

Working Group on the Legal Development of the Madrid System for the International Registration of Marks

Eighteenth Session
Geneva, October 12 to 16, 2020

REPORT

adopted by the Working Group

1. The Working Group on the Legal Development of the Madrid System for the International Registration of Marks (hereinafter referred to as “the Working Group”) met in Geneva from October 12 to 16, 2020. The session was held in hybrid mode, with some delegations attending physically, in Geneva, and most delegations participating remotely *via* an online platform (see document MM/LD/WG/18/INF/2).

2. The following Contracting Parties of the Madrid Union were represented at the session: African Intellectual Property Organization (OAPI), Albania, Algeria, Antigua and Barbuda, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Bhutan, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Canada, China, Colombia, Croatia, Cuba, Czech Republic, Denmark, Estonia, European Union (EU), Finland, France, Georgia, Germany, Ghana, Greece, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lesotho, Lithuania, Madagascar, Malaysia, Malawi, Mexico, Mongolia, Montenegro, Morocco, Namibia, New Zealand, Norway, Oman, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Rwanda, Sao Tome and Principe, Singapore, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago¹, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America, Uzbekistan, Viet Nam, Zimbabwe (81).

¹ On October 12, 2020, the Government of Trinidad and Tobago deposited its instrument of accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. The Madrid Protocol entered into force with respect to Trinidad and Tobago on January 12, 2021.

3. The following States were represented as observers: Bangladesh, El Salvador, Ethiopia, Jordan, Kuwait, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Saudi Arabia, Togo, Uganda, United Arab Emirates, Uruguay, Venezuela (Bolivarian Republic of), Yemen (17).

4. Representatives of: (i) Palestine (1); (ii) African Regional Intellectual Property Organization (ARIPO), Benelux Organization for Intellectual Property (BOIP), World Trade Organization (WTO) (3); and (iii) American Intellectual Property Law Association (AIPLA), Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA), International Federation of Intellectual Property Attorneys (FICPI), International Trademark Association (INTA), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), MARQUES – Association of European Trademark Owners, The Chartered Institute of Trade Mark Attorneys (CITMA) (9); participated in an observer capacity.

5. The list of participants (document MM/LD/WG/18/INF/3) is contained in Annex IV to this document.

AGENDA ITEM 1: OPENING OF THE SESSION

6. Mr. Daren Tang, Director General of the World Intellectual Property Organization (WIPO) opened the session and welcomed the participants to the first Madrid Working Group meeting held during his term as Director General. The Director General thanked those attending the meeting, either physically or virtually, and noted that participation remained high despite the difficult and unusual circumstances, with over 100 members joining in remotely. The Director General said he was conscious of the strain, especially on those in distant time zones, of virtual working and thanked participants for their commitment. The Director General asked participants not to forget the huge impact that their discussions could have on their countries and people, and that their work was critical to the movement of brands across borders. The work of the Working Group brought home the importance of intellectual property and he mentioned that it was even more important for the Working Group to step up its efforts to help support enterprises and entrepreneurs during those difficult times. The pandemic may have had disrupted the world, but it had not stopped the trademark system from becoming more global. While the Madrid System, prior to the adoption of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as “the Protocol”), had been, essentially, European in membership and usage, it had, since then, transformed itself into a global system, with an increasingly important participation from Asia and North America. The increasingly global profile of the Madrid System meant that it would also have to evolve to enable enterprises, particularly the smaller ones, to have easy and affordable access to the system. As such, it was opportune to consider the future evolution of its language regime. The introduction of new languages in the system was not only inevitable, due to its geographical expansion, but also desirable because it brought the system closer to all its users. The topic required careful consideration and prudent management, but the Director General said he was confident that participants in the Working Group would display the necessary wisdom, strategic insight and sense of balance to arrive at a suitable solution that would meet the legitimate expectations of all interested parties. The Director General noted that the pandemic had affected health and disrupted lives and that WIPO, like many of others, had to move to working offsite. Despite that, the staff of the Madrid Registry had really stepped up, showed resilience and determination to provide for the continuation of critical services and day-to-day operations in a home working environment. Due to their immense efforts, colleagues ensured that the Madrid Registry could maintain normal production levels. The main challenge faced by the Madrid Registry did not lie in maintaining production levels, but in ensuring that key legal notifications reached the users. Following the closure of the WIPO printshop and disruptions in postal services throughout the world, paper notifications could no longer be transmitted to those who had not provided their e-mail addresses. Through a host of

