

# AGREEMENT ON THE VISEGRAD PATENT INSTITUTE

*The Governments of the Czech Republic, Hungary, Republic of Poland*

*and the Slovak Republic*

*Affirming* their strong commitment to fully respecting their obligations under the Patent Cooperation Treaty done at Washington on June 19, 1970,

*Desiring* to foster innovation and creativity and to promote economic growth and competitiveness in the Central and Eastern European region\*,

*Recognizing* the crucial role their own industrial property offices perform in attaining these objectives through serving their inventors and industries in the area of patent law and practice and providing them with high-quality expertise necessary for securing legal protection for their inventions,

*Desiring* that their industrial property offices enhance their cooperation with a view to strengthening that expertise and pooling their resources for the benefit of their users, in particular individual inventors, small and medium-sized enterprises, and publicly funded research organisations,

*Desiring* to offer Central and Eastern European users of the patent system a favourable and efficient option for obtaining patent protection internationally and, to that end, to facilitate their access to the system established under the Patent Cooperation Treaty,

*Affirming* their strong commitment to fully respecting their obligations under the Convention on the Grant of European Patents (European Patent Convention) done at Munich on 5 October 1973, including its Protocol on the Centralisation of the European Patent System and on its Introduction, while wishing to exercise the rights these legal instruments have conferred on them,

*Desiring* to establish an intergovernmental organization under Article 16 and Article 32 of the Patent Cooperation Treaty which shall – subject to appointment by the Assembly of the International Patent Cooperation Union and approval by the Assembly of the agreement between such organization and the International Bureau of the World Intellectual Property Organization (WIPO) – fulfil the function of the International Searching Authority and International Preliminary Examining Authority under the Patent Cooperation Treaty and whose task shall be to carry out international search and international preliminary examination with respect to international patent applications filed under that Treaty,

*Have agreed as follows:*

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\* In accordance with Article 17, the membership of this Agreement is not limited to Visegrad countries. This Agreement is open to accession by other countries of the region. Although the Visegrad Patent Institute is established by the Visegrad countries, legally speaking it is not an institution of the Visegrad Cooperation.

## **Article 1**

### **Establishment of the Visegrad Patent Institute**

The Visegrad Patent Institute is hereby established as an intergovernmental organisation for cooperation in the field of patents.

## **Article 2**

### **Definitions**

(1) For the purposes of this Agreement

- (i) "VPI" means the Visegrad Patent Institute;
- (ii) "national office" means the central industrial property office of a Contracting State entrusted with the granting of patents;
- (iii) "PCT" means the Patent Cooperation Treaty done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984, and on October 3, 2001 and the Regulations annexed to that Treaty as amended;
- (iv) "EPC" means the Convention on the Grant of European Patents (European Patent Convention) done at Munich on 5 October 1973 as revised by the Act revising Article 63 EPC of 17 December 1991 and the Act revising the EPC of 29 November 2000;
- (v) "WIPO" means the World Intellectual Property Organization;
- (vi) "International Bureau" means the International Bureau of WIPO.

(2) Where provisions of this Agreement relating to the application of the PCT contain terms and expressions that are defined by the PCT, they shall have the same meaning as under the PCT.

## **Article 3**

### **Visegrad Patent Institute**

(1) The VPI shall have administrative and financial autonomy.

(2) The VPI shall be governed by an Administrative Board and administered by a Secretariat managed by a Director.

(3) The main task of the VPI shall be to act as an International Searching Authority and International Preliminary Examining Authority within the meaning of the PCT. The Administrative Board may decide to entrust the VPI with other similar tasks in the field of patents.

(4) The establishment and the operation of the VPI shall in no way affect the exclusive competence of the national offices with respect to national patents and patents having the same effect.

## **Article 4**

### **Legal status of the VPI**

- (1) The VPI shall have legal personality.
- (2) In each of the Contracting States, the VPI shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State. It may in particular enter into contracts, acquire or dispose of movable or immovable property and be a party to legal proceedings.
- (3) The Director of the VPI shall represent the VPI.

## **Article 5**

### **Headquarters**

- (1) The VPI shall have its headquarters in Budapest.
- (2) The VPI shall have a branch office in each of the other Contracting States unless the Administrative Board decides otherwise at the request of a Contracting State not wishing to host such an office.
- (3) The VPI shall conclude a headquarters agreement with Hungary.

