed.
- (c) The applicant shall receive at least one written opinion from the International Preliminary Examining Authority unless such Authority considers that all of the following conditions are fulfilled:
- i) the invention satisfies the criteria set forth in Article 33(1),
 - ii) the international application complies with the requirements of this Treaty and the Regulations in so far as checked by that Authority,
 - iii) no observations are intended to be made under Article 35(2), last sentence.
- (d) The applicant may respond to the written opinion.
- (3) (a) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it may invite the applicant, at his option, to restrict the claims so as to comply with the requirement or to pay additional fees.
- (b) The national law of any elected State may provide that, where the applicant chooses to restrict the claims under subparagraph (a), those parts of the international application which, as a consequence of the restriction, are not to be the subject of international preliminary examination shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.
- (c) If the applicant does not comply with the invitation referred to in subparagraph (a)

within the prescribed time limit, the International Preliminary Examining Authority shall establish an international preliminary examination report on those parts of the international application which relate to what appears to be the main invention and shall indicate the relevant facts in the said report. The national law of any elected State may provide that, where its national Office finds the invitation of the International Preliminary Examining Authority justified, those parts of the international application which do not relate to the main invention shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to that Office.

- (4) (a) If the International Preliminary Examining Authority considers;
- (i) that the international application relates to a subject matter on which the International Preliminary Examining Authority is not required,
 - (ii) under the Regulations, to carry out an international preliminary examination, and in the particular case decides not to carry out such examination, or
 - (iii) that the description, the claims, or the drawings, are so unclear, or the claims are so inadequately supported by the description, that no meaningful opinion can be formed on the novelty, inventive step (non-obviousness), or industrial applicability, of the claimed invention, the said Authority shall not go into the questions referred to in Article 33(1) and shall inform the applicant of this opinion and the reasons therefor.
- (b) If any of the situations referred to in subparagraph (a) is found to exist in, or in connection with, certain claims only, the provisions of that subparagraph shall apply only to the said claims.

Article 35

The International Preliminary Examination Report

- (1) The international preliminary examination report shall be established within the prescribed time limit and in the prescribed form.
- (2) The international preliminary examination report shall not contain any statement on the question whether the claimed invention is or seems to be patentable or unpatentable according to any national law. It shall state, subject to the provisions of paragraph (3), in relation to each claim, whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purposes of the international preliminary examination in Article 33(1) to (4). The statement shall

be accompanied by the citation of the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require. The statement shall also be accompanied by such other observations as the Regulations provide for.

- (3) (a) If, at the time of establishing the international preliminary examination report, the International Preliminary Examining Authority considers that any of the situations referred to in Article 34(4)(a) exists, that report shall state this opinion and the reasons therefor. It shall not contain any statement as provided in paragraph (2).

(b) If a situation under Article 34(4)(b) is found to exist, the international preliminary examination report shall, in relation to the claims in question, contain the statement as provided in subparagraph (a), whereas, in relation to the other claims, it shall contain the statement as provided in paragraph (2).

Article 36
Transmittal, Translation, and Communication, of the International Preliminary Examination Report

- (1) The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.
- (2) (a) The international preliminary examination report and its annexes shall be translated into the prescribed languages.
- (b) Any translation of the said report shall be prepared by or under the responsibility of the International Bureau, whereas any translation of the said annexes shall be prepared by the applicant.
- (3) (a) The international preliminary examination report, together with its translation (as prescribed) and its annexes (in the original language), shall be communicated by the International Bureau to each elected Office.
- (b) The prescribed translation of the annexes shall be transmitted within the prescribed time limit by the applicant to the elected Offices.
- (4) The provisions of Article 20(3) shall apply, *mutatis mutandis*, to copies of any document which is cited in the international preliminary examination report and which was not cited in the international search report.

Article 37

Withdrawal of Demand or Election

- (1) The applicant may withdraw any or all elections.
- (2) If the election of all elected States is withdrawn, the demand shall be considered withdrawn.
- (3) (a) Any withdrawal shall be notified to the International Bureau.
(b) The elected Offices concerned and the International Preliminary Examining Authority concerned shall be notified accordingly by the International Bureau.
- (4) (a) Subject to the provisions of subparagraph (b), withdrawal of the demand or of the election of a Contracting State shall, unless the national law of that State provides otherwise, be considered to be withdrawal of the international application as far as that State is concerned.
(b) Withdrawal of the demand or of the election shall not be considered to be withdrawal of the international application if such withdrawal is effected prior to the expiration of the applicable time limit under Article 22; however, any Contracting State may provide in its national law that the aforesaid shall apply only if its national Office has received, within the said time limit, a copy of the international application, together with a translation (as prescribed), and the national fee.