measures, the Madrid Registry had succeeded in mitigating the negative consequences of that situation, which could have potentially entailed the loss of user rights. During that same period, the electronic communication of data with the Offices of origin and of the designated Contracting Parties was also significantly enhanced and rendered paperless. In addition, a decision was made, at the most recent Madrid Union Assembly (hereinafter referred to as “the Assembly”), to make the provision of a user e-mail address a mandatory requirement for new applications. The Director General indicated that, on a more strategic level, the continued digital transformation of the Madrid System was crucial. The Director General recalled that, apart from the afore-mentioned electronic communications, other important steps in that regard had been taken recently. He mentioned the launch of a new streamlined online application form, called the Madrid Application Assistant, which enables the possibility to pay for international applications with a credit card, and a much more intense schedule of webinars focusing on practical topics of interest to users of the Madrid System. Further work on the digital transformation of the Madrid System, including through the new Madrid Information and Technology (IT) Platform, would remain an important focus for WIPO in the years ahead. In terms of filing numbers, the Director General highlighted the surprising resilience of the Madrid System and noted that filings were only one to two per cent lower than the previous year. While that compared favorably with 2009, when filings dropped by 14 per cent, there was still a need to continue watching these figures closely, as the full economic impact of the pandemic had only just begun to unfold. Turning to accessions, the Director General indicated that the Madrid Union had gained one new member since the Working Group last met in July of the previous year. With the accession of Malaysia to the Protocol, there were now 106 members of the Madrid System covering 122 countries. While the System would continue its geographical expansion, with more countries having made significant progress towards their accession, the COVID-19 pandemic delayed the accession preparations in a number of countries. Nonetheless, the instrument of accession of Trinidad and Tobago was expected that week and it was hoped that Pakistan would also join before the end of the year. Within the following one or two years, Bangladesh, Malta, Mauritius, Saudi Arabia, South Africa, Sri Lanka and the United Arab Emirates might also become members. The Director General welcomed the new members and members in waiting, and said that he would continue working with them, and with all members, to support their accession and implementation of the Madrid Protocol. The Director General urged all those taking part in that special session of the Working Group to make the most of their participation and to engage in constructive discussions on how the Madrid System could evolve to respond to the real needs of users from all regions of the world. The Director General said he was confident that the session would bring positive changes to the Madrid System, for Offices and users alike, and continue to make a difference to brand owners everywhere.

AGENDA ITEM 2: ELECTION OF THE CHAIR AND TWO VICE-CHAIRS

7. Mr. Nicolas Lesieur (Canada) was elected as Chair of the Working Group. Ms. María José Lamus Becerra (Colombia) and Mr. Tanyaradzwa Manhombho (Zimbabwe) were elected as Vice-Chairs.
8. Ms. Debbie Roenning acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

9. The Chair thanked the participants for his election and welcomed the Director General, delegations joining the session on-site and virtually, and the Secretariat to the eighteenth session of the Working Group. The Chair referred to the format and timetable of the meeting (document MM/LD/WD/18/INF/Prov. 3) and invited the Secretariat to provide further information concerning the logistical arrangements and conduct of the meeting, given its hybrid format.
10. The Secretariat reminded delegations and representatives of the modalities that applied to the conduct of the meeting on the virtual platform, including restricted use of the event chat function. The Secretariat said that the Chair would open the floor, in the usual order, to the delegations of the Contracting Parties of the Madrid System, as requested, to be followed by WIPO Member States observer delegations and, finally, to observer organization delegations. The Secretariat requested that all participants enable their cameras and speak clearly and slowly and recommended the use of a headset to optimize the audio quality for all participants and, particularly, for the interpreters working in the challenging remote environment.
11. The Chair thanked the Secretariat and opened the floor for comments on the draft agenda.
12. The Representative of CEIPI congratulated WIPO and welcomed the new Director General. The Representative acknowledged the challenges of the hybrid format of the meeting and said that, although the reduced agenda was regrettable, it was understandable and inevitable given the circumstances.
13. The Chair reminded participants that were attending the meeting remotely to activate their cameras, as this would be useful to the interpreters.
14. The Working Group adopted the draft agenda (document MM/LD/18/1 Prov.3).
15. The Working Group took note of the electronic adoption of the report of the seventeenth session of the Working Group, according to the procedures set out at its eighth session.

