

No. 26652

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**AUSTRALIA**  
**and**  
**WORLD INTELLECTUAL**  
**PROPERTY ORGANIZATION**

**Agreement in relation to the functioning of the Patent Office of the Government of Australia as an International Searching and International Preliminary Examining Authority under the Patent Cooperation Treaty (with annexes). Signed at Geneva on 11 November 1987**

*Authentic text: English.*

*Registered by Australia on 8 June 1989.*

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**AUSTRALIE**  
**et**  
**ORGANISATION MONDIALE DE**  
**LA PROPRIÉTÉ INTELLECTUELLE**

**Accord relatif au fonctionnement de l'Office des brevets du Gouvernement australien comme Administration chargée de la recherche et de l'examen préliminaire international en vertu du Traité de coopération en matière de brevets (avec annexes). Signé à Genève le 11 novembre 1987**

*Texte authentique : anglais.*

*Enregistré par l'Australie le 8 juin 1989.*

AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE WORLD INTELLECTUAL PROPERTY ORGANIZATION IN RELATION TO THE FUNCTIONING OF THE PATENT OFFICE OF THE GOVERNMENT OF AUSTRALIA AS AN INTERNATIONAL SEARCHING AND INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY UNDER THE PATENT COOPERATION TREATY<sup>2</sup>

PREAMBLE

The Government of Australia and the World Intellectual Property Organization,

Considering that the Agreement of February 29, 1980, between the Patent Office of the Government of Australia and the International Bureau<sup>3</sup> under Articles 16(3)(b) and 32(3) of the Patent Cooperation Treaty<sup>2</sup> was concluded for a period of ten years,

Desirous to continue the appointment of the Patent Office of the Government of Australia as an International Searching and International Preliminary Examining Authority under the Patent Cooperation Treaty,

Hereby agree as follows:

*Article 1. TERMS AND EXPRESSIONS USED IN THE AGREEMENT*

(1) For the purposes of this Agreement:

(a) "Treaty" means the Patent Cooperation Treaty.

(b) "Regulations" means the Regulations under the Treaty.

(c) "Administrative Instructions" means the Administrative Instructions under the Treaty.

(d) "Article" (except where a specific reference is made to an Article of this Agreement) means an Article of the Treaty.

(e) "Rule" means a Rule of the Regulations.

(f) "Contracting State" means a State party to the Treaty.

(g) "Authority" means the Patent Office of the Government of Australia.

(2) All other terms and expressions used in this Agreement which are also used in the Treaty, the Regulations or the Administrative Instructions have, for the purposes of this Agreement, the same meaning as in the Treaty, the Regulations and the Administrative Instructions.

*Article 2. BASIC OBLIGATIONS*

(1) The Authority shall carry out international search and international preliminary examination in accordance with, and perform such other functions of

<sup>1</sup> Came into force on 1 January 1988, in accordance with article 9 (1).

<sup>2</sup> United Nations, *Treaty Series*, vol. 1160, p. 231.

<sup>3</sup> *Ibid.*, vol. 1217, p. 273.

an International Searching and International Preliminary Examining Authority as are provided under the Treaty, the Regulations, the Administrative Instructions and this Agreement. In carrying out international search and international preliminary examination, the Authority shall be guided by the Guidelines for International Search and for International Preliminary Examination to be Carried Out under the Patent Cooperation Treaty. The Authority shall apply and observe all the common rules of international search and of international preliminary examination.

(2) The Authority and the International Bureau shall, having regard to their respective functions under the Treaty, the Regulations, the Administrative Instructions and this Agreement, render, to the extent possible, mutual assistance in the performance of their functions thereunder.

#### *Article 3. COMPETENCE OF AUTHORITY*

(1) The Authority shall act as an International Searching Authority for all international applications filed with the receiving Office of, or acting for, any Contracting State indicated in Annex A of this Agreement, provided that the receiving Office specifies the Authority for that purpose and that such applications are in one of the languages specified in Annex A of this Agreement.

(2) The Authority shall act as an International Preliminary Examining Authority for all international applications filed with the receiving Office of, or acting for, any Contracting State indicated in Annex A of this Agreement, provided that the receiving Office specifies the Authority for that purpose and that such applications are in one of the languages specified in Annex A of this Agreement.

#### *Article 4. SUBJECT MATTER NOT REQUIRED TO BE SEARCHED OR EXAMINED*

The Authority shall not be obliged to search, by virtue of Article 17(2)(a)(i), or shall not be obliged to examine, by virtue of Article 34(4)(a)(i), any international application to the extent that it considers that the international application relates to subject matter set forth in Rule 39.1 or Rule 67.1, as the case may be, with the exception of the subject matter specified in Annex B of this Agreement.

#### *Article 5. FEES AND CHARGES*

(1) A schedule of all fees of the Authority, and all other charges which the Authority is entitled to make, in relation to its function as an International Searching and International Preliminary Examining Authority, is set out in Annex C of this Agreement.

(2) The Authority shall, under the conditions and to the extent set out in Annex C of this Agreement, refund the whole or part of the search fee paid where an international search report can be wholly or partly based on the results of an earlier search made by the Authority (Rules 16.3 and 41.1) or where the international application is withdrawn or considered withdrawn before the start of the international search.

