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AD HOC WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE MADRID SYSTEM FOR THE INTERNATIONAL REGISTRATION OF MARKS

Geneva, July 4 to 8, 2005

REPORT

adopted by the Working Group

I. INTRODUCTION

1. The *Ad Hoc* Working Group on the Legal Development of the Madrid System (hereinafter referred to as “the Working Group”) met in Geneva from July 4 to 8, 2005.

2. The following Contracting Parties of the Madrid Union were represented at the session: Algeria, Antigua and Barbuda, Australia, Austria, Belgium, Bulgaria, China, Croatia, Cuba, Czech Republic, Denmark, European Community, Finland, France, Germany, Greece, Hungary, Iran (Islamic Republic of), Ireland, Italy, Japan, Kenya, Latvia, Lithuania, Morocco, Mozambique, Norway, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia and Montenegro, Singapore, Slovenia, Spain, Sweden, Switzerland, Syrian Arab Republic, Ukraine, United Kingdom, United States of America, Viet Nam (44).

3. The following States were represented by observers: Israel, Libyan Arab Jamahiriya, Mexico (3).

4. Representatives of the following international intergovernmental organization took part in the session in an observer capacity: Benelux Trademark Office (BBM) (1).
5. Representatives of the following international non-governmental organizations took part in the session in an observer capacity: American Intellectual Property Law Association (AIPLA), Asian Patent Attorneys Association (APAA), Association of European Trademark Owners (MARQUES), Centre for International Industrial Property Studies (CEIPI), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), International Association for the Protection of Industrial Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA) (9).
6. The list of participants is given in the Annex to this report.
7. Mr. Ernesto Rubio, Assistant Director General, opened the session and welcomed the participants on behalf of the Director General of WIPO.
8. The Working Group unanimously elected Mr. António Campinos (Portugal) as Chair of the Working Group and Mr. Michael Arblaster (Australia) and Miss Nabila Kadri (Algeria) as Vice-Chairs.
9. Mr. Denis Cohen (WIPO) acted as Secretary to the Working Group.
10. The Working Group adopted the draft agenda, as contained in document MM/LD/WG/1/1 Rev.
11. Discussions were based on document MM/LD/WG/1/2 prepared by the International Bureau and entitled "Review of the Refusal Procedure and the Safeguard Clause of the Madrid Protocol and Possible Amendments to the Common Regulations".
12. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions without reporting all the comments made.

II. REVIEW OF THE REFUSAL PROCEDURE UNDER THE MADRID PROTOCOL

Article 5(2)(a)

13. The delegation of Germany indicated that the one-year refusal period referred to in Article 5(2)(a) of the Protocol had proven to be satisfactory both for users of the Madrid system and for Offices and did not seem to require modification.
14. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that Article 5(2)(a) of the Protocol should not be modified.

Article 5(2)(b)

15. The delegation of Slovenia said that consultations with its users had revealed that the period of 12 months for refusal was considered to be adequate, and that it favored as short a period as possible.
16. The delegation of Switzerland said that its position regarding Article 5(2)(b) would depend on the outcome of the discussions concerning the restriction of the scope of the safeguard clause with respect to the refusal period. If the safeguard clause were to be restricted in that respect, they would favor a single 12-month period under the Protocol. On the other hand, if the safeguard clause were to be maintained, they could agree to the retention of the 18-month time limit, as it currently stood in Article 5(2)(b).
17. The representative of CEIPI asked whether it could be envisaged to amend Article 5(2)(b) so as to provide for a shortened time limit, for example 15 or 16 months, to be applicable only to those Contracting Parties which would be satisfied with such time limit. On the other hand, the 18-month period would remain applicable to all other Contracting Parties concerned. This could be seen as an encouragement towards a general reduction of the time period in the long run.
18. Commenting on the proposal made by CEIPI, the Secretariat noted that by providing for the co-existence of different time limits, the Madrid system would become more complex.
19. The delegation of Australia indicated that it would not favor a range of different time frames, but that it would prefer to retain the certainty of either 12 or 18 months.
20. The representatives of AIM and MARQUES said that users needed simplicity, cost-effectiveness and efficiency and that, in principle, they were in favor of a single 12-month refusal period. On the other hand, given that this might prevent potential new Contracting Parties from acceding to the Protocol, new Contracting Parties might be offered the possibility of making the declaration for an 18-month refusal period, but only with a temporary effect, for example, five years. This would encourage such new Contracting Parties to make every effort to achieve a reduction of their refusal time frames.
21. The delegation of Germany, while recalling that it had not made the declaration for the extension of the refusal period to 18 months, stated that it could agree to the retention of such time limit.
22. The delegation of Australia said that it had made the declaration concerning the extension of the refusal period to 18 months, but that such extended period was required by its Office only occasionally. It added that the possible extension of the refusal period to 18 months constituted a feature which would allow potential new Contracting Parties to be able to accede to the Protocol, and that if it were not for this specific feature, Australia would not have joined the Protocol.
23. The delegation of the European Community said that it also required more than 12 months and had consequently made the declaration under Article 5(2)(b). It added that, in respect of the European Community, the effects of this declaration were offset by the fact that its Office issued statements of grant of protection to holders of international registrations.