AGENDA ITEM 4: PROPOSED AMENDMENTS TO THE REGULATIONS UNDER THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

16. Discussions were based on document MM/LD/WG/18/2 Rev.
17. The Secretariat introduced document MM/LD/WG/18/2 Rev. and explained that it proposed amendments to several rules in the Regulations Under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as “the Regulations”). The International Bureau had revised the document following the recent adoption by the Madrid Union Assembly of amendments to the Regulations that required users to indicate their e-mail address to receive communications from the International Bureau. The document proposed two important amendments that would ensure that there would be adequate relief for users of the Madrid System, which concerned excuse in delay in meeting time limits and continued processing. The other proposed amendments aimed to streamline the Madrid System, for example, the amendments concerning subsequent designation and representation before the International Bureau; or were merely editorial amendments, for example, those concerning ceasing of effect and continuation of effects. The Secretariat provided details on the specific proposals and stated that the proposed amendments to Rule 3 concerned representation before the International Bureau. The Secretariat recalled that when a

representative was appointed in a separate communication using the form MM12, the International Bureau recorded the appointment as a distinct transaction. It was also possible to appoint a representative in a form concerning another request, for example, in a subsequent designation or in a request for recording of a change or cancellation of the international registration. In that case, the appointment was inscribed as part of that recording, rather than as a separate transaction, resulting in the information concerning the appointment being displayed in a manner that was neither consistent nor transparent. To streamline the processes, it was proposed to amend Rule 3(2)(a), with a consequential amendment in paragraph (4)(a) of the same Rule. Under the proposed amendments, the applicant could appoint a representative in the international application and the new holder could appoint a representative in the request for the recording of a change in ownership. Appointment of representative in all other situations would need to be made in a separate communication. Furthermore, the document proposed an amendment to Rule 3(6)(d) concerning the cancellation of the recording of the appointment requested by the representative. The Secretariat explained that it was no longer necessary to send applicants or holders a copy of all communications exchanged with a representative within the previous six months, as all those communications were now easily available through various e-services on the Madrid System website. The Secretariat referred to the proposed amendments to Rule 5 and mentioned that, at that time, Rule 5 excused delays in meeting time limits for communications addressed to the International Bureau due only to irregularities in postal and delivery services resulting from *force majeure* events. It also covered communications sent electronically where there was a failure in the electronic communication services of the International Bureau or in the locality of the interested party. The proposed amendments to Rule 5 provided a general *force majeure* provision offering relief measures where applicants, holders, representatives and Offices had failed to meet time limits for performing an action before the International Bureau. The proposed new paragraph (1) of Rule 5 would apply to any action before the International Bureau for which the Regulations prescribed a time limit, such as, for example, sending a communication, remedying an irregularity or paying a prescribed fee. The proposed amendments would be helpful for users of the Madrid System who were faced with any *force majeure* situation that prevented them from taking the required action within the specified time limit. It would also ensure that the Regulations offered users relief equivalent to that provided for in the Patent Cooperation Treaty Regulations (hereinafter referred to “the PCT Regulations”). The Rule would continue to require the party concerned to provide sufficient evidence and would continue to limit the excuse to six months from the expiry of the time limit concerned. The Secretariat explained that the proposed amendment to Rule 5*bis* that provided for continued processing where the applicant or holder missed a time limit for an action in a procedure before the International Bureau. The applicant or holder must request relief within two months from the expiry of the time limit concerned and pay a fee. However, no evidence or reason was required. The proposed amendment would clarify that the relief was also available for missed time limits to pay additional fees, following the examination of the international application by the International Bureau, and fees for a request for division. The Secretariat stated that the proposed amendment to Rule 22, concerning notifications relating to ceasing of effect, were editorial in nature and concerned some minor tidying up of the text, which was overlooked in the latest revision of the Regulations. The Secretariat indicated that the proposed amendment to Rule 24 would, for the sake of simplicity, no longer require that a request for the recording of a subsequent designation indicate the address of the holder, which could result in an irregularity when the holder failed to indicate the address exactly as recorded. The Secretariat clarified that the proposed amendments to Rule 39 and to the Schedule of Fees concerning continuation of effects were only editorial in nature and did not introduce any substantive changes. For the sake of consistency with the setup in the Regulations, the International Bureau was proposing to take out the specific amounts of fees in Rule 39(1)(ii) and move those to proposed new item 10 in the Schedule of Fees. The Secretariat concluded by referring to the proposed date of entry into force and said that the proposed amendments would greatly benefit users and would not affect Offices. As the International Bureau could implement the proposed amendments quickly, the Secretariat proposed that they enter into force

