

THE NATURE AND FUNCTIONING OF THE INTERNATIONAL PATENT SYSTEM

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1. THE BASIC THEORY OF PATENT LAW

- 1.1 The basic theory of patent law provides that a territorial state, or some authority as its personification, grants to an inventor an exclusive monopoly for a limited time in his new invention in return for his disclosure of the invention so that the public at large will be able to practice the invention once the patent expires.
- 1.2 In the heydays of patent law in the United Kingdom, for example, disclosure of the invention was by way of teaching apprentices the mysteries of the craft. In the case of *Buck's Patent 1.W.P.C. 35*, which was granted in 1651 for the melting of iron and other metals by coal without charking thereof, there was a *proviso* that “*the said Jeremy Buck, and his assigns, after seven years of the term hereby granted, do and shall take apprentices, and teach them the knowledge and mystery of the said new invention*”.
- 1.3 Presently, however, the disclosure of the invention is achieved by filing with an intellectual property office a description of the new invention. The description is called a “specification”, and its filing is a prerequisite for the grant of a patent. The specification is a public document which is open to public inspection. The purpose of a specification was captured by Lord Mansfield in *Liardet v Johnson 1. W.P.C. 53* when he opined that:

“The law relative to patents requires as a price the individual should pay the people for his monopoly, that he should enroll, to the very best of his knowledge and judgment, the fullest and most sufficient description of all the particulars on which the effect depended, that he was at the time able to do.”
- 1.4 Although the theory of the patent system is straightforward and virtually universal, its operations involve a myriad of international statutes, national domestic statutes and administrative practices, regional patenting systems, and an ever-changing technological environment. Understanding the nature and functioning of the patent system today therefore must, as a first step, include an understanding of the international patent system.

2. *THE INTERNATIONAL PATENT SYSTEM*

- 2.1 The international patent system is governed by a collection of international agreements developed by the international community to regulate the fields of patents. Some of the most important of these agreements will be discussed.

THE PROTECTION OF INDUSTRIAL PROPERTY (“THE PARIS CONVENTION”)

- 2.2 **Article 1.2** provides that protection of industrial property includes protection of, *inter alia*, patents.
- 2.3 **Article 1.4** provides that the term “patents” include “patents of importation, patents of improvement, and patents and certificates of addition”.
- 2.4 **Articles 2 and 3** provide for the principle of *national treatment*. National treatment means that, as regards the protection of industrial property, each country party to the Paris Convention must grant the same protection to nationals of the other member countries as it grants to its own nationals. Just a few comments and observations on the national treatment rules are offered here.
- 2.5 The term “national” includes both national persons and legal entities. With respect to legal entities, state-owned enterprises of a member country or other entities created under the public law of the country are nationals of the country concerned. So also are legal entities created under the private law of that country. In terms of Article 2 (1) of the Paris Convention, the national treatment rule applies to all advantages that the various national laws grant to their nationals.
- 2.6 Implicit in the national treatment rule is that any requirement of reciprocity in the grant and scope of patent protection is excluded.
- 2.7 In respect of nationals of member countries to the Paris Convention, the status of nationality *mero motu* triggers the benefits of the national treatment rule without any additional requirements as to domicile or the need to have an effective industrial or commercial establishment in any member country.
- 2.8 The national treatment rule must also be granted, in terms of Article 3 of the Paris Convention, to nationals of countries not party to the Paris Convention, if they are domiciled in a country which is a party to the Paris Convention or if they have therein a “real and effective” industrial or commercial establishment. The phrase “real and effective industrial or commercial establishment” means that there must be actual industrial or commercial activity in the member country, and a mere post office box, telefax or electronic mail address, or the renting of a small office with no real activity, will not suffice.