## **Article 6**

### **Privileges and immunities**

- (1) Within the scope of its official activities the VPI, its property and income shall be exempt from all direct taxes.
- (2) Where substantial purchases for the exercise of the official activities of the VPI are made, in the price of which taxes or duties are included, appropriate measures shall, whenever possible, be taken by the Contracting States to remit or reimburse to the VPI the amount of such taxes or duties.
- (3) No exemption shall be accorded in respect of duties and taxes which amount merely to charges for public utility services.
- (4) The headquarters agreement referred to in Article 5(3) may grant privileges and immunities other than those specified in paragraphs (1) and (2).

## **Article 7**

### **Liability**

- (1) The contractual liability of the VPI shall be governed by the law applicable to the contract in question in accordance with Regulation (EC) No 593/2008 (Rome I), where applicable, or failing that in accordance with the law of the Contracting State of the court seized.

(2) The non-contractual liability of the VPI in respect of any damage caused by it or the employees of the VPI Secretariat in the performance of their duties, to the extent that it is not a civil and commercial matter within the meaning of Regulation (EC) No 864/2007 (Rome II), shall be governed by the law of the Contracting State in which the damage occurred.

(3) The court with jurisdiction to settle disputes under paragraph (2) shall be a court of the Contracting State in which the damage occurred.

(4) The provisions of paragraphs (1) to (3) shall apply irrespective of the performance of the tasks of the VPI being entrusted to national offices. The liability of the national offices towards the VPI and the liability of the VPI towards the national offices shall be governed by the terms and conditions laid down by the Administrative Board.

## **Article 8**

### **Activities of the VPI**

(1)(a) Subject to Article 20, the VPI shall act as an International Searching Authority and International Preliminary Examining Authority within the meaning of the PCT, in accordance with an agreement between the International Bureau and the VPI, for applications filed with the receiving Office of, or acting for, any State party to this Agreement.

(b) The agreement between the International Bureau and the VPI may provide that the VPI shall also act for other applications filed with the receiving Office of, or acting for, any other Contracting State of the PCT where the receiving Office of such State specifies the VPI for that purpose.

(2) When concluding and implementing the agreement referred to in paragraph (1), the VPI shall comply with the obligations the Contracting States of this Agreement have under the Convention on the Grant of European Patents (European Patent Convention), including its Protocol on the Centralisation of the European Patent System and on its Introduction.

(3) In case of conflict between the provisions of the PCT and those of this Agreement, the provisions of the PCT shall prevail.

(4) Activities of the VPI as an International Searching Authority and International Preliminary Examining Authority and in relation to any other task entrusted to it under Article 3(3) shall be carried out by the national offices on behalf of the VPI in accordance with the terms and conditions laid down by the Administrative Board.

(5) The Administrative Board shall lay down the criteria for distributing the work to be carried out under paragraph (4) among the national offices. They shall be fair, equitable and relevant, ensuring a balanced distribution.

(6) The national offices shall, in accordance with the Financial Regulations, receive reimbursements for the activities they carry out under paragraph (4).

## **Article 9**

### **The Secretariat and the Director of the VPI**

(1) The Director shall be responsible for the organisation of the activities of the VPI. The Secretariat shall be responsible for administrative support and shall also act as the secretariat of the Administrative Board.

(2) The Secretariat shall be managed by the Director, who shall be responsible for its activities to the Administrative Board.

(3) To this end, the Director shall have in particular the following functions and powers:

- (i) he shall take all necessary steps to ensure the efficient performance of the VPI's tasks, including the adoption of internal administrative instructions;
- (ii) he may submit to the Administrative Board any proposal for amending the Implementing Regulations, or for decisions that come within the competence of the Administrative Board;
- (iii) he shall prepare and implement the budget as well as any amendment or supplement thereto;
- (iv) he shall submit a management report to the Administrative Board each year.

(4) The Director shall conform to the instructions of the Administrative Board as to the internal and external affairs of the VPI.

(5) National offices shall assist the Director and the Secretariat in fulfilling their tasks to the extent necessary and in accordance with the arrangements established by the Administrative Board.

(6) The employees of the Secretariat shall be bound, even after the termination of their employment, neither to disclose nor to make use of the information which by its nature is a professional secret.

## **Article 10**

### **Appointment of the Director**

(1) The Director of the VPI shall be appointed by the Administrative Board for a fixed term, which shall not exceed four years. He shall be eligible for reappointment. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the Administrative Board.

(2) The Administrative Board shall exercise disciplinary authority over the Director of the VPI.