two months after their adoption by the Madrid Union Assembly. The exact date would depend on whether there would be an extraordinary session early in 2021, which could be an option due to the reduced agenda of the recent General Assemblies. Otherwise, the Assembly could discuss the proposed amendments at its ordinary session, in September or October 2021.

18. The Chair opened the floor for comments on paragraphs 1 to 4 of the document.

19. The Chair noted that there were no comments from delegations on paragraphs 1 to 4 of the document and opened the floor for comments on paragraphs 5 to 8 of the document, concerning the appointment of a representative.

20. The Delegation of the Russian Federation, speaking on behalf of the Regional Group for Caucasian, Central Asian and Eastern European Countries (CACEEC) congratulated the Chair on his election and thanked the Secretariat for the preparation of the document and organization of the session. The Delegation stated that CACEEC was convinced that the implementation of the projects in the area of the legal development of the Madrid System was one of the most important elements of WIPO's activity. The Delegation said it was satisfied with the fact that, over the previous 10 years, there had been a record number of filings under the Madrid System, further noting that there had been a growth in filings every year and that the Madrid System remained fairly stable despite the circumstances. The Delegation indicated that the business community of its regional group, being the major users of the Madrid System, continued to demonstrate a high level of interest in the services provided within its framework. The Delegation stated that the COVID-19 pandemic had limited all areas of social life and had led to the suspension of many services. It had also seriously influenced the economy and provoked significant changes in international trade. As a result of those unprecedented circumstances, users of the Madrid System faced serious difficulties in various aspects due to measures introduced by a number of countries to limit the spread of the infection, particularly those that disrupted postal and delivery services. The Delegation further noted that bringing in the proposed amendments was an attempt to avoid or prevent disruptions that had arisen from the pandemic and that may occur in the future. The Delegation recalled that the Madrid Union Assembly, during its fifty-fourth (31st extraordinary) session, adopted amendments to the Regulations² to ensure that users of the Madrid System received electronic communications from the International Bureau, and said that it believed that such measures would allow for prompt responses to notifications that required urgent action in case of disruptions in postal services. The Delegation further stated that as there were, at that time, no provisions related to emergencies and related restrictions, it believed that the proposed amendments, in addition to the requirement to provide an e-mail address, would significantly improve the work of the Offices and the interaction with applicants during this difficult time. The Delegation considered it possible to recommend to the Assembly of the Madrid Union to adopt the proposed amendments to the Regulations in the form in which they were set out in the Annex to the document, and agreed that they should enter into force two months after their adoption.

² See document MM/A/54/2.

21. The Delegation for the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for the preparation of the document and welcomed, in principle, the proposed amendments to the Regulations in response to severe disruption for users of the Madrid System that resulted from the COVID-19 pandemic. However, the Delegation considered that there was a need to further discuss the proposed amendments to Rule 3(2)(a) and Rule 5. Regarding, the proposed amendment to Rule 3(2)(a) that would eliminate the possibility to appoint a representative in a subsequent designation or in a request under Rule 25, the Delegation could not agree to its entry into force two months after its adoption, as changes would need to be made to IT systems to implement the amendment. Taking into account its planned work priorities, the Delegation proposed that the amendment to Rule 3(2)(a) entered into force nine months after its adoption, at the earliest. With regard to Rule 5, the Delegation saw a need for close alignment with the wording in Rule 82^{quarter} of the PCT Regulations.

22. The Delegation of Brazil supported the proposed amendment to Rule 3(2)(a), as it benefitted users.

23. The Delegation of Madagascar congratulated the Chair and Vice-Chairs on their election and said that it supported all of the proposals made within the document and thanked the International Bureau for always finding room to improve and further simplify the Regulations. The Delegation said that it believed that the amendments would not only help to regularize certain provisions but would also bring together the Offices of the Contracting Parties, the International Bureau and the users of the Madrid System through electronic communication, particularly, in times like the current pandemic situation.