- 2.9 **Article 4** provides that, on the basis of a regular application for a patent filed by an applicant in one of the Paris Convention member countries, the same applicant or his successor in title may, within a period of twelve months from the initial filing date, apply for protection in all other Paris Convention countries. This is commonly called the “priority” principle.
- 2.10 These latter applications will then be regarded as if they had been filed on the same day as the earliest application. As such, these later applications enjoy a priority status with respect to all applications relating to the same invention filed after the date of the first application. They also enjoy a priority status with respect to all acts accomplished after that date which would normally be apt to destroy the rights of the applicant or the patentability of his invention.
- 2.11 In practice, the right of priority confers an advantage to an applicant entitled to benefit from the national treatment rule since he will have twelve months after filing on initial application for the protection of his invention to approach the other countries of the Paris Convention and seek protection in those countries based on his initial application.
- 2.12 **Article 4A (1)** of the Paris Convention also expressly recognizes that the right of priority may also be invoked by the successor in title of the first application.
- 2.13 It should be emphasized that priority can only be claimed for the same invention as that defined in the first regular filed national application. For priority to arise, the first application must be “duly filed”. By a filed “regular national application” is meant any filing that is adequate to establish the date on which the application was filed in the country concerned. For countries with regional patent systems like ARIPO, OAPI, the European Patent System, and the Eurasian regional patent system, a filing in the regional patent office also qualifies as a duly filed regular national application.
- 2.14 Any withdrawal, abandonment or rejection of the first application does not destroy its capacity to serve as a priority basis, because the right of priority subsists even where the first application generating that right is no longer existent.
- 2.15 **Article 4B** regulates the effect of priority. It can be summarized as follows: A later application claiming priority must be treated in any Paris Convention country as if it had been filed on the date of filing of the initial application, and all acts accomplished between the time of filing the initial application and filing the later application (the so-called “priority period”) cannot destroy the rights of the later application claiming priority. As such, any publication of the invention during the priority period, or any filing of the same invention by a third party during the priority period, will not destroy the novelty or inventive character of the application claiming priority.

- 2.16 **Article 4 bis** provides for the independence of patents obtained for the same invention in different countries. This rule is commonly called the rule of “independence of patents for inventions”. It means that a patent for an invention cannot be refused, invalidated or otherwise terminated in any member country on the ground that a patent for the same invention has been refused or invalidated, or is no longer maintained or is terminated in any other member country of the Paris Convention. Put differently, the fate of a patent in *Country A* has no influence at all on the fate of the same patent in *Country B*, because the patents are subject to different national laws, administrative practices and jurisprudence.
- 2.17 **Article 4 bis (5)** gives practical effect to the rule of independence of patents for inventions. It provides that a patent granted to an application which claimed the priority of an earlier initial foreign application must be given the same duration which it would have been given by national law had no priority been claimed. Put differently, it is prohibited to deduct the priority period from the patent term by invoking the priority of a first application. As such, a provision in any national law starting the term of patent protection from the earlier initial foreign application claiming the priority date, and not from the actual filing date of the application in that country, would fall afoul of Article 4bis (5).
- 2.18 **Article 4ter** provides that the inventor shall have the right to be mentioned as such in the patent.
- 2.19 **Article 4quarter** provides for patentability in case of restrictions or prohibitions of sale imposed by domestic law. It provides that the grant of a patent should 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 domestic law.
- 2.20 **Article 5** regulates questions relating to the importation of articles covered by patents, of failure to work the patented invention, of insufficiently working the patented invention, and of compulsory licences.
- 2.21 **Article 5A (1)** provides that importation by the patentee into the country where the patent has been granted of articles manufactured in any Paris Convention country shall not entail forfeiture of the patent.
- 2.22 The word “patentee” in Article 5 should be construed not to refer only to patentees proper, but also to cover a patentee’s representative, and any person effecting an importation in the name of a patentee. The word “forfeiture”, on the other hand, should be construed to include any measure which has the effect of definitively terminating a patent. It should cover instances of invalidation, revocation, cancellation and repeal of the patent.