## **Article 11**

### **The Administrative Board**

- (1) The Administrative Board shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Board.
- (2) The language used in the deliberations of the Administrative Board shall be English. Documents submitted to the Administrative Board and the minutes of its deliberations shall be drawn up in English.
- (3) The Administrative Board shall establish its own Rules of Procedure.

## **Article 12**

### **Competence of the Administrative Board in certain matters**

- (1) The Administrative Board shall be competent to adopt and amend
  - (i) the Implementing Regulations,
  - (ii) the Financial Regulations,
  - (iii) the conditions of employment of the employees of the Secretariat,
  - (iv) and its Rules of Procedure.
- (2) The Administrative Board shall be competent to authorise the Director of the VPI to negotiate and, subject to its approval, to conclude agreements on behalf of the VPI with states and intergovernmental organisations.
- (3) The Administrative Board shall perform such other functions as are appropriate to implementing the provisions of this Agreement.

## **Article 13**

### **Decisions of the Administrative Board and voting rules**

- (1) The Administrative Board shall endeavour to take its decisions by consensus. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.
- (2) The right to vote in the Administrative Board shall be restricted to the Contracting States. Each Contracting State shall have one vote and shall vote only in its own name.
- (3) Subject to paragraph (4), the decisions of the Administrative Board shall require two-thirds of the votes cast.
- (4) Unanimity of the Contracting States voting shall be required for the decisions the Administrative Board is empowered to take under Articles 3(3), 5(2), 7(4), 8(5), 12(1), 12(2) and 14(4). The Administrative Board shall take such decisions or, under paragraph (1), shall take decisions by consensus only if all the Contracting States are represented.

(5) Abstentions shall not be considered as votes.

## **Article 14**

### **Financial provisions**

(1) The budget of the VPI shall be balanced. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations. If necessary, the budget may be amended or supplemented.

(2) The expenses of the VPI shall be covered by its own resources and, where necessary, by special financial contributions made by the Contracting States, the amount of which shall be determined by the Administrative Board in accordance with the Financial Regulations. The VPI's own resources shall comprise all income from fees and other sources, and also, where applicable, the reserves of the VPI.

(3) The VPI may levy fees for any task or procedure carried out under this Agreement. The Implementing Regulations shall determine in particular the amounts of the fees and the ways in which they are to be paid. The amounts of the fees shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the VPI's budget to be balanced.

(4)(a) However, if the VPI is unable to balance its budget under the conditions laid down in paragraph (3), the Contracting States shall remit to the VPI special financial contributions, the amount of which shall be determined by the Administrative Board in accordance with the Financial Regulations.

(b) If other means of provisionally covering any deficit or any part thereof are secured, the Administrative Board may decide that such deficit be carried forward and that the Contracting States should not be asked to pay contributions.

(c) If the financial situation of the VPI so permits, the Administrative Board may decide that any contributions paid under subparagraph (a) be reimbursed to the Contracting States which have paid them.

(5) The expenditure entered in the budget shall be authorised for the duration of one accounting period, unless the Financial Regulations provide otherwise. The accounting period shall commence on 1 January and end on 31 December.

(6) The Director of the VPI shall submit the draft budget to the Administrative Board no later than the date prescribed in the Financial Regulations. The budget, and any amendment or supplement to it, shall be adopted by the Administrative Board.

(7)(a) The income and expenditure account and a balance sheet of the VPI shall be examined by auditors whose independence is beyond doubt. They shall be appointed by the Administrative Board for a period of five years, which shall be renewable or extensible. The auditors shall draw up a report containing a signed audit opinion after the end of each accounting period.

(b) The Director of the VPI shall annually submit to the Administrative Board the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the VPI together with the report of the auditors.

The Administrative Board shall approve the annual accounts together with the report of the auditors and shall discharge the Director of the VPI in respect of the implementation of the budget.

(8) The Financial Regulations shall lay down in particular:

- (i) the arrangements relating to the establishment and implementation of the budget and for rendering and auditing the accounts;
- (ii) the method for determining the amounts of the special financial contributions as well as the procedure whereby they are to be made available to the VPI by the Contracting States;
- (iii) the method for determining the amounts of reimbursements national offices shall receive for the activities they carry out under Article 8(4) as well as the procedure whereby they are to be made available to these offices by the VPI;
- (iv) the rules on distributing, among the Contracting States, any surplus the VPI may generate through its operations;
- (v) the generally accepted accounting principles on which the budget and the annual financial statements shall be based.