24. The delegations of Norway and Sweden indicated that their Offices usually notified refusals of protection within a shorter period than 18 months, but that they would in any event require a period longer than 12 months. Moreover, the 18-month time limit might be useful to attract potential new members to the system.

25. The delegation of China indicated that it favored the possibility of extension of the refusal period to 18 months, given in particular that its Office carried out examination on relative grounds and also in view of the increase of international filings.

26. The delegation of Kenya expressed support for maintaining Article 5(2)(b) as it currently stood.

27. The representative of FICPI indicated that she could agree to the retention of Article 5(2)(b) as it currently stood.

28. The delegation of Iran (Islamic Republic of) was of the opinion that an 18-month refusal period was necessary and that such period should not be shortened.

29. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that Article 5(2)(b) of the Protocol should not be modified.

Article 5(2)(c) (*Chapeau*)

30. The Secretariat indicated that, since the date of issuing of document MM/LD/WG/1/2, Greece had made the declaration under Article 5(2)(c), so that the number of Contracting Parties having made such declaration was currently 19.

31. The Chair noted that there were no comments and concluded that the recommendation of the Working Group was that the principle laid down in the *chapeau* of subparagraph (c) of Article 5(2) of the Protocol should not be modified.

Article 5(2)(c)(i)

32. The Chair noted that there were no comments and concluded that the recommendation of the Working Group was that item (i) of Article 5(2)(c) of the Protocol should not be modified.

Article 5(2)(c)(ii)

33. The delegations of Germany and Iran (Islamic Republic of) indicated that, for the sake of simplicity, they welcomed the proposal to delete the reference to the seven-month time limit in that provision.

34. The delegation of Japan, while agreeing to the proposal to delete the reference to the seven-month time limit, indicated that the proposed amendment might result in less predictability and proposed that, in order to avoid this, the International Bureau might collect and publish information on the various opposition periods in different Contracting Parties.

35. The delegation of Spain indicated that, for the sake of legal certainty, it was in favor of retaining the reference to the maximum period of seven months in the text of the provision.

36. The delegation of Sweden supported the views of Spain and expressed concerns regarding the proposed amendment, which might encourage certain Contracting Parties to opt for an opposition period longer than six months. It suggested to simplify drafting of Article 5(2)(c)(ii), rather than deleting the reference to the seven-month time limit in that provision.

37. Upon a request from the Chair, the Secretariat suggested an alternative drafting of Article 5(2)(c)(ii), as follows:

“(ii) the notification of the refusal based on an opposition is made within a time limit of one month from the expiry of the opposition period, provided that such time limit does not exceed seven months from the date on which the opposition period begins.”

38. The delegations of Germany, Ireland, Japan, Kenya and Sweden agreed with a redrafting of Article 5(2)(c)(ii) rather than deleting the reference to the seven-month time limit in that provision.

39. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was to amend Article 5(2)(c)(ii) along the lines suggested by the Secretariat, as reflected in paragraph 37, above.

Article 5(2)(d)

40. The Chair noted that there were no comments and concluded that the recommendation of the Working Group was that Article 5(2)(d) should not be modified.

Article 5(2)(e)

41. The delegations of Australia and the European Community indicated that they would support the submission of the interpretative statement proposed by the International Bureau in relation to Article 5(2)(e), for the sake of legal certainty.

42. The delegations of China, Ireland and Sweden while agreeing that interpretation of this provision could be the subject of confusion, supported the submission to the Assembly of the Madrid Union of the interpretative statement suggested in document MM/LD/WG/1/2.

43. The delegation of Australia suggested that, as part of future discussions concerning the Protocol, the requirement of unanimity contained in Article 5(2)(e) be reconsidered so as to allow more flexibility for the adoption of proposed modifications.

44. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that an interpretative statement be submitted to the Assembly of the Madrid Union to the effect that Article 5(2)(e) of the Protocol be understood as allowing the Assembly to examine the operation of the system established by subparagraphs (a) to (d), as last amended, and that any further modification of those provisions should require a unanimous decision of the Assembly.

III. REVIEW OF THE SAFEGUARD CLAUSE

General Comments

45. The delegation of Switzerland said that it favored a repeal of the safeguard clause to the extent, in particular, that this would result in a considerable simplification of the international registration procedure. The repeal of the safeguard clause is a necessary step for the Protocol to be the only applicable treaty in the future. This simplification would also be in WIPO's interest. At the same time, with a view to counterbalancing the potential negative consequences of such repeal for users of the Madrid system, and in particular for Swiss users, the delegation of Switzerland said that in the course of the later discussions, notably on the refusal period and the individual fee system, it would be submitting a number of further proposals.

46. The delegation of Spain expressed support for a repeal of the safeguard clause, which had originally been conceived as a transitional provision. In the long run, the Protocol should be the only applicable treaty governing the international registration system.

47. The delegation of Kenya indicated its preference for a repeal of the safeguard clause. According to the experience of its Office, the Protocol had proven to be a much more efficient instrument than the Agreement.