- 2.23 With respect to the goods that are imported, they should have been manufactured in a Paris Convention country.
- 2.24 The rationale for Article 5 is that patentees should work their patents in the country of grant. This will promote industrialization in the country and help to introduce the use of new technology in the country. Otherwise patentees, on the basis of their patents, would merely block the working of the invention in the country or monopolise the importation of the patented invention.
- 2.25 **Article 5A (2)** therefore gives to each Paris Convention country the optional right to take legislative measures providing for the grant of compulsory licences in cases where there is a failure to work the patented invention, or where there is an insufficient working of the patented invention.
- 2.26 **Article 5A (3)** provides that a patent should not be forfeited where the patent can be compulsorily licensed, and that, in any event, forfeiture proceedings may not be instituted before the expiration of two years from the grant of the first compulsory licence.
- 2.27 **Article 5A (4)** provides that a compulsory licence on failure to work or insufficient working may not be applied for before the period of four years from the date of filing the patent application, or three years from the date of the grant of the patent. Also, the compulsory licence application should be denied if the “patentee justifies his inaction by legitimate reasons”. The legitimate reasons may include barriers imposed by local, technical or economic obstacles which prevent working of the invention in the country.
- 2.28 A compulsory licence should be non-exclusive, and not transferable even to sub-licensees except with that part of the enterprise or goodwill that exploits such licence. The patent owner must retain the right to grant other non-exclusive licences and to work the patented invention himself. These provisions are designed to prevent the compulsory licensee from obtaining a stronger position on the market than is warranted by the purpose of the compulsory licence, namely, to ensure sufficient working of the invention in the country.
- 2.29 **Article 5 bis** provides for grace periods for the payment of fees for the maintenance of patent rights, and for the restoration of patents which have lapsed by reason of non-payment of fees. The period of grace should not be less than six months, but a surcharge may be levied for the late payment.
- 2.30 **Article 5ter** deals with patents in international traffic. It provides that where ships, aircraft or land vehicles of Paris Convention countries enter temporarily or accidentally a given member country and have on board devices patented in that country, the owner of the means of transportation is not required to obtain prior approval or a licence from the patent owner, and temporary or accidental entry of

- the patented device into the country in such cases constitutes no infringement of the patent for invention.
- 2.31 **Article 5 ter** applies to devices on board the ship, aircraft or vehicle affixed thereto as machinery, tackle, gear or other accessories used for operational requirements. As such, it covers only the use of the patented invention, and does not allow the making of patented inventions on board such means of conveyance.
- 2.32 **Article 11** governs the temporary protection of inventions shown at international exhibitions. Paris Convention member countries are required to temporarily grant protection, in conformity with their domestic legislation, to patentable inventions exhibited at official or officially recognized international exhibitions held in their territories. Usually, this is achieved in domestic legislation by providing that exhibition at the trade fair will not destroy the novelty and inventiveness of the invention for a period of limited duration, say twelve months from the date of the trade fair.
- 2.33 **Article 12** requires each Paris Convention country to establish a special intellectual property office responsible, inter alia, for publishing a journal with patent information. The Belize Intellectual Property Office is a progeny of this Article.
- 2.34 **Article 19** allows Paris Convention member countries to make special arrangements for the protection of intellectual property matters. The other WIPO administered treaties discussed hereunder are special agreements in terms of this Article.
- 2.35 As of 15 October, 2002, one hundred and sixty-four countries including Belize, had ratified the Paris Convention.

THE PATENT COOPERATION TREATY (“PCT”).

- 3.1 The traditional patent system on which the Paris Convention is predicated requires the filing of individual national patent applications for each country for which protection is sought, with the few exceptions of patent applications filed using the OAPI (African Intellectual Property Organization), ARIPO-Harare Protocol (African Regional Industrial Property Organization), EPO (European Patent Office) and Eurasian patent system routes.
- 3.2 Under the traditional Paris Convention route, the priority of an earlier application can be claimed for applications filed subsequently in foreign countries but such later applications must be filed within twelve months of the filing date of the earlier application. Under this route, except for regional patent applications indicated above, an applicant has to prepare and file an application in each country where he seeks protection for his invention within twelve months of the

