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WORLD INTELLECTUAL PROPERTY ORGANIZATION GENEVA

INTERNATIONAL UNION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (PARIS UNION)

ASSEMBLY

Nineteenth Session (9th Extraordinary) Geneva, September 21 to 29, 1992

CONTINUATION OF THE DIPLOMATIC CONFERENCE FOR THE CONCLUSION OF A TREATY SUPPLEMENTING THE PARIS CONVENTION AS FAR AS PATENTS ARE CONCERNED

Memorandum of the Director General

1. The Assembly of the Paris Union decided in April 1991 (see document P/A/XVII/2, paragraph 26) that the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned (hereinafter referred to as "the Diplomatic Conference" and "the PLT," respectively) would be in two parts. The first part, as decided, took place at The Hague in June 1991. The question now before the Assembly of the Paris Union is when the second part of the Diplomatic Conference should be held.

2. It is recalled that the reasons for the division of the Diplomatic Conference into two parts were--as stated in a WIPO document of September 20, 1991 (P/A/XVIII/3, paragraph 3)--the following two: "One is that at least one of the key countries needs more time to decide how far it could go in accepting that the PLT contain provisions requiring important changes in its domestic law. The other is that the Uruguay Round of GATT, which was expected to be completed in December 1990, is still not completed."

3. The Assembly of the Paris Union decided, in September-October 1991, that it would take a decision on the date of the second part of the Diplomatic Conference latest by September 1992 (see document P/A/XVIII/3 and document P/A/XVIII/5, paragraph 15).

4. It would seem that the situation has sufficiently changed for making now a decision on the continuation of the Diplomatic Conference. Firstly, it would seem that the key country in question will very soon be in a position to know how far it could go in accepting that the PLT contain provisions requiring important changes in its domestic law. Secondly, although the negotiations of the Uruguay Round of GATT have not been completed, the draft of the text dealing with intellectual property (hereinafter referred to as "the TRIPS draft"), which would be part of the final outcome of the Uruguay Round, is now known. (It is believed that if the draft is adopted, it will be adopted without major changes.)

5. The situation in the GATT negotiations concerning the TRIPS draft seems to allow, as is indicated below, the task of the Diplomatic Conference to be simplified and thereby increase its chances of success.

Venue and Date of the Second Part of the Diplomatic Conference

6. Since no invitation has been received to hold the second part of the Diplomatic Conference at a location other than Geneva, it is proposed that it be held in Geneva. Because of the exiguity of the conference rooms in WIPO's headquarters building, it would have to be held in another building. The "Centre International de Conférences de Genève (CICG)," which is at walking distance from WIPO's headquarters, is an ideal place for such purpose. The CICG is in heavy demand, and it is not easy to reserve it, particularly for a period as long as three weeks, which is believed to be the period needed. The International Bureau has obtained an option for the period from July 12 to 30, 1993. It is proposed that the second part of the Diplomatic Conference take place during that period.

Changes in the Basic Proposal

7. The TRIPS draft gives comprehensive solutions to the issues dealt with in the following six Articles of the Basic Proposal before the Diplomatic Conference:

- Article 10: Fields of Technology,
- Article 19: Rights Conferred by the Patent,
- Article 22: Term of Patents,
- Article 24: Reversal of Burden of Proof,
- Article 25: Obligations of the Right Holder,
- Article 26: Remedial Measures Under National Legislation.

8. It is proposed that these Articles be omitted from the Basic Proposal, the more so as they are among the most controversial. For that reason, all of them contain alternatives and, for five of them, the alternative consists of simply omitting the Article.

Change in the Tasks of the Two Main Committees of the Diplomatic Conference

9. The removal of the six Articles from the Basic Proposal would seem to necessitate the transfer of some questions from Main Committee I to Main Committee II of the Diplomatic Conference. It is proposed that the Diplomatic Conference deal with this matter at the beginning of its second part.

10. The Assembly of the Paris Union is invited to make decisions in respect of the proposals contained in paragraphs 6, 8 and 9, above.

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