Article 38

Confidential Nature of the International Preliminary Examination

- (1) Neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, allow access within the meaning, and with the proviso, of Article 30(4) to the file of the international preliminary examination by any person or authority at any time, except by the elected Offices once the international preliminary examination report has been established.
- (2) Subject to the provisions of paragraph (1) and Articles 36(1) and (3) and 37(3)(b), neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, give information on the issuance or non-issuance of an international preliminary examination report and on the withdrawal or non-withdrawal of the demand or of any election.

Article 39

Copy, Translation, and Fee, to Elected Offices

- (1) (a) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 22 shall not apply to such State and the applicant shall furnish a copy of the international application (unless the communication under Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each elected Office not later than at the expiration of 30 months from the priority date.

(b) Any national law may, for performing the acts referred to in subparagraph (a), fix time limits which expire later than the time limit provided for in that subparagraph.
- (2) The effect provided for in Article 11(3) shall cease in the elected State with the same consequences as the withdrawal of any national application in that State if the applicant fails to perform the acts referred to in paragraph (1)(a) within the time limit applicable under paragraph (1)(a) or (b).
- (3) Any elected Office may maintain the effect provided for in Article 11(3) even where the applicant does not comply with the requirements provided for in paragraph (1)(a) or (b).

Article 40

Delaying of National Examination and Other Processing

- (1) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 23 shall not apply to such State and the national Office of or acting for that State shall not proceed, subject to the provisions of paragraph (2), to the examination and other processing of the international application prior to the expiration of the applicable time limit under Article 39.
- (2) Notwithstanding the provisions of paragraph (1), any elected Office may, on the express request of the applicant, proceed to the examination and other processing of the international application at any time.

Article 41

Amendments of the Claims, the Description, and the Drawings, before Elected Offices

- (1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each elected Office within the prescribed time limit. No elected Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired, except with the express consent of the applicant.
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- (2) The amendments shall not go beyond the disclosure in the international application as filed, unless the national law of the elected State permits them to go beyond the said disclosure.
- (3) The amendments shall be in accordance with the national law of the elected State in all respects not provided for in this Treaty and the Regulations.
- (4) Where an elected Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 42

Results of National Examination in Elected Offices

No elected Office receiving the international preliminary examination report may require that the applicant furnish copies, or information on the contents, of any papers connected with the examination relating to the same international application in any other elected Office.

CHAPTER III

COMMON PROVISIONS

Article 43

Seeking Certain Kinds of Protection

In respect of any designated or elected State whose law provides for the grant of inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, or utility certificates of addition, the applicant may indicate, as prescribed in the Regulations, that his international application is for the grant, as far as that State is concerned, of an inventor's certificate, a utility certificate, or a utility model, rather than a patent, or that it is for the grant of a patent or certificate of addition, an inventor's certificate of addition, or a utility certificate of addition, and the ensuing effect shall be governed by the applicant's choice. For the purposes of this Article and any Rule thereunder, Article 2(ii) shall not apply.

Article 44

Seeking Two Kinds of Protection

In respect of any designated or elected State whose law permits an application, while being for the grant of a patent or one of the other kinds of protection referred to in Article 43, to be also for the grant of another of the said kinds of protection, the applicant may indicate,

as prescribed in the Regulations, the two kinds of protection he is seeking, and the ensuing effect shall be governed by the applicant's indications. For the purposes of this Article, Article 2(ii) shall not apply.

Article 45

Regional Patent Treaties

- (1) Any treaty providing for the grant of regional patents ("regional patent treaty"), and giving to all persons who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents.
- (2) The national law of the said designated or elected State may provide that any designation or election of such State in the international application shall have the effect of an indication of the wish to obtain a regional patent under the regional patent treaty.

Article 46

Incorrect Translation of the International Application

If, because of an incorrect translation of the international application, the scope of any patent granted on that application exceeds the scope of the international application in its original language, the competent authorities of the Contracting State concerned may accordingly and retroactively limit the scope of the patent, and declare it null and void to the extent that its scope has exceeded the scope of the international application in its original language.

Article 47

Time Limits

- (1) The details for computing time limits referred to in this Treaty are governed by the Regulations.
- (2) (a) All time limits fixed in Chapters I and II of this Treaty may, outside any revision under Article 60, be modified by a decision of the Contracting States.
 - (b) Such decisions shall be made in the Assembly or through voting by correspondence and must be unanimous.
 - (c) The details of the procedure are governed by the Regulations.