- filing of the first application. Due to language differences and different legal and administrative systems between countries, the applicant is forced to pay translation fees, attorney fees and official fees in each country in which he files his application. Also, patent offices in each country in which an application is filed have to examine each application as to form and substance, an especially onerous task for small jurisdiction offices staffed with, at the most, less than ten people.
- 3.3 The Patent Cooperation Treaty (“PCT”) was introduced to overcome the difficulties inherent in the functioning of the traditional patent system. The PCT was adopted at Washington in 1970, entered into force on 24 January 1978, and became operational on 1 June 1978, initially with eighteen (18) Contracting States. As of 15 October, 2002, it had one hundred and seventeen (117) Contracting States, including Belize.
 - 3.4 As its name suggests, the PCT is an agreement for international cooperation in the filing, searching and examination of patent applications and the dissemination of the technical information contained therein.
 - 3.5 The PCT improves on the traditional patent system by simplifying and making more effective and economical the system of patent filing, search and examination in the interests of users of the system, that is, applicants, patent offices and patent attorneys.
 - 3.6 Firstly, the PCT establishes an international system which enables the filing, with a single patent office, called “a receiving office” of a single application, called “the international application” in one language having effect in all other PCT countries in which the applicant seeks his patent to be protected (called “the designated states”). The International Bureau of WIPO is an optional receiving office for all nationals and residents of PCT countries.
 - 3.7 The international application is subjected to an international search by an International Searching Authority (ISA), which are experienced patent offices specially appointed to carry out international searches by the Assembly of the PCT Union on the basis of agreements to observe PCT standards and time limits. For Belize, the International Searching Authority is the EPO (European Patent Office). In conducting a search, the ISA has to consult certain prescribed PCT minimum documentation, and to give its report in an international search report, which is normally made available to the applicant by the fifth month the application is filed.
 - 3.8 If the international search report is favourable to the applicant, that is, if the report provides that the applicant’s invention is not anticipated by prior art, then the applicant can begin prosecuting his application before the designated offices.

- 3.9 The international search report is also of immense assistance to designated offices like the Belize Intellectual Property Office which do not have technically qualified staff and an extensive collection of patent documents arranged in a manner suitable for search purposes, in examining applications and otherwise evaluating the inventions described.
- 3.10 The International Searching Authority sends the international search report to the applicant and to the International Bureau of WIPO. The International Bureau includes the search report in the international publication of the international application and sends a copy to the designated offices.

PCT INTERNATIONAL PRELIMINARY EXAMINATION

- 3.11 Once the applicant has received the international search report, he may then proceed to make a specific request for international preliminary examination by filing a demand in which the designated states are elected in order to ascertain whether the claimed invention is novel, involves an inventive step, and is capable of industrial utility.
- 3.12 A fee for an international preliminary examination is due when a demand is filed with the International Preliminary Examining Authority, together with a handling fee to cover the work of the International Bureau of WIPO.
- 3.13 International Preliminary Examining Authorities are appointed by the Assembly of the PCT Union, and for Belize, the International Preliminary Examining Authority is the European Patent Office (EPO). The results of the international preliminary examination are given in a report which is furnished to the applicant and elected offices through the International Bureau of WIPO, which translates such results into English, if required by an elected office. The opinion of the patentability of an invention as contained in the results is of immense value to countries like Belize, where due to technical constraints, examination of patents is only as to form and not substance.

PCT INTERNATIONAL PUBLICATION

- 3.14 Following the international search, the International Bureau of WIPO includes the search results in the international publication of the international application. This publication is done in a PCT pamphlet, containing a front page setting out bibliographic data furnished by the applicant, together with data such as the International Patent Classification (IPC) symbol assigned by the International Searching Authority, the abstract and the description, claims, drawings and international search report. The publication of such pamphlet is announced in the *PCT Gazette*, which lists the published international applications in the form of entries reproducing data taken from the front pages of the pamphlets. These publications, the pamphlets and the *PCT Gazette* are distributed free of charge by

