

WIPO



H/DC/7

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

**DIPLOMATIC CONFERENCE
FOR THE ADOPTION OF A NEW ACT OF THE HAGUE
AGREEMENT CONCERNING THE INTERNATIONAL DEPOSIT
OF INDUSTRIAL DESIGNS**

Geneva, June 16 to July 6, 1999

ARTICLE 6(2) OF THE DRAFT NEW ACT

Memorandum of the International Bureau

1. As it stands currently in the basic proposal (document H/DC/3), Article 6(2) of the draft new Act provides that an international registration shall, as from its registration date, be equivalent to a regular filing within the meaning of Article 4 of the Paris Convention. This provision is intended to reflect Article 4A(2) of the Paris Convention, which provides that any filing that is equivalent to a regular national filing under treaties concluded between countries of the Paris Union shall be recognized as giving rise to a right of priority. However, the reference in the proposed Article 6(2) to international *registration* and *registration* date would have the consequence that, in order to give rise to the right of priority, an international application must necessarily have resulted in a registration.

2. This would be unduly restrictive in the light of Article 4A(3) of the Paris Convention, which states that, by a regular national filing is meant any filing that is adequate to establish the date on which the application was filed “whatever may be the subsequent fate of the application.”

3. In order to solve this difficulty, Article 6(2) could be modified as indicated in the Annex. This would permit an international application to serve as a basis for claiming priority provided it contains the essential elements of an application, thereby enabling it to be considered as equivalent to a “regular national filing” within the meaning of Article 4A(3) of the Paris Convention. Under this provision, an international application which contains an irregularity which is prescribed as an irregularity entailing the postponement of the date of the international registration is not treated as equivalent to a regular national filing until that irregularity has been corrected. (Those irregularities are listed in Rule 14(3) of the draft Regulations.)

4. For the purposes of Article 6(2), no account is taken of irregularities relating to additional elements notified by a Contracting Party under Article 17, even though such irregularities may have the effect to postpone the date of the international registration (see Articles 17 and 9(2)(b) in document H/DC/3 and the corresponding notes in document H/DC/5). In other words, an international application containing only irregularities relating to Article 17 of the draft new Act (but not irregularities prescribed as irregularities entailing the postponement of the date of the international registration) would give rise to the right of priority, as from its filing date, whether these irregularities are corrected or not, and whatever may be the subsequent fate of the application. This is so because, under Article 8, if these irregularities are not corrected within the prescribed time limit, the application is deemed not to contain the designation of the Contracting Party (or Contracting Parties) requiring the additional element concerned, and the date of registration is *not affected*, with the consequence that the priority of the international application could be claimed in an application subsequently filed with the Contracting Party (or Contracting Parties) requiring the additional element that was not furnished. This is no different from the situation which already arises under Article 4A(2) of the Paris Convention, which allows priority to be claimed from a national application which contains all the elements necessary to constitute a regular national filing under the domestic legislation of the country where it was filed, even though it may lack an element which would be necessary in order to constitute a regular national filing in the country where priority is claimed.

[Annex follows]

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ANNEX

Article 6

Priority

[...]

(2) [*International Application Serving as a Basis for Claiming Priority*] (a) An international application which does not contain an irregularity which is prescribed as an irregularity entailing a postponement of the date of the international registration shall, as from its filing date and whatever may be its subsequent fate, be equivalent to a regular filing within the meaning of Article 4 of the Paris Convention.

(b) An international application which does contain an irregularity which is prescribed as an irregularity entailing a postponement of the date of the international registration shall, as from the date on which the correction of such irregularity is received by the International Bureau and whatever may be the subsequent fate of the international application, be equivalent to a regular filing within the meaning of Article 4 of the Paris Convention.

[End of Annex and of document]