Article 48

Delay in Meeting Certain Time Limits

- (1) Where any time limit fixed in this Treaty or the Regulations is not met because of interruption in the mail service or unavoidable loss or delay in the mail, the time limit shall be deemed to be met in the cases and subject to the proof and other conditions prescribed in the Regulations.
- (2) (a) Any Contracting State shall, as far as that State is concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit.

(b) Any Contracting State may, as far as that State is concerned, excuse, for reasons other than those referred to in subparagraph (a), any delay in meeting any time limit.

Article 49

Right to Practice before International Authorities

Any attorney, patent agent, or other person, having the right to practice before the national Office with which the international application was filed, shall be entitled to practice before the International Bureau and the competent International Searching Authority and competent International Preliminary Examining Authority in respect of that application.

CHAPTER IV TECHNICAL SERVICES

Article 50

Patent Information Services

- (1) The International Bureau may furnish services by providing technical and any other pertinent information available to it on the basis of published documents, primarily patents and published applications (referred to in this Article as “the information services”).
- (2) The International Bureau may provide these information services either directly or through one or more International Searching Authorities or other national or international specialized institutions, with which the International Bureau may reach agreement.
- (3) The information services shall be operated in a way particularly facilitating the acquisition by Contracting States which are developing countries of technical knowledge and technology, including available published know-how.

- (4) The information services shall be available to Governments of Contracting States and their nationals and residents. The Assembly may decide to make these services available also to others.
- (5) (a) Any service to Governments of Contracting States shall be furnished at cost, provided that, when the Government is that of a Contracting State which is a developing country, the service shall be furnished below cost if the difference can be covered from profit made on services furnished to others than Governments of Contracting States or from the sources referred to in Article 51(4).
- (b) The cost referred to in subparagraph (a) is to be understood as cost over and above costs normally incident to the performance of the services of a national Office or the obligations of an International Searching Authority.
- (6) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.
- (7) The Assembly shall, when it considers it necessary, recommend methods of providing financing supplementary to those referred to in paragraph (5).

Article 51

Technical Assistance

- (1) The Assembly shall establish a Committee for Technical Assistance (referred to in this Article as "the Committee").
- (2) (a) The members of the Committee shall be elected among the Contracting States, with due regard to the representation of developing countries.
- (b) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.
- (3) (a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries in developing their patent systems individually or on a regional basis.
- (b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

- (4) The International Bureau shall seek to enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly the United Nations, the agencies of the United Nations, and the Specialized Agencies connected with the United Nations concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.
- (5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

Article 52

Relations with Other Provisions of the Treaty

Nothing in this Chapter shall affect the financial provisions contained in any other Chapter of this Treaty. Such provisions are not applicable to the present Chapter or to its implementation.

CHAPTER V

ADMINISTRATIVE PROVISIONS

Article 53

Assembly

- (1) (a) The Assembly shall, subject to Article 57(8), consist of the Contracting States.
- (b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
- (2) (a) The Assembly shall:
- (i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;
 - (ii) perform such tasks as are specifically assigned to it under other provisions of this Treaty;
 - (iii) give directions to the International Bureau concerning the preparation for revision conferences;
 - (iv) review and approve the reports and activities of the Director General concerning

the Union, and give him all necessary instructions concerning matters within the competence of the Union;

- (v) review and approve the reports and activities of the Executive Committee established under paragraph (9), and give instructions to such Committee;
 - (vi) determine the program and adopt the triennial² budget of the Union, and approve its final accounts;
 - (vii) adopt the financial regulations of the Union;
 - (viii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;
 - (ix) determine which States other than Contracting States and, subject to the provisions of paragraph (8), which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
 - (x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (3) A delegate may represent, and vote in the name of, one State only.
- (4) Each Contracting State shall have one vote.
- (5) (a) One-half of the Contracting States shall constitute a quorum.
- (b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.
- (6) (a) Subject to the provisions of Articles 47(2)(b), 58(2)(b), 58(3) and 61(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.

² *Editor's Note:* Since 1980, the program and budget of the Union have been biennial.

