

AMENDMENTS TO THE PHILIPPINE RULES ON PCT APPLICATIONS

IPO OFFICE ORDER NO. 123, S. 2003, December 15, 2003

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WHEREAS, the Intellectual Property Office (IPO) promulgated the Philippine Rules on Patent Cooperation Treaty (PCT) Applications (Pro-PCT), which entered into effect on 22 October 2001;

WHEREAS, the IPO issued Office Order No. 13, series of 2002 amending the Pro-PCT, effective 01 April 2002, in view of the modifications adopted by the PCT Assembly during the thirteenth (13th) ordinary session held from 24 September to 03 October 2001;

WHEREAS, the PCT Assembly during its thirty-second (14th Ordinary) session held from 22 September to 01 October 2003 adopted amendments to the Regulations under the PCT;

WHEREAS, the PCT Assembly decided that the aforementioned amendments to the Regulations under the PCT shall take effect 01 January 2004;

NOW, THEREFORE, in view of the foregoing, the Pro-PCT, as amended, are hereby further amended, as follows:

SECTION 1. Rule 4 is amended to read, as follows:

Rule 4. Effect of an International Application - 4.1. An international application, which has been accorded an international filing date in accordance with the Treaty and PCT regulations, shall have the effect of a national application for a patent or utility model, respectively, regularly filed with the Intellectual Property Office as of the International filing date, which date shall be considered to be the actual filing date in the Philippines. (PCT Article 11(3) and PCT Rule 4.9)

4.2 Subject to Review by the IPO under Rule 37, an international application that is withdrawn or considered withdrawn under the Treaty and PCT Regulations, before the application has entered the national phase in the Philippines as provided in Part 3 of these Rules, that international application is likewise withdrawn or considered withdrawn in the Philippines (PCT Article 24)

SECTION 2. Rule 25 is amended to read, as follows:

Rule 25. According of International Filing Date and its Effect - 25.1 The IPO, as the competent receiving Office, shall accord as the international filing date the date of receipt of the international application, provided that, at the time of receipt:

- 1) at least one applicant is a resident or national of the Philippines;
- 2) the international application is in the Filipino or English language; and
- 3) the international application contains at least the following elements:
 - i) an indication that it is intended as an international application;
 - ii) the name of the applicant;
 - iii) a part which on the face of it appears to be a description; and
 - iv) a part which on the face of it appears to be a claim or claims. (PCT Article 11 (1))

25.2 If the IPO finds that the applicant or not one of the applicants is a resident or national of the Philippines or that the language is neither Filipino nor English, the international application shall be treated and transmitted to the IB in accordance with PCT Rule 14, subject to payment of the transmittal fee under PCT Rule 14.

25.3 If the IPO finds that the international applications did not, at the time of receipt, contain the elements listed in Rule 25.1 item (3), it shall invite the applicant to file the required correction within thirty (30) days from the date of the invitation. If the applicant complies with the invitation, the IPO shall accord as the international filing date, the date of receipt of the required correction. If the applicant does not comply with the invitation, the IPO shall promptly in accordance with PCT Rule 20.7 (i) notify the applicant that his application is not and will not be treated as an international application and shall indicate the reasons therefor.

SECTION 3. Rule 28 is amended, including the deletion of sub-rule 28.3. Accordingly, sub-rule 28.4 becomes the new sub-rule 28.3 to read, as follows:

Rule 28. Demand for International Preliminary Examination - 28.1 On filing of a demand under PCT Article 31, the international application shall be the subject of an international preliminary examination.

28.2 The demand for international preliminary examination shall be filed directly by the applicant with the competent IPEA prior to the expiration of whichever of the following periods expires later:

a) 3 months from the date of transmittal to the applicant of the international search report (or of the declaration referred to in PCT Article 17 (2) (a) that no international search report will be established) and the written opinion by the ISA; or

b) 22 months from the priority date (PCT Rule 54bis)

28.3 In accordance with PCT Article 31 and PCT Rules 57 and 58, the demand shall be subject to the payment by the applicant of the prescribed fees directly to the IPEA within one (1) month from the date on which the demand was submitted. (PCT Rules 57, 58 and 58bis)

Copies of the Demand Form are available at the IPO.

SECTION 4. Rule 34 is amended deleting sub-rule 34.1. Accordingly, sub-rules 34.2 and 34.3 become the new sub-rules 34.1 and 34.2, respectively, to read, as follows:

Rule 34. The IPO as a Designated or Elected Office - 34.1 The IPO, when acting as a Designated or Elected Office during international processing will be identified by the full title "Philippine Designated Office" or by abbreviation "DO/PH" and "Philippine Elected Office" or by abbreviation "EO/PH" (Section 107 (b) of the PCT Administrative Instructions)

34.2 The major functions of the IPO in respect to international applications in which the Philippines has been designated or elected, shall include:

- 1) Receiving various notifications throughout the international phase; and
- 2) Accepting for national phase examination international applications which comply with Part 3 of these Rules.

SECTION 5. The Confirmation Fee under Rule 41 (sub-rule 41.1) is deleted. Further, sub-rule 41.2 is amended, to read as follows:

41.2 Fee for the benefit of the IB (International Filing Fee)

The amount of the international filing fee referred to in PCT Rule 15.2 is published in the PCT Gazette and is available at the IPO.

SECTION 6. Rule 42 is amended including the deletion of sub-rules 42.2 and 42.4. Accordingly, sub-rule 42.3 becomes the new sub-rule 42, to read, as follows:

Rule 42. Due Dates and Extension of Time Limits for Payment of Fees Collected by IPO - All fees must be paid on or before the due date prescribed in the PCT Regulations and these Rules.

42.1 The transmittal fee and search fee shall be paid by the applicant within one (1) month from the date of receipt by the IPO of the international application; (PCT Rule 14.1 (c), 15.4, 16.1 (f))

42.2 Where the fees due under this rule have not been paid, or that the amount paid is insufficient to cover the total amount due, the IPO shall invite the applicant to pay the required fees together with the late payment fee within one (1) month without extension of time from the date of invitation; (PCT Rule 16bis.1(a))

SECTION 7. Scope and Applicability - These amendments apply to PCT international applications, the filing date of which is on or after 01 January 2004.

SECTION 8. Filing of Certified Copies - Ms. Amy D. Tabije, Records Officer I, is hereby directed to immediately file three (3) certified copies of this Rule with the University of the Philippines Law Center, and, one (1) certified copy each with the Office of the President, the Senate of the Philippines, the House of Representatives, the Supreme Court of the Philippines and the National Library.

SECTION 9. Effectivity - These amendments shall take effect on 01 January 2004 after publication in the IPO website and in a newspaper of general circulation not later than 17 December 2003.

Adopted: 15 Dec. 2003

Recommending Approval: Approved:

(SGD.) EPIFANIO M. EVASCO (SGD.) EMMA C. FRANCISCO

Director of Patents

Director General

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