(3) The Authority shall, under the conditions and to the extent set out in Annex C of this Agreement, refund the whole or part of the preliminary examination fee paid where the demand is considered as if it had not been submitted (Rule 58.3) or where the demand or the international application is

withdrawn by the applicant before the start of the international preliminary examination.

*Article 6. CLASSIFICATION*

For the purposes of Rules 43.3(a) and 70.5(b), the Authority shall indicate solely the International Patent Classification.

*Article 7. LANGUAGES OF CORRESPONDENCE USED BY THE AUTHORITY*

For the purposes of correspondence, including forms, the Authority shall use the English language.

*Article 8. INTERNATIONAL-TYPE SEARCH*

The Authority shall carry out international-type searches to the extent decided by it.

*Article 9. ENTRY INTO FORCE OF THE AGREEMENT*

(1) This Agreement shall enter into force on January 1, 1988.

(2) This Agreement supersedes, as from the date of its entry into force, the Agreement which was concluded on February 29, 1980.<sup>1</sup>

*Article 10. DURATION AND RENEWABILITY OF THE AGREEMENT*

This Agreement shall remain in force until December 31, 1997. The Parties to this Agreement shall, no later than January 1997, start negotiations for its renewal.

*Article 11. AMENDMENT*

(1) Without prejudice to paragraphs (2) and (3), amendments may, subject to approval by the Assembly of the International Patent Cooperation Union, be made to this Agreement by agreement between the Parties hereto; they shall take effect on the date agreed upon by them.

(2) Without prejudice to paragraph (3), amendments may be made to the Annexes of this Agreement by agreement between the Director General of the World Intellectual Property Organization and the Authority; they shall take effect on the date agreed upon by them.

(3) The Authority may, by notice in writing given to the Director General of the World Intellectual Property Organization:

- (i) Add to the languages listed in Annex A of this Agreement;
- (ii) Amend the schedule of fees and other charges contained in Annex C of this Agreement.

(4) Any amendment notified under paragraph (3) shall take effect on the date specified by the Authority, provided that for any increase of fees or other charges contained in Annex C that date is at least one month later than the date on which the notification is received by the International Bureau.

<sup>1</sup> See footnote 3 on p. 142 of this volume and annex A, p. 398.

*Article 12. TERMINATION OF THE AGREEMENT*

(1) This Agreement shall terminate before December 31, 1997:

- (i) If the Government of Australia gives the Director General of the World Intellectual Property Organization written notice to terminate this Agreement; or
- (ii) If the Director General of the World Intellectual Property Organization gives the Government of Australia written notice to terminate this Agreement.

(2) The termination of this Agreement under paragraph (1) shall take effect one year after receipt of the notice by the other Party, unless a longer period is specified in such notice or unless both Parties agree on a shorter period.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

DONE at Geneva, this 11th day of November 1987, in two originals in the English language.

For the Government  
of Australia by:  
[Signed — Signé]<sup>1</sup>

For the World Intellectual  
Property Organization by:  
[Signed — Signé]<sup>2</sup>

ANNEX A

STATES AND LANGUAGES

Under Article 3 of the Agreement, the Authority

- (i) Shall act for the following States: Australia and the States regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations;
- (ii) Specifies the following language: English.

ANNEX B

SUBJECT MATTER NOT EXCLUDED FROM SEARCH OR EXAMINATION

The subject matter set forth in Rule 39.1 or Rule 67.1 which, under Article 4 of the Agreement, is not excluded from search or examination, is the following: None.

<sup>1</sup> Signed by R. Robertson — Signé par R. Robertson.

<sup>2</sup> Signed by A. Bogsch — Signé par A. Bogsch.

## ANNEX C

## FEES AND CHARGES FOR INTERNATIONAL SEARCH AND PRELIMINARY EXAMINATION

## PART I. SCHEDULE OF FEES AND CHARGES

<i>Kind of Fee or Charge</i>	<i>Amount Australian Dollars</i>
Search fee (Rule 16.1(a)).....	430
Additional fee (Rule 40.2(a)) .....	380
Preliminary examination fee (Rule 58.1(b)).....	215
Additional fee (Rule 68.3(a)) .....	215
Providing copies of cited documents (Rules 44.3(b) and 71.2(b))...	5 per document

PART II. CONDITIONS AND EXTENT OF REFUNDS OF THE SEARCH FEE  
AND OF THE PRELIMINARY EXAMINATION FEE

(1) Any amount paid by mistake, without cause, or in excess of the amount due, for fees indicated in Part I shall be refunded.

(2) Where the international application is withdrawn or is considered withdrawn, under Article 14 (1), (3) or (4), before the start of the international search, the amount of the search fee paid shall be fully refunded.

(3) Where the Authority benefits from an earlier search 25%, 50%, 75% or 90% of the search fee shall be refunded, depending upon the extent to which the Authority benefits from that earlier search.

(4) In the cases provided for under Rule 58.3, the amount of the preliminary examination fee paid shall be fully refunded.

(5) If the international application or the demand is withdrawn before the start of the international preliminary examination, the amount of the preliminary examination fee paid shall be fully refunded.