24. The Delegation of Japan congratulated the Chair and Vice-Chairs on their election and expressed its appreciation to the Secretariat for the preparation of the meeting. The Delegation supported, in general, the proposed amendments since they would be beneficial for intellectual property offices, users and the International Bureau, particularly, given the experience of the COVID-19 situation.

25. The Chair noted that general statements had been given on the document and reminded delegations that he would go through the document, paragraph by paragraph. The Chair, noting that there were no comments on paragraphs 5 to 8 concerning the appointment of a representative, opened the floor for comments on paragraphs 9 and 10 concerning the cancellation of the appointment of a representative. The Chair noted that there were no comments on paragraphs 9 and 10 and opened the floor for comments on paragraphs 11 to 19, concerning the proposed amendments to Rule 5, dealing with excuse in delays in meeting time limits.

26. The Delegation of China congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for all its work. The Delegation supported the proposed amendments adding that they streamlined the Regulations and procedures, improving the Madrid System user's experience. However, the Delegation sought further clarification on the proposed amendments to Rule 5 and, in particular, asked for further guidance on the requirement of satisfactory evidence, suggesting that widely recognized *force majeure* situations be referred to in the Rule and be exempted from such evidence requirement.

27. The Delegation of the United Kingdom congratulated the Chair and Vice-Chairs on their election and thanked the International Bureau for preparing the document, and for the work it had done on the proposed amendments to the Regulations. The Delegation welcomed the opportunity to discuss those amendments and lent its support to the proposed amendments to Rules 3(2)(a), 3(6)(d), 5^{bis}, 21(1)(c), 24(3)(a)(ii) 36(ii) and 39(1)(ii), all of which simplified processes for users or provided important clarifications and updates to the rules. The Delegation referred to Rule 5, relating to excuses of delays in meeting time limits, and

welcomed the opportunity to discuss how the Madrid System functioned in emergencies like the current pandemic. The Delegation said that discussions at the Madrid Union Assembly were productive and that the United Kingdom welcomed the agreement of rule changes that would require e-mail addresses to be provided at different points in Madrid processes. The Delegation stated that the United Kingdom supported the proposed amendments to Rule 5, as they would further increase the flexibility of the Madrid System in dealing with emergencies.

The Delegation noted, as mentioned in the document, that the changes were intended to align the Madrid System with the PCT System. However, further changes were discussed regarding Rule 82^{quarter} of the PCT Regulations during its last Working Group meeting and there would be further discussions on that issue at the next PCT Working Group meeting. On that basis, the Delegation considered that the Madrid Working Group should revisit that issue, if further changes were agreed to the PCT Regulations, to maintain the consistency between the Madrid System and the PCT System.

28. The Delegation of Germany congratulated the Chair and Vice-Chairs on their election and thanked the International Bureau for the clear and early availability of the documents. The Delegation considered that the proposed amendments to Rule 5 went beyond what was covered by Rule 82^{quarter} of the PCT Regulations. The Delegation said that, according to the proposed amendments to Rule 5(2), all irregularities in postal delivery or electronic communication services would be excused if the interested party submitted evidence, to the satisfaction of the International Bureau, proving that the failure to meet the time limit was due to circumstances beyond the control of the interested party. Rule 82^{quarter} of the PCT Regulations, however, required that failure to meet a time limit would be due to a general unavailability of electronic communication services in the locality where the interested party resided or at its place of business. General unavailability was not in the wording of Rule 5(2). The Delegation considered that the International Bureau's proposal went beyond the *force majeure* reasons listed in paragraph 18 of the document, and felt that it watered down the time limits of the Protocol and Regulations. Moreover, the proposed Rule 5(2) applied not only to communications addressed to the International Bureau, but also to all time limits specified in the Regulations. That meant, including those that the interested party must observe *vis-a-vis* of the Offices. Therefore, the proposed amendment to Rule 5(2) would have an impact on the IT systems and operations of the Offices of the designated Contracting Parties. The Delegation noted that Rule 5(4) concerned limitation on excuse and did not apply to Rule 5(2).