- (b) Abstentions shall not be considered as votes.
- (7) In connection with matters of exclusive interest to States bound by Chapter II, any reference to Contracting States in paragraphs (4), (5), and (6), shall be considered as applying only to States bound by Chapter II.
- (8) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to the Assembly.
- (9) When the number of Contracting States exceeds forty, the Assembly shall establish an Executive Committee. Any reference to the Executive Committee in this Treaty and the Regulations shall be construed as references to such Committee once it has been established.
- (10) Until the Executive Committee has been established, the Assembly shall approve, within the limits of the program and triennial³ budget, the annual programs and budgets prepared by the Director General.
- (11) (a) The Assembly shall meet in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.
- (b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee, or at the request of one-fourth of the Contracting States.
- (12) The Assembly shall adopt its own rules of procedure.

Article 54
Executive Committee

- (1) When the Assembly has established an Executive Committee that Committee shall be subject to the provisions set forth hereinafter.
- (2) (a) The Executive Committee shall, subject to Article 57(8), consist of States elected by the Assembly from among States members of the Assembly.
- (b) The Government of each State member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

³ *Editor's Note:* Since 1980, the program and budget of the Union have been biennial.

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- (3) The number of States members of the Executive Committee shall correspond to one-fourth of the number of States members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.
- (4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution.
- (5) (a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.
- (b) Members of the Executive Committee may be re-elected but only up to a maximum of two-thirds of such members.
- (c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.
- (6) (a) The Executive Committee shall:
- (i) prepare the draft agenda of the Assembly;
 - (ii) submit proposals to the Assembly in respect of the draft program and biennial budget of the Union prepared by the Director General;
 - (iii) *[deleted]*
 - (iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;
 - (v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;
 - (vi) perform such other functions as are allocated to it under this Treaty.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (7) (a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.
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- (b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative or at the request of its Chairman or one-fourth of its members.
- (8) (a) Each State member of the Executive Committee shall have one vote.
- (b) One-half of the members of the Executive Committee shall constitute a quorum.
- (c) Decisions shall be made by a simple majority of the votes cast.
- (d) Abstentions shall not be considered as votes.
- (e) A delegate may represent, and vote in the name of, one State only.
- (9) Contracting States not members of the Executive Committee shall be admitted to its meetings as observers, as well as any intergovernmental organization appointed as International Searching or Preliminary Examining Authority.
- (10) The Executive Committee shall adopt its own rules of procedure.

Article 55

International Bureau

- (1) Administrative tasks concerning the Union shall be performed by the International Bureau.
- (2) The International Bureau shall provide the secretariat of the various organs of the Union.
- (3) The Director General shall be the chief executive of the Union and shall represent the Union.
- (4) The International Bureau shall publish a Gazette and other publications provided for by the Regulations or required by the Assembly.
- (5) The Regulations shall specify the services that national Offices shall perform in order to assist the International Bureau and the International Searching and Preliminary Examining Authorities in carrying out their tasks under this Treaty.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee or working group established under this Treaty or the
- (7) Regulations. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.
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- (8) (a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the revision conferences.
- (b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for revision conferences.
- (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.
- (9) The International Bureau shall carry out any other tasks assigned to it.

Article 56

Committee for Technical Cooperation

- (1) The Assembly shall establish a Committee for Technical Cooperation (referred to in this Article as “the Committee”).
- (2) (a) The Assembly shall determine the composition of the Committee and appoint its members, with due regard to an equitable representation of developing countries.
- (b) The International Searching and Preliminary Examining Authorities shall be *ex officio* members of the Committee. In the case where such an Authority is the national Office of a Contracting State, that State shall not be additionally represented on the Committee.
- (c) If the number of Contracting States so allows, the total number of members of the Committee shall be more than double the number of *ex officio* members.
- (d) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of interested organizations to participate in discussions of interest to them.
- (3) The aim of the Committee shall be to contribute, by advice and recommendations:
- (i) to the constant improvement of the services provided for under this Treaty,
 - (ii) to the securing, so long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports, and

- (iii) on the initiative of the Assembly or the Executive Committee, to the solution of the technical problems specifically involved in the establishment of a single International Searching Authority.
- (4) Any Contracting State and any interested international organization may approach the Committee in writing on questions which fall within the competence of the Committee.
- (5) The Committee may address its advice and recommendations to the Director General or, through him, to the Assembly, the Executive Committee, all or some of the International Searching and Preliminary Examining Authorities, and all or some of the receiving Offices.
- (6) (a) In any case, the Director General shall transmit to the Executive Committee the texts of all the advice and recommendations of the Committee. He may comment on such texts.
- (b) The Executive Committee may express its views on any advice, recommendation, or other activity of the Committee, and may invite the Committee to study and report on questions falling within its competence. The Executive Committee may submit to the Assembly, with appropriate comments, the advice, recommendations and report of the Committee.
- (7) Until the Executive Committee has been established, references in paragraph (6) to the Executive Committee shall be construed as references to the Assembly.
- (8) The details of the procedure of the Committee shall be governed by the decisions of the Assembly.