48. The delegation of Portugal also expressed support for a repeal of the safeguard clause.

49. The Secretariat indicated that it had received from Kyrgyzstan written comments concerning the review of the safeguard clause. These comments which were distributed to the Working Group, indicated that Kyrgyzstan favored maintaining the safeguard clause with respect to the refusal period and the fee system, and supported a restriction of the scope of the safeguard clause with respect to all other features concerned.

Review of the Safeguard Clause With Respect to Transformation

50. The delegations of Belgium, France, Germany, Iran (Islamic Republic of), Kenya, Portugal, Slovenia, Spain and the United States of America indicated that they favored a restriction of the scope of the safeguard clause with respect to transformation, given that such restriction would allow more transformations to take place and would therefore be beneficial to users of the Madrid system.

51. The delegation of Australia said that it also favored a restriction of the scope of the safeguard clause with respect to transformation, but that this issue should also be examined further in light of the proposal to be put forward later by the delegation of Norway, concerning the possible abolition of the requirement of a basic application or basic registration.

52. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that a proposal to restrict the scope of the safeguard clause with respect to transformation be submitted to the Assembly of the Madrid Union for adoption.

Review of the Safeguard Clause With Respect to the Required Basis for Applying for an International Application

53. The delegations of Australia, Belgium, China, Cuba, France, Germany, Kenya, Portugal, Romania, Slovenia, Spain and the United States of America indicated that they supported a restriction of the scope of the safeguard clause with respect to the required basis for filing an international application, given in particular that such restriction would result in more flexibility and would therefore be beneficial to users of the Madrid system.

54. Replying to comments made by the representatives of ECTA and INTA in respect of the advantage of basing an international application on a granted registration rather than a pending application, the Secretariat stated that the application of the Protocol would simply give an additional option to international applicants (namely the possibility of filing an international application on the basis of a basic application), which could not be considered as detrimental for users of the Madrid system.

55. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that a proposal to restrict the scope of the safeguard clause with respect to the required basis for the filing of an international application be submitted to the Assembly of the Madrid Union for adoption.

Review of the Safeguard Clause With Respect to the “Cascade”

56. The delegations of France, Germany, Iran (Islamic Republic of), Portugal and Spain indicated that they favored a restriction of the scope of the safeguard clause with respect to the “cascade”, given that such restriction would be beneficial to users of the Madrid system.

57. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that a proposal to restrict the scope of the safeguard clause with respect to the “cascade” be submitted to the Assembly of the Madrid Union for adoption.

Review of the Safeguard Clause With Respect to the Presentation to the International Bureau of Subsequent Designations and Requests for the Recording of Cancellations and Renunciations

58. The delegations of Australia, Belgium, Cuba, Germany, Iran (Islamic Republic of), Portugal, Spain, as well as the representative of INTA, indicated that they favored a restriction of the scope of the safeguard clause with respect to the presentation to the International Bureau of subsequent designations and requests for the recording of cancellations and renunciations, given that such restriction would give more freedom as regards the communication of such requests to the International Bureau, and would therefore be beneficial to users of the Madrid system.

59. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that a proposal to restrict the scope of the safeguard clause with respect to the presentation to the International Bureau of subsequent designations and requests for the recording of cancellations and renunciations be submitted to the Assembly of the Madrid Union for adoption.

Review of the Safeguard Clause With Respect to the Refusal Period

60. The delegation of Switzerland recalled its preference for a repeal of the safeguard clause, and its position in respect of the time limits for refusal, as reflected in paragraph 16, above.

61. The delegation of France, supported by the delegations of Austria, Germany, the Russian Federation, Slovenia, and by the representatives of the BBM and ECTA, indicated that it favored the maintaining of the safeguard clause with respect to the refusal period. It explained in substance that a restriction of this clause would be detrimental to users of the Madrid system, who would have to wait for 18 months, or longer in the case of refusals based on an opposition, instead of 12 months as at present, in order to know whether they enjoyed protection in the territory of the designated Contracting Parties concerned.

62. The delegations of Bulgaria, China, Cuba, Iran (Islamic Republic of), Italy, Kenya, Portugal and Spain expressed support for a restriction of the safeguard clause with respect to the refusal period, considering the simplification of the procedure that such restriction would bring about, and given that the Protocol was destined to become the sole treaty governing the international registration procedure in the future.

63. The delegation of Belgium indicated that it was reserving its position on this issue for the time being, pending the completion of consultations with interested circles in Belgium.

64. The delegations of Australia, the European Community, Ireland, the Republic of Korea, Sweden, the United Kingdom and the United States of America, while noting that they were bound only by the Protocol and therefore not directly concerned by the review of the safeguard clause, expressed their preference for a restriction of the safeguard clause with respect to the refusal period.

65. The representative of MARQUES said that, as a matter of principle, she was in favor of maintaining the safeguard clause with respect to both the refusal period and the fee system, to the extent that a restriction would result in longer time limits being applied and higher fees for trademark owners. She believed, however, that the Protocol was well placed to become the sole treaty governing the international registration system of marks, and for this reason every opportunity should be taken to improve the system for the benefit of users. In this context, a repeal of the safeguard clause could be supported by MARQUES, provided however that Offices enhanced the level of service they currently rendered under the Madrid system. This could be achieved by providing information regarding the status of pending designations and by sending more communications, including, for example, statements of grant of protection. The representative of MARQUES requested the Working Group to give a commitment on this point.