29. The Chair opened the floor for comments on paragraphs 18 and 19 of the document.

30. The Delegation of Colombia congratulated the Chair and Vice-Chairs on their election and the Secretariat for preparing the document. The Delegation noted that the document under discussion included guidelines to improve practices among users of the Madrid System. Therefore, the Delegation supported all the proposed amendments. In particular, it considered that the change related to the appointment of a representative in a separate request was very positive for the users of the Madrid System, because it accelerated and, therefore, increased efficiency of processes under the Madrid System. The Delegation referred to the proposed amendments in relation to the excuses in delays in meeting time limits. Those proposed amendments provided a flexible principle that would last over time and adapt to the multiple situations that might prevent meeting a time limit, such as the current situation with COVID-19. Regarding the other changes, the Delegation considered that they allow for positive development of the Madrid System and made the system more competitive, while not generating any additional burden for the International Bureau.

31. The Delegation of India thanked the Secretariat for the preparation of the document and welcomed, in general, the proposed amendments to the Regulations. In particular, the Delegation welcomed introducing communication by e-mail and stated that the Indian Office had already implemented such with the parties concerned. However, the Delegation considered that more elaborate discussions were required in respect of the proposed amendments to Rule 22 and Rule 24.

32. The Delegation of the United States of America took the opportunity to congratulate the Chair and the Vice-Chairs on their election, and thanked the Secretariat for the excellent preparation of the documents. The Delegation supported the proposed amendments, but noted that, for Rule 5, they would need to make changes to their IT systems to allow filers to respond to the International Bureau's irregularity notices beyond the three-month deadline. The current IT system of the United States Patent and Trademark Office (USPTO) did not allow filers to respond to irregularities after the three months had expired and, in that regard, it would need one year to implement the IT system changes. Therefore, the Delegation proposed that the entry into force date be set one year following the adoption of the amendments, rather than two months after their adoption. In the interest of not holding up the implementation of the proposed amendments, the Delegation suggested that the International Bureau consider a transition period of one year following the adoption to allow the United States of America and possibly other Contracting Parties time to make the necessary changes to their IT systems.

33. The Chair opened the floor for comments on paragraph 22 of the document concerning subsequent designation.

34. The Delegation of Germany appreciated and supported the amendments proposed by the International Bureau to Rule 22. However, the Delegation considered that the proposed change could have further addressed the situation where the holder had indicated a name different to that recorded in the International Register. A different name would also result in an irregularity that delayed the recording of the subsequent designation. According to Rule 24(6)(c)(i) and 24(6)(c)(ii), the date of the subsequent designation should not be affected by an irregularity concerning the name and address of the holder. In that regard, the Delegation noted the reference to the holder's name, concerned only to a change in name of the holder, not a change of the holder. Therefore, the amendment proposed in Rule 22 only resolved part of the problem and the Delegation suggested that the International Bureau propose a solution at the next session of the Working Group, concluding that a mere change in name of the holder should not affect the date of the subsequent designation.

35. The Delegation of the Republic of Moldova congratulated the Chair and Vice-Chairs on their election and the International Bureau for the documents it had prepared. The Delegation proposed to require the holder to indicate only the number of the international registration in the form MM4 (Request for Subsequent Designation), which would make that similar to the practice in other registries or in other forms where only the number of the international registration was required.

36. The Chair opened the floor for comments on paragraphs 23 to 25 of the document on continuation of effects. The Chair noted that there were no comments on paragraphs 23 to 25 and opened the floor for comments on paragraphs 26 to 28 of the document on the implications for Offices and the International Bureau.

37. The Delegation of Singapore congratulated the Chair and the Vice-Chairs on their election and thanked the Secretariat for the preparation of the document. The Delegation supported the general proposals as set out in the document, which would offer broader relief for the users of the Madrid System and increase overall user friendliness.

38. The Delegation of the Republic of Korea congratulated the Chair and the Vice-Chairs on their election and expressed its confidence in a successful and productive session under their leadership. The Delegation also thanked the Secretariat for its efforts in preparing for the meeting. The Delegation said that it generally agreed with the proposed amendments to the Regulations. However, the Delegation noted occasions when the applicants submitted the relevant requests via Offices and, therefore, the amendment to the Regulations might have some minor implications for Offices. In that regard, the Delegation asked whether the Secretariat could provide the relevant support for IT systems and forms in a timely manner.