Article 57
Finances

- (1) (a) The Union shall have a budget.
- (b) The budget of the Union shall include the income and expenses proper to the Union and its contribution to the budget of expenses common to the Unions administered by the Organization.
- (c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.
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- (2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.
- (3) Subject to the provisions of paragraph (5), the budget of the Union shall be financed from the following sources:
- (i) fees and charges due for services rendered by the International Bureau in relation to the Union;
 - (ii) sale of, or royalties on, the publications of the International Bureau concerning the Union;
 - (iii) gifts, bequests, and subventions;
 - (iv) rents, interests, and other miscellaneous income.
- (4) The amounts of fees and charges due to the International Bureau and the prices of its publications shall be so fixed that they should, under normal circumstances, be sufficient to cover all the expenses of the International Bureau connected with the administration of this Treaty.
- (5) (a) Should any financial year close with a deficit, the Contracting States shall, subject to the provisions of subparagraphs (b) and (c), pay contributions to cover such deficit.
- (b) The amount of the contribution of each Contracting State shall be decided by the Assembly with due regard to the number of international applications which has emanated from each of them in the relevant year.
- (c) If other means of provisionally covering any deficit or any part thereof are secured, the Assembly may decide that such deficit be carried forward and that the Contracting States should not be asked to pay contributions.
- (d) If the financial situation of the Union so permits, the Assembly may decide that any contributions paid under subparagraph (a) be reimbursed to the Contracting States which have paid them.
- (e) A Contracting State which has not paid, within two years of the due date as established by the Assembly, its contribution under subparagraph (b) may not exercise its right to vote in any of the organs of the Union. However, any organ of the Union may allow such a State to continue to exercise its right to vote in that organ so long as it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.
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- (6) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.
- (7) (a) The Union shall have a working capital fund which shall be constituted by a single payment made by each Contracting State. If the fund becomes insufficient, the Assembly shall arrange to increase it. If part of the fund is no longer needed, it shall be reimbursed.
- (b) The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be decided by the Assembly on the basis of principles similar to those provided for under paragraph (5)(b).
- (c) The terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.
- (d) Any reimbursement shall be proportionate to the amounts paid by each Contracting State, taking into account the dates at which they were paid.
- (8) (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an *ex officio* seat in the Assembly and on the Executive Committee.
- (b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.
- (9) The auditing of the accounts shall be effected by one or more of the Contracting States or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 58
Regulations

- (1) The Regulations annexed to this Treaty provide Rules:
- (i) concerning matters in respect of which this Treaty expressly refers to the
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Regulations or expressly provides that they are or shall be prescribed,

- (ii) concerning any administrative requirements, matters, or procedures,
 - (iii) concerning any details useful in the implementation of the provisions of this Treaty.
- (2) (a) The Assembly may amend the Regulations.
- (b) Subject to the provisions of paragraph (3), amendments shall require three-fourths of the votes cast.
- (3) (a) The Regulations specify the Rules which may be amended
- (i) only by unanimous consent, or
 - (ii) only if none of the Contracting States whose national Office acts as an International Searching or Preliminary Examining Authority dissents, and, where such Authority is an intergovernmental organization, if the Contracting State member of that organization authorized for that purpose by the other member States within the competent body of such organization does not dissent.
- (b) Exclusion, for the future, of any such Rules from the applicable requirement shall require the fulfillment of the conditions referred to in subparagraph (a)(i) or (a)(ii), respectively.
- (c) Inclusion, for the future, of any Rule in one or the other of the requirements referred to in subparagraph (a) shall require unanimous consent.
- (4) The Regulations provide for the establishment, under the control of the Assembly, of Administrative Instructions by the Director General.
- (5) In the case of conflict between the provisions of the Treaty and those of the Regulations, the provisions of the Treaty shall prevail.

CHAPTER VI

DISPUTES

Article 59
Disputes

Subject to Article 64(5), any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

CHAPTER VII

REVISION AND AMENDMENT

Article 60
Revision of the Treaty

- (1) This Treaty may be revised from time to time by a special conference of the Contracting States.
- (2) The convocation of any revision conference shall be decided by the Assembly.
- (3) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to any revision conference.
- (4) Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be amended either by a revision conference or according to the provisions of Article 61.