66. The delegation of Denmark declared that it shared the views expressed by MARQUES and urged other delegations to take a stand on the matter. It also suggested that the notification of statements of grant of protection should be made compulsory, since it provides a good solution to any concerns that the users of the system might have with regard to length of the refusal period.

67. The delegation of Slovenia pointed out that the notification of statements of grant of protection represented in practice the sending of several thousand notifications each year, which constituted an additional burden of work which Offices with small capacities could not easily absorb.

68. The representative of AIM said that he fully supported the views expressed by the representative of MARQUES, stressing that it was crucial for users to have, as soon as possible, legal certainty regarding the status of protection for their marks. AIM also noted that the issue with regard to the length of the refusal period would have less importance if the national and regional offices would provide, in particular, notifications with regard to the status of a pending designation.

69. The representative of CEIPI said that he favored maintaining the safeguard clause with respect to the refusal period, but that this view could change if the notification of statements of grant of protection were to become compulsory under the Common Regulations.

70. The Secretariat noted that it might not be legally justified to provide for compulsory notification of statements of grant of protection since, in case of non-compliance, no legal consequences could be provided for (the principle already being that if no refusal was notified within the refusal period, this automatically implied the grant of protection).

71. The Chair noted that, as far as States bound by both the Agreement and the Protocol were concerned, six delegations had expressed support for maintaining the safeguard clause with respect to the refusal period (Austria, France, Germany, Kyrgyzstan, the Russian Federation and Slovenia), while nine delegations favored a restriction of the scope of the safeguard clause (Bulgaria, China, Cuba, Iran (Islamic Republic of), Italy, Kenya, Portugal, Spain and Switzerland). The Chair also recalled that the position of the delegation of Belgium was still reserved.

72. Noting that there were no further comments, the Chair concluded that no recommendation could be made by the Working Group at this point in time in relation to the restriction – or maintenance – of the safeguard clause with respect to the refusal period.

Review of the Safeguard Clause With Respect to the Individual Fee System

73. The delegation of Switzerland recalled its preference for a repeal of the safeguard clause, including therefore a restriction of the scope of this clause with respect to the individual fee system. It pointed out that, since such restriction could result in higher costs for users, it was essential to take due account of the interests of trademark owners so as to reach a fair balance. To that end, the delegation of Switzerland proposed to amend the principles governing the maximum amounts of individual fees, by providing that such amounts should not exceed 50% of the corresponding domestic fees. Given that such amendment would imply modifying Article 8(7) of the Protocol itself, the delegation of Switzerland requested that this issue be put on the agenda for future discussion.

74. In that context, and in order to avoid the need to revise Article 8(7)(a) of the Protocol, which could only be done through a Diplomatic Conference, the representative of CEIPI wondered whether one could not limit the application of the ceiling of the individual fees, as envisaged by the delegation of Switzerland, to the cases where the safeguard clause would apply, in other words, to the mutual relations between Contracting Parties bound by both the Agreement and the Protocol.

75. Replying to a question raised by the delegation of Slovenia, the Secretariat explained that the amount of the individual fee could comprise both the filing fee and the registration fee which might be required at the national level. It was also possible for a Contracting Party having such a fee structure to make a declaration concerning the payment of the individual fee in two parts, as was currently the case for Cuba and Japan.

76. The delegation of Australia informed the Working Group that it was likely that, within a year, Australia would make the declaration concerning the payment of the individual fee in two parts. He also noted that a reduction of the amounts of individual fees as proposed by the delegation of Switzerland would certainly cause financial difficulties for the Office of Australia.

77. The delegation of France, supported by the delegations of Bulgaria, China, Germany, Italy, Latvia, Morocco, the Russian Federation and Slovenia, indicated that they favored maintaining the safeguard clause with respect to the individual fee system. It was noted in particular that in the case of a restriction, users would have to pay (higher) individual fees instead of standard fees as at present and that it was crucial to keep a cost-effective international registration system. They also expressed concerns that in the case of a restriction, new Contracting Parties might be encouraged to opt for the individual fee system.

78. The delegations of Kenya, Portugal and Spain recalled their positions concerning a repeal of the safeguard clause, which would thus include a restriction of the scope of this clause with respect to the individual fee system. The delegation of Spain stressed that such repeal would result in a better application of the principle of equality of treatment between all Contracting Parties and would allow the setting up of a fairer balance between those Contracting Parties.