- WIPO to the Belize Intellectual Property Office, and patent attorneys may have recourse to them at the Belize Intellectual Property Library in Belmopan, which is currently being established with the necessary computer hardware and software to allow the searching of information on CD-Roms.
- 3.15 The procedure of international search, international publication and international preliminary examination is commonly called “the international phase” of the PCT system. The international phase is followed by what is called the “national phase” of the PCT.
 - 3.16 During the national phase of the PCT, the international applicant, after having received an international search report and, where appropriate, an international preliminary examination report, should then pay the official fees to the various elected offices in whose countries he seeks to have his patent protected. It should be understood by all patent attorneys that the national phase is no more than the normal patent practice and procedure you deal with in filing patents on a daily basis with the Belize Intellectual Property Office, save and except that its progenitor in this case is the international phase. The only exceptions, logically, will refer to form, not substance, like the use of PCT forms, and priority documents, and other PCT documents emanating from the international phase.
 - 3.17 In using the PCT system, patent attorneys should make reference to the **PCT Applicant’s Guide**, a paper copy of which can be found at the Belize Intellectual Property Office Library and electronic versions of which I understand can be downloaded from www.wipo.int. The Guide is published in two volumes. Volume I relates to the international phase, and Volume II relates to the procedure before designated and elected offices.
 - 3.18 What benefits then, can be said to accrue to Belize, the national economy, the Belizean applicant and the Belizean patent attorney from using the PCT?
 - 3.19 Simply stated, the objectives of the PCT are to establish an international system which enables the filing, with a single receiving office, of a single application in one language having effect in each of the PCT countries which the applicant designates in his application.
 - 3.20 The PCT has the advantage of subjecting each international application to an international search which results in a report citing the relevant prior art taken into account in determining the patentability of the invention. Also, the international preliminary examination of the international application provides to both applicant and elected offices a report containing an opinion as to whether the claimed invention meets certain international criteria for patentability.
 - 3.21 More specifically, for the Belize Intellectual Property Office, the international publication of the international application done by the International Bureau of WIPO can save publishing costs, as the office may then forego publishing the

entire patent application, which is usually voluminous. Publication itself serves two main purposes. Firstly, it discloses to the public the nature of the invention, in the form of the technological advance made by the inventor. Secondly, it delineates the scope of the protection which may ultimately be obtained.

- 3.22 The PCT does not affect the revenue of the Belize Intellectual Property Office, which still collects the normal official fees prescribed by the patent law.
- 3.23 Technological progress is an essential factor of Belize's national economic development. Real technological progress cannot be achieved from domestic inventions alone. We have to stimulate, harness and promote foreign inventiveness. The PCT is an appropriate strategy for enabling the importation of foreign technologies into Belize. The system of patent licensing will then enable greater technology transfer. The benefits to our local economy cannot be overemphasised. There will be increased investment, employment opportunities, and the transfer of technical skills. Today, creativity and innovation are the new drivers of the world economy and national well-being increasingly depends on the strategy a country develops to mine this intellectual capital. The International Bureau of WIPO regularly issues to the Belize Intellectual Property Office CD-ROMS with technical information on patents made under the PCT, enabling the collection of a well arranged body of patent documents for review and evaluation in Belize. For patent attorney's in Belize, where there is no national university teaching drafting and patent law, these can be useful precedents for patent drafting.
- 3.24 It should be pointed out, indeed emphasized, that the PCT does not compete with the Paris Convention, because the PCT itself is a special agreement made in terms of Article 19 of the Paris Convention, and that the PCT does not provide for the grant of international patents, since the task of and responsibility for granting patents remains exclusively in the hands of the national and regional intellectual property offices.
- 3.25 However, we should, I dare say, as participants in the international patent system, closely analyse the workings of the PCT in order to use it to our benefit. In 1985, for example, the number of international PCT filings were 7095. In 2001, it was 103,947. However, the origin of PCT filings continue to be concentrated in a very small number of industrialised countries, with the USA leading the way with 38.5% or 40,000 applications, followed by Germany with 13.1% and Japan with 11.4%. These three countries alone represent 63% of the total PCT filings. Developing countries, on the other hand, despite reduced filing fees for applications from these countries, account only for 5% of the total filings. Also, most of the PCT-related work is concentrated in three main big offices, the USPTO, the EPO, and the JPO. To provide equity in the system, something needs to be done to divert part of the work to offices from the developing countries, and, I opine, to an office within a CARICOM state. To achieve this, I think we should,

as a nation and as bloc within CARICOM, be part of the global patent agenda currently being formulated within WIPO.