Article 61
Amendment of Certain Provisions of the Treaty

- (1) (a) Proposals for the amendment of Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be initiated by any State member of the Assembly, by the Executive Committee, or by the Director General.

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- (b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.
- (2) (a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.
- (b) Adoption shall require three-fourths of the votes cast.
- (3) (a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States members of the Assembly at the time it adopted the amendment.
- (b) Any amendment to the said Articles thus accepted shall bind all the States which are members of the Assembly at the time the amendment enters into force, provided that any amendment increasing the financial obligations of the Contracting States shall bind only those States which have notified their acceptance of such amendment.
- (c) Any amendment accepted in accordance with the provisions of subparagraph (a) shall bind all States which become members of the Assembly after the date on which the amendment entered into force in accordance with the provisions of subparagraph (a).

CHAPTER VIII

FINAL PROVISIONS

Article 62

Becoming Party to the Treaty

- (1) Any State member of the International Union for the Protection of Industrial Property may become party to this Treaty by:
- (i) signature followed by the deposit of an instrument of ratification, or
- (ii) deposit of an instrument of accession.
- (2) Instruments of ratification or accession shall be deposited with the Director General.
- (3) The provisions of Article 24 of the Stockholm Act of the Paris Convention for the
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Protection of Industrial Property shall apply to this Treaty.

- (4) Paragraph (3) shall in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Treaty is made applicable by another Contracting State by virtue of the said paragraph.

Article 63

Entry into Force of the Treaty

- (1) (a) Subject to the provisions of paragraph (3), this Treaty shall enter into force three months after eight States have deposited their instruments of ratification or accession, provided that at least four of those States each fulfill any of the following conditions:
- (i) the number of applications filed in the State has exceeded 40,000 according to the most recent annual statistics published by the International Bureau,
 - (ii) the nationals or residents of the State have filed at least 1,000 applications in one foreign country according to the most recent annual statistics published by the International Bureau,
 - (iii) the national Office of the State has received at least 10,000 applications from nationals or residents of foreign countries according to the most recent annual statistics published by the International Bureau.
- (b) For the purposes of this paragraph, the term “applications” does not include applications for utility models.
- (2) Subject to the provisions of paragraph (3), any State which does not become party to this Treaty upon entry into force under paragraph (1) shall become bound by this Treaty three months after the date on which such State has deposited its instrument of ratification or accession.
- (3) The provisions of Chapter II and the corresponding provisions of the Regulations annexed to this Treaty shall become applicable, however, only on the date on which three States each of which fulfill at least one of the three requirements specified in paragraph (1) have become party to this Treaty without declaring, as provided in Article 64(1), that they do not intend to be bound by the provisions of Chapter II. That date shall not, however, be prior to that of the initial entry into force under paragraph (1).

Article 64
Reservations⁴

- (1) (a) Any State may declare that it shall not be bound by the provisions of Chapter II.
- (b) States making a declaration under subparagraph (a) shall not be bound by the provisions of Chapter II and the corresponding provisions of the Regulations.
- (2) (a) Any State not having made a declaration under paragraph (1)(a) may declare that:
- (i) it shall not be bound by the provisions of Article 39(1) with respect to the furnishing of a copy of the international application and a translation thereof (as prescribed),
- (ii) the obligation to delay national processing, as provided for under Article 40, shall not prevent publication, by or through its national Office, of the international application or a translation thereof, it being understood, however, that it is not exempted from the limitations provided for in Articles 30 and 38.
- (b) States making such a declaration shall be bound accordingly.
- (3) (a) Any State may declare that, as far as it is concerned, international publication of international applications is not required.
- (b) Where, at the expiration of 18 months from the priority date, the international application contains the designation only of such States as have made declarations under subparagraph (a), the international application shall not be published by virtue of Article 21(2).
- (c) Where the provisions of subparagraph (b) apply, the international application shall nevertheless be published by the International Bureau:
- (i) at the request of the applicant, as provided in the Regulations,
- (ii) when a national application or a patent based on the international application is published by or on behalf of the national Office of any designated State having made a declaration under subparagraph (a), promptly after such publication but not before the expiration of 18 months from the priority date.

⁴ *Editor's Note:* Information received by the International Bureau concerning reservations made under Article 64(1) to (5) is published in the Gazette and on the WIPO website at: www.wipo.int/pct/en/texts/reservations/res_incomp.html.