79. The delegations of Cuba, Hungary and Iran (Islamic Republic of) expressed their support for a restriction of the safeguard clause with respect to the individual fee system.
80. The delegation of Belgium explained that its position on this issue was reserved for the time being, pending the completion of consultations with interested circles in Belgium.
81. The representative of INTA was of the opinion that a restriction of the safeguard clause with respect to the refusal period and the individual fee system would be likely to lead to an increased number of declarations being made by Contracting Parties in connection with the extension of the refusal period to 18 months and the individual fee system, to the detriment of users.
82. The delegation of Algeria said that its country was intending to join the Madrid Protocol in the future, and expressed support for maintaining the safeguard clause with respect to the individual fee system.
83. The Chair noted that, as far as States bound by both the Agreement and the Protocol were concerned, 10 delegations had expressed support for maintaining the safeguard clause with respect to the fee system (Bulgaria, China, France, Germany, Italy, Kyrgyzstan, Latvia, Morocco, the Russian Federation and Slovenia), while seven delegations favored a restriction of the scope of the safeguard clause in that respect (Cuba, Hungary, Iran (Islamic Republic of), Kenya, Portugal, Spain and Switzerland). The Chair also noted that the position of the delegation of Belgium was still reserved.
84. As a possible compromise, the Chair asked whether it was conceivable that the Working Group might agree to recommend to maintain the safeguard clause with respect to the individual fee system if a consensus were reached concerning the restriction of the scope of the safeguard clause with respect to the refusal period.
85. The delegation of Austria indicated that maintaining the safeguard clause with respect to only one feature would be regrettable in terms of keeping the international procedure as simple and attractive as it is at present. It would prefer that these two issues followed the same fate.
86. The delegation of Germany supported the intervention made by the delegation of Austria by stating that it would reconsider its position on the refusal period if this were to be the only feature that would not allow the repeal of the safeguard clause. However, as there was also no consensus on the fee issue, the delegation of Germany maintained its position also with respect to the refusal period.
87. Noting that there were no further comments, the Chair concluded that no recommendation could be made by the Working Group at this point in time in relation to the restriction – or maintenance – of the safeguard clause with respect to the individual fee system.

88. Replying to a question from the delegation of Australia regarding future action concerning the issues of the refusal period and the individual fee system, the Chair indicated that the situation would be reported to the Assembly of the Madrid Union at its next session, in September/October 2005. On this occasion, the Assembly could discuss these issues and possibly take a position. It will for the Assembly to decide whether it is appropriate to ask the Director General of WIPO to convene another session of this Working Group early in 2006 in order to further address these matters.

Additional Features to Be Considered as Part of the Review of the Safeguard Clause

89. The delegation of Switzerland indicated that, in the case of a restriction of the scope of the safeguard clause, it would seem legally more appropriate to provide for subsequent reviews of the said clause by means of an interpretative statement, rather than through a modification of Article 9*sexies* itself. This view was based on the fact that paragraph (2) of Article 9*sexies* only allowed the Assembly to modify paragraph (1) of this provision, which did not deal with the timing of possible later reviews.

90. The representative of CEIPI supported the proposal made by the delegation of Switzerland and pointed out that an interpretative statement should not contain any specific timing for possible later reviews of the safeguard clause.

91. The delegation of Spain said that it fully shared the views expressed by the delegation of Switzerland and the representative of CEIPI. The Secretariat also agreed that this course of action would be more appropriate.

92. The Chair noted that there were no further comments and concluded that, in the case of a restriction of the safeguard clause, the recommendation of the Working Group was that an interpretative statement be submitted to the Assembly of the Madrid Union to the effect that Article 9*sexies*(2) of the Protocol be understood as allowing the Assembly to undertake, at any point in time, further reviews of the safeguard clause, as amended.

Address of Representative

93. The Secretariat recalled that the review of the safeguard clause would have no effect on this issue if the proposed amendment of Rule 3(1) of the Common Regulations were approved.

94. Consequently, the Working Group agreed to provisionally suspend the review of the safeguard clause in order to examine the possible amendment of the Common Regulations concerning the address of a representative before the International Bureau (see paragraphs 99 to 103, below).

Language Regime

95. The delegations of Belgium, Cuba, France, Germany, Iran (Islamic Republic of), Italy, Kenya, Portugal, the Russian Federation, Slovenia, Spain and the United States of America, said that they supported the application of the trilingual regime between States bound by both treaties.

96. In response to a question raised by the delegation of Italy, the Secretariat pointed out that the application of the trilingual regime would not be detrimental to Offices since, as regards the language of an international application, the Office of origin would remain entitled, under Rule 6(1)(b), to restrict the choice of the applicant to only one language, or to two languages, or could permit the applicant to choose between any of the three languages.

97. The delegation of China stated its preference for maintaining the safeguard clause with respect to the language regime, due to the risk of an increase of the work load for the Office in different languages. However, in the light of the explanation given by the Secretariat, the delegation would support the application of the trilingual regime.

98. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that a proposal to amend the Common Regulations so as to provide for the trilingual regime in the mutual relationships between States bound by both the Agreement and the Protocol be submitted to the Assembly of the Madrid Union for adoption.

IV. POSSIBLE AMENDMENTS TO THE COMMON REGULATIONS

Address of Representative

99. The delegation of Australia stated that it would be satisfied with either of the options suggested by the International Bureau for amending the requirement concerning the address of representative appointed before the International Bureau. It would, however, favor the most open proposal consisting of allowing anyone to be appointed, i.e., not necessarily with an address in a Contracting Party to the Madrid system.

100. The representative of FICPI expressed fears that this measure would jeopardize the quality of the services rendered to owners of international trademarks under the Madrid system.

101. The delegation of Italy favored the proposal consisting of providing that the address of a representative appointed before the International Bureau should be in the territory of a Contracting Party to the Madrid system.