39. The Chair opened the floor for comments on paragraphs 29 and 30 of the document on the date of entry into force.

40. The Delegation of Belarus congratulated the Chair and Vice-Chairs on their election and the International Bureau for the documents it had prepared. The Delegation asked whether the Chair could provide a summary of the discussions on the amendments before moving on to the date of entry into force. The Delegation referred to paragraphs 5 to 8 of the document, concerning appointment of representative and said that appointing a new representative in a separate request might not be beneficial to the holder because it would mean that the holder would need to take two actions, and pay two sets of fees. The Delegation also wished to respond to the suggestion made by another delegation that the name of the holder, as well as the address of the holder, be omitted from Rule 22. Given that the international registration number may contain a mistake, the request should contain an additional indication to help the International Bureau identify the subject international registration in the request for subsequent designation. The Delegation believed that the amendment should just apply to the address, as proposed by the International Bureau.

41. The Chair responded to the Delegation of Belarus and confirmed that the intention was to identify the proposed amendments that had support, and those that did would be included in the decision language.

42. The Delegation of Denmark congratulated the Chair and the Vice-Chairs on their election and the International Bureau for the documents it had prepared. The Delegation noted that the amendment to remove the requirement to indicate the address of the holder in a request for subsequent designation was proposed on the basis that, in some cases, it was different to the one indicated in the International Register, resulting in an irregularity that delayed the recording of the subsequent designation. The Delegation sought further elaboration on the reason for the irregularities.

43. The Representative of MARQUES thanked the International Bureau for making the meeting possible and welcomed the election of the Chair and Vice-Chairs. The Representative referred to its position paper and stated that it was in favor of proposals in the document that would improve the speed and ease of appointing representatives, of communicating electronically with the holders, and that protected holders against failure to meet deadlines in situations like the current global pandemic.

44. The Delegation of Brazil agreed with the proposals in the document concerning the different rules. When referring to Rule 5, the Delegation noted that the amendment might have consequences for the national rules in Brazil, but the Delegation fully understood the need for *force majeure* measures for emergencies and therefore, agreed with all proposals.

45. The Chair noted that there were no more comments on the document, and invited the Secretariat to respond to some of the points raised by delegations.

46. The Secretariat responded first to the Delegation of the European Union's position on the amendments to Rule 3(2)(a) and on the possible delay in the implementation of those amendments due to the necessary IT requirements. The Secretariat explained that the

amendments concerned the appointment of a representative before the International Bureau in the Madrid System's official forms. Only three per cent of requests for the appointment of a representative were included in other transactions. Most requests for the appointment of a representative were made in the international application or in form MM12, a stand-alone request for the appointment of a representative. It was uncommon for the holder to appoint a representative in a request for another transaction. The Secretariat, in response to the comments made by the Delegation of China concerning required evidence for *force majeure* events under Rule 5, stated that it would be sufficient in cases of *force majeure* to simply refer to the *force majeure* event. The Secretariat noted that there had been various natural disasters in the past with extensive news coverage. For the current COVID-19 pandemic, the International Bureau had waived the requirement for evidence and it was sufficient to state that the failure to meet the time limit was due to COVID-19. The Secretariat referred to the comments made by the Delegations of Germany and the United Kingdom on the amendments to Rule 5 and its similarities to Rule 82*quater* of the PCT Regulations. The Secretariat was aware that potential changes to Rule 82*quater* had been discussed during the PCT Working Group meeting and that discussions would continue at its next meeting. The Secretariat said that, if the proposed amendments to Rule 5 were adopted, the Working Group could revisit the wording of Rule 5, should Rule 82*quater* of the PCT Regulations be amended in the future, to ensure harmonization. However, in the meantime, it was important to offer users of both the PCT and the Madrid System adequate and relevant relief. The Delegation of Germany mentioned that the proposed amendment to Rule 5 (2) was broader than Rule 82*quater*, but that was not the case. Paragraph (2) of Rule 5 referred to paragraph (1), therefore, the relief measure due to the irregularities in postal services communications would have to be within the scope of paragraph (1) of the proposed amendments to Rule 5. It did not go any broader than that. The Secretariat noted the comments made by the Delegation of the United States of America concerning the amendments to Rule 5 and the need to develop its IT systems to allow applicants to respond to an irregularity beyond three months. The Secretariat clarified that, where those irregularities had to be remedied by the applicant, the applicant could communicate directly with the International Bureau. However, the Office might need to remedy the irregularity with assistance from the applicant. In those cases, the Office would be able to communicate with the International Bureau. Concerning the entry into force, the Secretariat stressed that Rule 5 concerned actions before the International Bureau. Addressing a number of delegations, including the Delegations of Belarus, Denmark, Germany and the Republic of Moldova, that had raised questions on requests for subsequent designations under Rule 24, the Secretariat explained that the current rule required the international registration number, the name of the holder and the address of the holder. The proposed deletion of the requirement to indicate the address would bring it line with the other requests under Rule 25. A request to record a change under Rule 25 needed to include the international registration number and the name of the holder. The Secretariat suggested that Offices advise holders to use WIPO's e-subsequent designation tool available on WIPO's website. The holder would need to indicate the international registration number in the e-subsequent designation request, and the tool would prepopulate the information as recorded in the International Register. Therefore, the user would see all the details of that international registration, including the recorded name and address of the holder. The Secretariat reminded delegations that a subsequent designation merely added Contracting Parties to the existing international registration with the bibliographical data as recorded in the International Register. By filling out the form or using the web service, the holder would not be requesting a change of the name or address of the holder. Eliminating the requirement to indicate an address would also eliminate potential irregularities for those using the paper form. If the holder used the e-subsequent designation tool (web service) and noted that the details listed did not reflect, for example, the holder's current address, the holder would have the opportunity to request the recording of the change in address before recording a subsequent designation. The Secretariat referred to the comments made by the Delegation of Germany concerning irregularities and noted that, where the holder had completed a paper form and indicated an address that contained a typo, for example, it stated the wrong house number, the International Bureau would issue an irregularity and the holder would be given the