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- (4) (a) Any State whose national law provides for prior art effect of its patents as from a date before publication, but does not equate for prior art purposes the priority date claimed under the Paris Convention for the Protection of Industrial Property to the actual filing date in that State, may declare that the filing outside that State of an international application designating that State is not equated to an actual filing in that State for prior art purposes.
- (b) Any State making a declaration under subparagraph (a) shall to that extent not be bound by the provisions of Article 11(3).
- (c) Any State making a declaration under subparagraph (a) shall, at the same time, state in writing the date from which, and the conditions under which, the prior art effect of any international application designating that State becomes effective in that State. This statement may be modified at any time by notification addressed to the Director General.
- (5) Each State may declare that it does not consider itself bound by Article 59. With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of Article 59 shall not apply.
- (6) (a) Any declaration made under this Article shall be made in writing. It may be made at the time of signing this Treaty, at the time of depositing the instrument of ratification or accession, or, except in the case referred to in paragraph (5), at any later time by notification addressed to the Director General. In the case of the said notification, the declaration shall take effect six months after the day on which the Director General has received the notification, and shall not affect international applications filed prior to the expiration of the said six-month period.
- (b) Any declaration made under this Article may be withdrawn at any time by notification addressed to the Director General. Such withdrawal shall take effect three months after the day on which the Director General has received the notification and, in the case of the withdrawal of a declaration made under paragraph (3), shall not affect international applications filed prior to the expiration of the said three-month period.
- (7) No reservations to this Treaty other than the reservations under paragraphs (1) to (5) are permitted.

Article 65
Gradual Application

- (1) If the agreement with any International Searching or Preliminary Examining
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Authority provides, transitionally, for limits on the number or kind of international applications that such Authority undertakes to process, the Assembly shall adopt the measures necessary for the gradual application of this Treaty and the Regulations in respect of given categories of international applications. This provision shall also apply to requests for an international-type search under Article 15(5).

- (2) The Assembly shall fix the dates from which, subject to the provision of paragraph (1), international applications may be filed and demands for international preliminary examination may be submitted. Such dates shall not be later than six months after this Treaty has entered into force according to the provisions of Article 63(1), or after Chapter II has become applicable under Article 63(3), respectively.

Article 66
Denunciation

- (1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.
- (2) Denunciation shall take effect six months after receipt of the said notification by the Director General. It shall not affect the effects of the international application in the denouncing State if the international application was filed, and, where the denouncing State has been elected, the election was made, prior to the expiration of the said six-month period.

Article 67
Signature and Languages

- (1) (a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.
- (b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the German, Japanese, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.
- (2) This Treaty shall remain open for signature at Washington until December 31, 1970.

Article 68
Depositary Functions

- (1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.
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- (2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations annexed hereto to the Governments of all States party to the Paris Convention for the Protection of Industrial Property and, on request, to the Government of any other State.
- (3) The Director General shall register this Treaty with the Secretariat of the United Nations.
- (4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and the Regulations to the Governments of all Contracting States and, on request, to the Government of any other State.

Article 69
Notifications

The Director General shall notify the Governments of all States party to the Paris Convention for the Protection of Industrial Property of:

- (i) signatures under Article 62,
- (ii) deposits of instruments of ratification or accession under Article 62,
- (iii) the date of entry into force of this Treaty and the date from which Chapter II is applicable in accordance with Article 63(3),
- (iv) any declarations made under Article 64(1) to (5),
- (v) withdrawals of any declarations made under Article 64(6)(b),
- (vi) denunciations received under Article 66, and
- (vii) any declarations made under Article 31(4).

**THE AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL
PROPERTY RIGHTS
(TRIPS)**

Date and Place of Adoption of Agreement	:	15 th April 1994, Marrakesh
Date of Entry into Force of Agreement	:	1 st January 1995
Date of Accession by Brunei Darussalam	:	1 st January 1995
Date of Entry into Force for Brunei Darussalam	:	1 st January 1995
Reservations / Declarations	:	None
Applicable Legislation as of 19 th January 2013	:	
		i. Trade Marks Act (CAP. 98)
		ii. Tobacco Order, 2005
		iii. Merchandise Marks Act (CAP. 96)
		iv. Copyright Order, 1999
		v. Industrial Designs Order, 2000
		vi. Layout Designs Order, 2000
		vii. Customs Order, 2006
		viii. Broadcasting Act (CAP. 180)
		ix. Patents Order, 2011

Executive Summary:

When the World Trade Organization (WTO) was established to replace the General Agreement on Trade and Tariffs (GATT) in 1995, several agreements were made under the WTO, which includes the Agreement on Trade Related Aspects of Intellectual Property Rights.