102. The delegations of Antigua and Barbuda, Germany, Singapore, Slovenia, Sweden, the United Kingdom and the United States of America, as well as the representative of MARQUES, supported the view expressed by the delegation of Australia, since this would allow the widest possible choice for representation and would allow for harmonization between the Hague and the Madrid systems.

103. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that a proposal consisting of amending Rule 3(1) to provide that anyone might be appointed in an international application or an international registration to act as a representative before the International Bureau (not necessarily with an address in a Contracting Party to the Madrid system) be submitted to the Assembly of the Madrid Union for adoption.

Treatment of Irregularities Affecting the Date

104. The delegations of Austria, Cuba, France, Germany, Italy, Latvia, Norway, Slovenia, Spain, Sweden, the Russian Federation and the United States of America expressed their opposition to the proposal made by the Secretariat, which would prove to be detrimental to users.

105. The delegation of Australia suggested a possible change in the calculation of the two-month period, so that it would commence from the date of notification of the irregularity by the International Bureau, instead of the date of receipt of the international application by the Office of origin. The Secretariat replied that such change would be the source of substantial legal uncertainty for third parties and therefore did not seem advisable.

106. A number of delegations indicated that the two-month period to correct irregularities notices was a problem in light of the current backlog in the International Bureau and that this could jeopardise the priority date for owners. In response, the International Bureau indicated that measures were being taken to overcome this problem.

107. Replying to a question raised by the delegation of Slovenia, the Secretariat confirmed that, at the international application stage, a missing declaration of intention to use (form MM18) was not an irregularity affecting the date, contrary to the situation applicable in the context of subsequent designations.

108. The delegation of Japan suggested that Rule 24(6)(c)(i) be amended so as to allow holders to submit form MM18 subsequently without any consequence for the date of the subsequent designation.

109. In reply, the Secretariat explained that such provision was introduced in the Common Regulations in order to reflect the situation applicable under the law of the United States of America at the time of adoption of the Common Regulations. The proposal made by the delegation of Japan would not cause any difficulty to the International Bureau in terms of the administration of procedures.

110. The delegation of the United States of America said that it would give further consideration to this question, and that it would probably be able to come back to it at a next meeting of the Working Group.

111. The Chair noted that there were no further comments and concluded that no recommendation should be made by the Working Group to the Assembly of the Madrid Union on this issue.

Provisional Recording of a Renewal

112. The delegation of Germany supported the deletion of Rule 30(3)(c).

113. The delegation of Japan suggested that rather than deleting Rule 30(3)(c) as suggested by the Secretariat, this provision instead be amended with a view to its simplification and in such manner that the holder would not lose the opportunity to remedy an irregularity concerning an insufficient payment of the renewal fees.

114. The delegations of Slovenia, Spain and the United Kingdom, as well as the representatives of AIPLA, FICPI and INTA expressed their opposition to the proposed deletion of Rule 30(3)(c). The mechanism contained in that provision favored the interests of users and it would be wiser to keep such a mechanism, in view especially of the complexity involved in the calculation of the renewal fees and the insufficient experience of a number of Contracting Parties bound exclusively to the Protocol in the context of renewals.

115. The delegations of Ireland and Italy suggested that the provision remain unchanged.

116. The delegation of Germany said that in view of the comments made by the other delegations, it was premature to delete Rule 30(3)(c) and therefore preferable to keep the provision as it stood.

117. The Chair noted that there were no further comments and concluded that no recommendation should be made by the Working Group to the Assembly of the Madrid Union on this issue.

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118. The delegations of Germany and Iran (Islamic Republic of) indicated their support for the deletion of Rule 32(3).

119. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that a proposal consisting in deleting Rule 32(3) of the Common Regulations be submitted to the Assembly of the Madrid Union for adoption.

Date of Recording of Various Communications

120. The Chair noted that there were no comments and concluded that the recommendation of the Working Group was that a proposal consisting of specifying in Rules 19 to 21 the date of recording of invalidations, restrictions of the holder's right of disposal, licenses and replacement of a national or regional registration by an international registration (namely the date on which the corresponding request, complying with the applicable requirements, had been received by the International Bureau), be submitted to the Assembly of the Madrid Union for adoption.

Proposal Made by the Delegation of Switzerland (Rule 20(3))

121. The delegation of Switzerland introduced its proposed amendment to Rule 20(3), as contained in an informal document issued by its delegation (in English, French and Spanish versions) and distributed to the Working Group. It explained that Rule 20(3) should be supplemented so as to provide that the recording of a restriction of the holder's right of disposal be also communicated by the International Bureau to the Office of the Contracting Party of the holder, even when such Office was not the Office of a designated Contracting Party, or the Office that had requested the recording of the restriction in question.

122. The Chair noted that there were no comments and concluded that the recommendation of the Working Group was that a proposal, consisting in supplementing Rule 20(3) so as to provide that the recording of a restriction of the holder's right of disposal be also communicated to the Office of the Contracting Party of the holder, be submitted to the Assembly of the Madrid Union for adoption.