4. THE PATENT LAW TREATY (“PLT”)

- 4.1 The PLT was adopted on June 1, 2000, at a Diplomatic Conference in Geneva. Its basic purpose is to harmonize and streamline formal procedures in respect of patent applications and patents. It provides maximum criteria which intellectual property offices should require in respect of patent applications, and prohibits such offices to require anything over and above what it stipulates.
- 4.2 Any state which is a party to the Paris Convention may become a party to the PLT, and some intergovernmental organizations which meet the membership criteria specified in the treaty may also become members.
- 4.3 Article 3 of the PLT provides that it applies to national and regional patent applications for patents for invention, patents for addition, and divisional applications for patents for invention and patents for addition, which terms are to be given the meaning respectively assigned to them in Article 2(i) of the PCT. The PLT also applies to patent applications for invention and addition filed under the PCT which have entered the national phase. Lastly, the PLT applies to all patents for invention or addition granted by an intellectual property office.
- 4.4 The PLT contains provisions relating to filing date requirements. The filing date has three significant legal implications. Firstly, it determines the person with priority to obtain a patent. Secondly, it determines what will constitute prior art (that body of knowledge in the public domain prior to the filing date) and as such, will determine the patentability of the invention. Thirdly, the filing date will determine the priority date for purposes of Article 4 of the Paris Convention, that is, the date on which the twelve months period will begin to run.
- 4.5 In terms of Article 5 of the PLT, to obtain a filing date to an application, an applicant has to file documents which show that they constitute a patent application, and which identify the applicant and his contact address, and which contain a description of the patent, or a drawing thereto.
- 4.6 In terms of Article 6 of the PLT, the requirements relating to the form or contents of an international application under the PCT, during both the international and national stages of an application, are referentially incorporated into the PLT. Also, the contents of a “request” of an international application under the PCT are referentially incorporated into the PLT and Contracting Parties are enjoined by Rule 3 (2) of the PLT Regulations, (“the Rules”) to accept request forms which are based on the PCT request form.

- 4.7 In terms of Article 8 and Rule 20 of the Rules of the PLT, Contracting Parties are required to accept communications to their intellectual property offices which are set out in the Model International Forms to the PLT relating to powers of attorneys, recordals of change of name and address, or change in applicant or owner, certificates of transfer, recordal or cancellation of recordals of licences or security interest, and requests to correct mistakes.
- 4.8 Applicants are required to appoint representatives to prosecute their patent applications before intellectual property offices, except for limited procedures as set out in Article 7 of the PLT, where they may represent themselves to file an application in order to secure a filing date, to pay fees, to file a copy of an earlier application in order to establish a filing date where a part of a description or drawing has been missing from the initial application, or has been replaced, or to attend to the issue of a receipt or notice by the intellectual property office. However, according to Rule 10 (2), applicants may be required to provide an address of service within the country notwithstanding their legal standing to personally prosecute aspects of their applications as set out above.
- 4.9 The PLT reduces all unnecessary evidence in support of an application, power of attorney, requests for recordal of change in name or address, declarations of priority or the authentication of translations. Evidence will only be required, in terms of Article 6 (6), where an intellectual property office has a reasonable doubt as to the truthfulness of a document, or the accuracy of a translation. Evidence is only required for very serious matters like requests for recordals to change the name of an applicant or patent owner, or recordals, and cancellation of recordals, of a licence or security interest; and for signatures, evidence may be required pursuant to Article 8 (4) (b) where there is doubt as to authenticity, and, in terms of Rule 9 (6), digital signatures must be authenticated by attestation, notarization, authentication, legalization or by some other appropriate certification.
- 4.10 Where an applicant files an application with an intellectual property office, Rule 4 (3) prohibits that office from requiring the applicant to furnish to it a copy, certified or uncertified, of that application in later dealings with the applicant on the subject. The same applies to cases where the office can obtain copies from other intellectual property offices in an acceptable digital format. Also, in terms of Rule 4 (4) of the Rules, the office may require a translation only where the validity of the priority claim in the earlier application is relevant to determine whether the invention is patentable.
- 4.11 Where any time limit for the doing of any act is fixed by an intellectual property office, the PLT allows an applicant or patent owner to request an extension of time to do the said act. Such request must, in terms of Article 11 (1) (i), be made prior to the expiration of the time limit, and the extension proper will be for a period of at least two months from the expiration date. Also, in terms of Article 11 (1) (ii), an applicant or patent owner may similarly request from an intellectual property office an extension of a fixed time limit for at least two months from the

