

# Resolution



## Question Q109

### PCT - Patent Cooperation Treaty

#### Restitution of right of priority for PCT patent applications

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Yearbook 2005/II, page 369  
Executive Committee of Berlin, September 24 – 29, 2005

Q109

#### **AIPPI**

- noting that an inventor can irreversibly lose his right by a simple failure to meet the priority term,
- noting that the failure to claim priority right may influence the definition of the applicable state of the art,
- noting that PCT assembly is going to amend the PCT rules by introducing the possibility of a late priority claim if the PCT application is filed within two months from the priority term,
- noting that the amendment under discussion at the PCT assembly foresees that the restoration of the right is subjected to the criteria applied by the receiving office at the first step and by the designated offices when the national phase is entered, namely the “due care” or the “unintentional” criterion,
- noting that already in the Resolution approved by Executive Committee of Copenhagen of June 1994 for the restitution of rights in the case of post filing defaults the criterion of “inadvertence or fortuitous circumstances” was supported,

#### **resolves**

- that for the restoration of right of priority only the criterion of “unintentional” should be required.