Proposal Made by the Delegation of Switzerland (Rule 28(2))

123. The delegation of Switzerland introduced its proposed amendment to Rule 28(2), as contained in the informal document referred to in paragraph 121, above. It explained that Rule 28(2) should be supplemented so as to provide that a correction of the International Register should also be notified by the International Bureau to the Office that had requested such correction, and not only to the Offices of the designated Contracting Parties.

124. The Secretariat pointed out that the International Bureau had already adopted the practice of notifying the Office which had requested a correction, notwithstanding the fact that this was not specifically required at present under Rule 28.

125. The delegation of Japan stated that it supported the proposal made by the delegation of Switzerland.

126. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that a proposal, consisting of supplementing Rule 28(2) so as to provide that a correction of the International Register be also notified by the International Bureau to the Office that had requested such correction, be submitted to the Assembly of the Madrid Union for adoption.

Proposal Made by the Delegation of the United Kingdom (Rule 17(5))

127. The delegation of the United Kingdom introduced its proposed amendment to Rule 17(5), as contained in an informal document issued by its delegation (in English version only) and distributed to the Working Group. It explained that, when an application had been partially refused, those goods and services which had not been the subject of the partial refusal ought to be permitted to proceed to publication for the purpose of opposition and, where applicable, to protection. This would meet the desire for the provision of better services to users.

128. The delegation of Denmark indicated that it was not yet in a position to react on the substance of this proposal, but welcomed the possibility of further discussion of the matter at future meetings.

129. The Secretariat stated that the concerns expressed by the delegation of the United Kingdom did not seem to require amendment of the Common Regulations, but that this issue would in any event require to be further discussed.

130. The Chair noted that there were no further comments and concluded that the proposed amendment made by the delegation of the United Kingdom in relation to Rule 17(5) required further discussion.

Proposal Made by the Delegation of the United Kingdom (Rule 17(6))

131. The delegation of the United Kingdom introduced its proposed amendment to Rule 17(6), as contained in the informal document referred to in paragraph 127, above, concerning the possibility of notifying statements of grant of protection in respect of some only of the goods and services.

132. The Secretariat explained that, when the possibility of issuing such statements was introduced (with effect from November 1, 2000), it was on the assumption that they would necessarily concern all the goods and services covered by the international registration. At present, under the Common Regulations, the notification of a statement of grant of protection seemed incompatible with a situation where there had been a partial refusal. The Secretariat added that the possibility of notifying statements of grant of protection for only part of the goods and services would be likely to complicate the international procedure, given that such statement could already be communicated in two stages (following, respectively, *ex officio* examination and opposition). The Secretariat also said that such partial statements of grant of protection would significantly increase the burden of work for both Offices of Contracting Parties and the International Bureau, and asked whether there was a real need for users to go in the proposed direction, since it could be deduced *a contrario*, in the case of partial refusals, that protection had been granted by the Office concerned for the remaining portion. The users would eventually receive the corresponding statement of grant of protection for that portion.

133. Replying to a question raised by the representative of FICPI, the Secretariat indicated, that under the current provisions of the Common Regulations, the notification of statements of grant of protection was provided for only on an optional basis. This should remain the case since providing for compulsory notifications would be of limited value from a legal point of view, since failure to comply would have no legal consequence.

134. The representative of MARQUES said that the issuing of statements of grant of protection was a matter of considerable interest to users.

135. The delegations of Austria and Germany stated that they would have difficulties in agreeing to a proposal which might result in statements of grant of protection becoming compulsory.

136. The Chair noted that there were no further comments and concluded that the proposed amendment made by the delegation of the United Kingdom in relation to Rule 17(6) required further discussion.

Proposal Made by the Delegation of Japan (Rule 28(4))

137. The delegation of Japan expressed the view that it was necessary to consider introducing further restrictions on the operation of Rule 28(4). It proposed that a time limit shorter than nine months be provided in order to request a correction of the International Register, and that such time limit applied to all types of errors, including those made by the International Bureau. This would result in additional legal certainty.

138. The delegation of the United Kingdom supported the views of the delegation of Japan.

139. The delegation of Finland gave support to the suggestion that the matter of corrections, especially bearing in mind the legal certainty aspects, be discussed in a future meeting.

140. The Chair noted that there were no further comments and concluded that, in the absence of a written proposal, the amendment suggested by the delegation of Japan in relation to Rule 28(4) required further discussion.

V. OTHER MATTERS

(a) Measures to consider at a Possible Next Meeting of the Working Group

Model Provisions on the Issues of Replacement and Transformation

141. Referring to an informal document presented by MARQUES (in English version only), and distributed to the Working Group, the representative of MARQUES suggested that model provisions be drafted in connection with the procedures involving transformation and replacement. She stated that implementation at the national level of these two procedures was unclear and varied from one Contracting Party to another, while users were looking for certainty and harmonized rules. The drawing up of model provisions would introduce an important improvement in the functioning of the Madrid system.

142. The representatives of AIM and INTA indicated that they fully shared the views expressed by MARQUES.

143. The delegation of Norway stated that there were two principal uncertainties in connection with the issue of replacement, namely, the requirements regarding the list of goods and services and the question of what should be considered the date of the replacement.