This Agreement deal with the main categories of intellectual property namely, *copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout-designs of integrated circuits* as well as protection of undisclosed information and anti-competitive practices. TRIPS set out minimum standards for the protection of intellectual property as well as provide adequate and effective enforcement on intellectual property that does not create barriers to legitimate trade. This Agreement provides application of the WTO dispute settlement mechanism.

Source of text: *Source of text: http://www.wto.org/english/docs_e/legal_e/27-trips.pdf*

PART I

GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1

Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.
2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.
3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.¹ In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.² Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

¹ When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

² In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

Article 2

Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).
2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection³ of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.
2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

³ For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

- (a) Deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;
- (b) Granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;
- (c) In respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;
- (d) Deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

Article 5

Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8
Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.
2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II

**STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF
INTELLECTUAL PROPERTY RIGHTS**

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9
Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article *6bis* of that Convention or of the rights derived therefrom.
2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10
Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).
2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations

shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11
Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12
Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13
Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14
**Protection of Performers, Producers of Phonograms (Sound Recordings) and
Broadcasting Organizations**

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.
3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).
4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.
5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.
6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).
3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.
4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.
5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16 **Rights Conferred**

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.
2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.
3. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17
Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18
Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19
Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.
2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20
Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21
Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3

GEOGRAPHICAL INDICATIONS

Article 22
Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
 - (a) The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
 - (b) Any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).
3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.
4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications For Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.⁴
2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.
3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability these provisions to individual geographical indications whose use was the subject of such negotiations.
2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under

⁴ Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

- these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.
3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.
 4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.
 5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:
 - (a) Before the date of application of these provisions in that Member as defined in Part VI;
or
 - (b) Before the geographical indication is protected in its country of origin; measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.
 6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.
 7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the of protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use
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became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.
9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4

INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5

PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.⁵ Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
3. Members may also exclude from patentability:
 - (a) Diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
 - (b) Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

⁵ For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

- (a) Where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing⁶ for these purposes that product;
 - (b) Where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29

Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.
2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use⁷ of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

⁶ This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

⁷ "Other use" refers to use other than that allowed under Article 30.

- (a) Authorization of such use shall be considered on its individual merits;
- (b) Such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (c) The scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (d) Such use shall be non-exclusive;
- (e) Such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) Any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;
- (g) Authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (i) The legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;
- (j) Any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;
- (k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive

practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

- (l) Where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
- (i) The invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
 - (ii) The owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and
 - (iii) The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.⁸

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent

⁸ It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

- (a) If the product obtained by the patented process is new;
 - (b) If there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.
2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.
 3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

SECTION 6

LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:⁹ importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

⁹ The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.
2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38

Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.
2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.
3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7

PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed

- information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices¹⁰ so long as such information:
 - (a) Is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - (b) Has commercial value because it is secret; and
 - (c) Has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
 3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8

CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.
2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this

¹⁰ For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.
4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1

GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.
4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.
5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

SECTION 2

CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42

Fair and Equitable Procedures

Members shall make available to right holders¹¹ civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

¹¹ For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 43

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.
2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 44

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.
2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered

because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3

PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:
 - (a) To prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
 - (b) To preserve relevant evidence in regard to the alleged infringement.
2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.
3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.
4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a

- view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.
5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.
 6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.
 7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.
 8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4

SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES¹²

Article 51

Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures¹³ to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods¹⁴ may take place, to lodge an application in writing with

¹² Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

¹³ It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

¹⁴ For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52 **Application**

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53 **Security or Equivalent Assurance**

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.
2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Article 54
Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55
Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56
Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57
Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58
Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

- (a) The competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
- (b) The importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;
- (c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59
Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60
De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5

CRIMINAL PROCEDURES

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.
2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.
3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.
4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

Article 63

Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.
2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the Paris Convention (1967).
3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.
4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public

interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.
2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.
3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.
2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.
3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.
5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.
2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68

Council for Trade-Related Aspects of Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69

International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70

Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.
2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under

Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.
 4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.
 5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.
 6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.
 7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.
 8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27 that Member shall:
 - (a) Notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;
 - (b) Apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and
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- (c) Provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).
9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71

Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.
2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

- (a) To require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) To prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;
 - (i) Relating to fissionable materials or the materials from which they are derived;
 - (ii) Relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) Taken in time of war or other emergency in international relations; or
- (c) To prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