- expiration of the unobserved time limit. Such request may be made after the expiration of the unobserved time limit. Acceptance by the office of the first type of request is optional, but the office is required to accept the second type of request where certain circumstances as set out in the PLT and the Rules exist. Article 11, however, does not apply to time limits fixed by legislation.
- 4.12 In terms of Article 13 (1) of the PLT and Rule 14 (1), (2) and (3) of the Rules, an applicant can add to and correct priority claims for national or regional applications. Also, an applicant who unintentionally files an application after the twelve months priority period can, on making a request therefore, apply for the reinstatement of his priority rights provided certain conditions as are set out in Article 13 of the PLT and Rule 14 of the Rules exist.
- 4.13 The PLT promotes the use of both paper and electronic communications, for the benefit of both intellectual property offices and applicants. In terms of Article 8 (1) (b) of the PLT, an intellectual property office is not obliged to accept the filing of communications in electronic form, or, in terms of Article 8 (1) (c), to exclude the filing of communications on paper. In terms of Rule 8 (1), intellectual property offices are required to accept paper communication filings until the 2nd June, 2005.
- 4.14 As of 15 October, 2002, the PLT had been signed by fifty-four (54) signatories, of which four (4) had either ratified or acceded to it. Belize has neither signed nor ratified the PLT, and consideration may be given to doing so.

5. THE STRASBOURG AGREEMENT CONCERNING THE INTERNATIONAL PATENT CLASSIFICATION ("THE IPC")

- 5.1 The manifold problems confronting an intellectual property office dealing with patents can be narrowed down to two: problems associated with patent examination and processing. In terms of processing problems, these are now universally dealt with by assigning a number, mostly numerical but sometimes alphanumerical, to identify the patent application and the patent. Examination, however, is more complex. Apart from requiring technical experts in disparate fields of endeavour, examination can only fruitfully and successfully be done if undertaken in a milieu with well arranged and maintained patent documents, not only from the jurisdiction concerned, but from most, if not all, jurisdictions because of the requirement of absolute novelty.
- 5.2 To address the problems of patent examination, the Strasbourg Agreement Concerning the International Patent Classification ("IPC") was adopted in 1971, and entered into force on 7 October, 1975. It is administered by WIPO.

- 5.3 The IPC is a patent classification statute. It divides the entire field of technology into eight (8) sections, one hundred and eighteen (118) classes, six hundred and twenty-four (624) subclasses and over sixty-seven thousand (67,000) groups. Each section, class, subclass and group has a title and a symbol. When examining a patent application, an intellectual property office should indicate the title and symbol of the subclass to which the invention belongs. This facilitates the document to be retrieved (and used later for examination purposes) according to its subject matter.
- 5.4 The IPC exists in English and French texts published by WIPO, the latest of which is the 6th Edition. WIPO has a CD-ROM it provides to intellectual property offices called IPC-CLASS. A request therefor will be made in due course for the use of the Belize Intellectual Property Office.

6. THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (“TRIPS”)

- 6.1 The Uruguay Round of multilateral trade negotiations held under the framework of the General Agreement on Tariffs and Trade (“GATT”) was concluded on December 15, 1993. The negotiations included, for the first time within the GATT, discussions on aspects of intellectual property rights related to international trade. The results of those negotiations are contained in an Annex to the World Trade Organization Agreement (“WTO Agreement”) and are called the Agreement on Trade-Related Aspects of Intellectual Property Rights (The “TRIPS Agreement”).
- 6.2 The TRIPS Agreement is built on the principles of the Paris Convention, and it referentially incorporates therefrom Articles 1 to 12, and Article 19 in respect of industrial property matters, including patents. The most notable non-referential patent provisions of the TRIPS Agreement run from Articles 27 to 34, and Articles 70.8 and 70.9.
- 6.3 The TRIPS Agreement is a three-part instrument that applies the principles of GATT in an intellectual property context. Part 1 establishes the general principles which WTO members should adopt in their national jurisdictions. WTO members are required to provide minimum effective measures for the protection of intellectual property, including patents. Most importantly, the principle of national treatment is carried over from the Paris Convention, and the principle of “most favoured nation” treatment, which is found in no other intellectual property instrument, is introduced. The basic underpinning of the TRIPS Agreement is to achieve the global harmonisation of substantive industrial property law principles in the context of international trade.
- 6.4 Part 2 of the TRIPS Agreement sets forth the basic principles concerning the availability, scope and use of patents. This part is a progressive step for patents, as it lays down a most clearly articulated standard of patentable

subject matter yet to appear in an international instrument. In Article 27.1, the TRIPS Agreement provides that patents shall be available for products and processes in all fields of technology, provided they are new, involve an inventive step and are capable of industrial application, except that WTO members may exclude inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* (public safety), 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.

- 6.5 WTO members may also exclude from patentable subject matter diagnostic, therapeutic and surgical methods for the treatment of humans or animals, 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 (Article 27.3).
- 6.6 WTO members are required to protect new plant varieties in their national territories either by the grant of patents or by a *sui generis* system or a combination of the two, in terms of Article 27.3.
- 6.7 **Article 27.1** provides that patents shall be available and patent rights enjoyable without discrimination as to place of invention, the field of technology, and whether products are imported or produced locally.
- 6.8 **Article 28.1** provides that exclusive rights in patents shall include, for products, the right to prevent third parties from making, using, offering for sale, selling or importing the patented product, and for processes, the right to prevent third parties from using the process and from using, offering for sale, selling or importing for those purposes the product obtained directly by that process, subject to certain allowable exceptions as provided in Article 30.
- 6.9 **Article 28.2** provides that patents shall be assignable, transferable, and available for licensing.
- 6.10 **Article 31** allows compulsory licensing of patents, and use by the government, subject to certain specified conditions, including compulsory licensing and use of semi-conductor technology.
- 6.11 **Article 32** provides that judicial review should be available for any decision to revoke or forfeit a patent.
- 6.12 **Article 33** provides that the term of a patent shall be twenty (20) years from the date of filing of the application.

- 6.13 **According to Article 34**, the burden of proof concerning a case whether a product was made by a patented process is in the circumstances specified therein placed on the alleged infringer.
- 6.14 **Article 70** requires WTO members to make available, by 1st January 1995, patent protection for pharmaceuticals and agricultural chemical products commensurate with the obligations imposed under Article 27.
- 6.15 **Article 70.9** provides that where an application referred to in Paragraph 6.14 is filed, exclusive marketing rights must be granted for a period of five years after the obtaining of marketing approval or until a product patent is granted or rejected in the Member State, whichever period is shorter.

CONCLUSION

- 6.16 The above is a rough map of the international patent scene. I have gone beyond the PCT because, as can be seen, the operations of the PCT are now no longer isolated, but inextricably linked to other international statutes. Indeed, there are other international (or may be regional) patent initiatives like the European Patent Convention, but the provisions of such instruments are simply beyond the scope of this Paper.