144. The representative of AIM spoke about the problems which might be posed for users due to the fact that replacement was automatic and did not require formally recording. In particular, users might encounter difficulties when conducting prior right searches, since prior rights resulting from earlier national registrations were not immediately visible when consulting the International Register.

145. The delegation of Germany noted that where there had been a recording of a replacement, the information being published by WIPO for the benefit of third parties might be lacking in some regards.

146. The Secretariat noted that the International Bureau had recently submitted a questionnaire to the Offices of Contracting Parties concerning various issues, including those of replacement and transformation. To date, the results collected by the International Bureau appeared to indicate a variety of approaches being adopted at the national level among Contracting Parties and, therefore, the proposal put forward by the representative of MARQUES had considerable merit.

147. In response to a question raised by the delegation of Slovenia, the Chair said that the concept of “model provisions” should be understood to mean non-mandatory guidelines, in the sense that they not be part of a legal instrument, but might serve as a reference for Offices and users.

148. The delegation of Germany spoke of the different types of model provisions that could be considered and suggested that it would be advisable to determine whether such model provisions should be intended for endorsement by the Assembly of the Madrid Union.

149. The Chair noted that there were no further comments and concluded that the issue of model provisions concerning replacement and transformation required further discussion.

Standardized Forms or Templates

150. Referring to the document it had issued (in English version only), and distributed to the Working Group, the delegation of Norway stated that it would bring about considerable simplicity for Offices, the International Bureau and most importantly for users of the Madrid system, if standardized forms or templates could be made available for various notifications to the International Bureau, notably in the context of provisional refusals, statements of grant of protection and the late filing of oppositions.

151. The Secretariat stated that it would welcome the introduction of standardized forms or templates as this would bring about simplification and rationalization. Such an undertaking would however not be without difficulty given that there were currently 77 Contracting Parties in the Madrid system.

152. The representative of INTA noted that, with a view to simplification of the system, it could be envisaged to indicate systematically and in a clear and non-ambiguous way, the time limit within which a reply must be sent in respect of communications notified by the Offices of designated States, given in particular that there are currently four different starting points for the time limit.

153. The Chair noted that there were no further comments and concluded that the question related to the issue of standardized forms and templates, as proposed by the delegation of Norway, required further discussion.

(b) Future of the Madrid System

154. The delegation of Norway stated that it wished to open a general discussion with regard to the future of the Madrid system, with a view to introducing more efficiency and making the system more user-friendly. It proposed for discussion the abolition of the requirement for a basic mark (registration or application) in an Office of origin, the five-year dependency period and the mechanism of transformation. The reduction of the time limit for refusal should also be examined as part of this exercise.

155. The representative of CEIPI said that he supported the proposal made by the delegation of Norway. He recalled, in particular, that these very principles (notably the possibility of direct filings with the International Bureau without the need of a basic mark) were embodied in the Trademark Registration Treaty (“TRT”), of June 12, 1973. However, the implementation of the TRT proved to be a failure (only two registrations were filed under this treaty during the 11 years of its existence). The non-use of the TRT by trademark owners was due mainly to the fact that the treaty did not win widespread acceptance.

156. The delegation of Japan spoke about the demands of Japanese users in relation to the Madrid system. With regard in particular to the requirement of a basic mark, it highlighted the particular difficulties faced by users whose Office of origin was in a country that did not use Latin characters. A mark registered in such an Office could be subject to central attack. The delegation of Japan added that the issue of compulsory statements of grant of protection was also of crucial importance and should therefore be considered as well.

157. The delegation of Antigua and Barbuda pointed out that the abolition of the requirement for a basic mark could prove to be detrimental for local representatives.

158. The representative of INTA, while admitting the risk of central attack, said that it was also necessary to examine in concreto the number of such central attacks which are successful, and to distinguish between restrictions of the list of goods and services and total cancellations.

159. A delegation underlined that the possibility of central attack was in certain cases of benefit to users since it avoided litigation in several jurisdictions.

160. The need to institute a mechanism enabling users to appeal the decisions of the International Bureau was also expressed by a delegation.

161. The Chair noted that there were no further comments and concluded that the issues related to the future of the Madrid system required further discussion.

(c) Agenda of the Working Group

162. The delegations of Australia and Norway said that, in light of the discussions, it would seem appropriate to hold another session of this Working Group with a view to discussing:

- draft proposals for the modification of provisions of the Protocol and of the Common Regulations, to be prepared by the International Bureau as may be decided by the Assembly of the Madrid Union at its session in September/October 2005;

- any other matter which the Assembly of the Madrid Union might consider relevant for the Working Group to examine, including, for example, other proposals for amendment of the Common Regulations, model provisions concerning replacement and transformation, standardized forms or templates as well as proposals regarding the future of the Madrid system.

163. The Chair noted that there were no further comments and concluded that the recommendation of the Working Group was that the Assembly of the Madrid Union agree that a further meeting of this Working Group be arranged in 2006 so as to allow further discussion of the above-mentioned issues prior to the meetings of the Assembly of the Madrid Union in 2006.

164. This report was unanimously adopted by the Working Group on July 8, 2005.

[Annex follows]

ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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(dans l'ordre alphabétique des noms français des États et organisations)
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Secrétaire/Secretary: Denis COHEN (OMPI/WIPO)

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