## **Article 15**

### **Implementing Regulations**

(1) The Implementing Regulations shall lay down rules concerning:

- (i) matters in respect of which this Agreement expressly refers to the Implementing Regulations;
- (ii) any administrative requirements, matters, or procedures;
- (iii) any details useful in the implementation of the provisions of this Agreement;
- (iv) the amounts of the fees and the ways in which they are to be paid.

(2) In case of conflict between the provisions of this Agreement and those of the Implementing Regulations, the provisions of this Agreement shall prevail. The Implementing Regulations shall not be an integral part of this Agreement.

## **Article 16**

### **Ratification**

(1) This Agreement shall be subject to ratification in accordance with the respective constitutional requirements of the Contracting States.

(2) Instruments of ratification shall be deposited with the Government of Hungary (hereinafter referred to as „Depositary”).



## **Article 17**

### **Accession**

(1) This Agreement shall be open to accession by any European State at the invitation of the Administrative Board.

(2) Instruments of accession shall be deposited with the Depositary.

## **Article 18**

### **Entry into force**

(1) This Agreement shall enter into force two months after the Czech Republic, Hungary, the Republic of Poland and the Slovak Republic have all deposited their instruments of ratification.

(2) Any accession shall take effect on the first day of the second month after the deposit of the instrument of accession.

## **Article 19**

### **Initial contribution**

(1) Upon entry into force of this Agreement, the Contracting States referred to in Article 18(1) shall pay to the VPI an initial contribution. The initial contribution shall cover the costs of setting up the VPI and shall be used for that purpose. The amount of that initial contribution shall be divided among those Contracting States in equal parts.

(2) Any State which accedes to this Agreement shall also pay an initial contribution. In this case, the initial contribution shall cover the costs incurred by the VPI in connection with the accession of that State. The amount of that initial contribution shall be fixed by the Administrative Board.

## **Article 20**

### **Appointment of the VPI**

The VPI shall seek appointment by the Assembly of the International Patent Cooperation Union as an International Searching Authority and International Preliminary Examining Authority in accordance with the provisions of the PCT. The Contracting States shall assist the VPI in that process.

## **Article 21**

### **Reservations**

No reservations to this Agreement are permitted.

## **Article 22**

### **Amendments**

- (1) This Agreement may be amended by an agreement between the Contracting States.
- (2) Proposals for the amendment of this Agreement may be initiated by any Contracting State. Such proposals shall be communicated to the Administrative Board.
- (3) Unless otherwise provided in the agreement amending this Agreement, any amendment to this Agreement shall enter into force two months after all the Contracting States have deposited their instruments of approval.

## **Article 23**

### **Denunciation, termination and suspension**

- (1) Any Contracting State may at any time denounce this Agreement. Denunciation shall be notified to the Depositary. It shall take effect six months after the date of receipt of such notification.
- (2) This Agreement may be terminated at any time by the consent of all the Contracting States under such terms as are agreed between them.
- (3) The operation of this Agreement may be suspended at any time by the consent of all the Contracting States under such terms as are agreed between them.

## **Article 24**

### **Disputes**

- (1) Any dispute between two or more Contracting States concerning the interpretation or application of this Agreement or the Implementing Regulations which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Board, which shall endeavour to bring about agreement between the States concerned.
- (2) If such agreement is not reached within one year from the date when the dispute was referred to the Administrative Board, any one of the States concerned may submit the dispute to the International Court of Justice.

## **Article 25**

### **Language and Depositary of the Agreement**

This Agreement, drawn up in a single original, in the English language, shall be deposited with the Depositary.

## Article 26

### Transmission and notifications

(1) The Depositary shall draw up certified true copies of this Agreement and shall transmit them to the Governments of all signatory and acceding States.

(2) The Depositary shall notify to the Governments of the States referred to in paragraph (1):

- (i) the deposit of any instrument of ratification or accession;
- (ii) the date of entry into force of this Agreement;
- (iii) any denunciation received pursuant to Article 23(1) and the date on which such denunciation comes into force.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Bratislava on 26 February 2015.

For the Government of the Czech Republic

For the Government of Hungary

Josef Kratochvíl  
President of the Industrial Property Office of  
the Czech Republic

Miklós Bendzsel  
President of the Hungarian Intellectual  
Property Office

For the Government of the Republic of  
Poland

For the Government of the Slovak Republic

Alicja Adameczak  
President of the Patent Office of the Republic  
of Poland

Ľuboš Knoth  
President of the Industrial Property Office of  
the Slovak Republic