opportunity to remedy that. However, it would not be appropriate to indicate a new address in a request for a subsequent designation where the holder, for example, had moved business location. The holder would need to request the recording of a change of address, either before or after requesting the subsequent designation. It was possible to indicate in the paper form that a certain change be recorded before the recording of the subsequent designation. The Secretariat reiterated that Offices should advise their users to use the e-subsequent designation tool because it would accurately reflect what was in the International Register and would give them the opportunity to request the recording of the relevant changes either before or after the recording of the subsequent designation. The Secretariat acknowledged that the proposal in the document concerning the entry into force was rather vague. The Secretariat explained that at the time the document had been drafted, it was not clear whether there would be an extraordinary session of the Assemblies, early in 2021, or the adoption of the proposed amendments would need to wait until the ordinary session in September or October 2021. The Secretariat noted the concerns raised by delegations that needed sufficient time to make the relevant IT changes and therefore, proposed that the amendments enter into force on November 1, 2021.

47. The Representative of MARQUES stressed a preference to implement the proposed changes as soon as possible and supported the two months, as proposed in the document. If that was not possible, the Representative of MARQUES considered that a transition period could be discussed as a compromise, as suggested by the Delegation of the United States of America.

48. The Chair explained that the Secretariat's proposed date of entry into force, on November 1, 2021, was realistically the earliest certain date for entry into force. Having a date earlier than that created issues with the uncertainty of when the next Madrid Union Assembly would be held. On the other end of the spectrum, indicating that they would enter into force a number of months after adoption may result in an entry into force later than November 1, 2021. Therefore, November 1, 2021, was a compromise that sought to provide some sort of middle ground between the two ends of the spectrum.

49. The Chair asked whether any delegation had any objection to the adoption of the amendments following the explanations provided by the Secretariat.

50. The Delegation of Germany referred to Rule 5 and said that the Secretariat had provided some clarification. However, the Delegation sought further clarification and reiterated that Rule 5(2) mentioned all irregularities in postal delivery or electronic communication, while Rule 82^{quarter} of the PCT Regulations only mentioned a general unavailability of electronic communication services in the locality of the interested party. Furthermore, Rule 5(2) applied to all time limits, specified in the Regulations and not only to communications addressed to the International Bureau. Therefore, there were also time limits included that the interested party must observe *vis-a-vis* the Office. The Delegation highlighted that another delegation had mentioned the time limits in Rule 5(4), but noted that Rule 5(4) did not apply to Rule 5(2). As paragraph (2) had been expressly deleted, there was no limitation on excuse that applied to paragraph (2). Therefore, the Delegation saw a need for closer alignment with the wording in Rule 82^{quarter}. Regarding the date of entry into force, the Delegation strongly supported November 1, 2021, as that would provide sufficient time to update its IT systems. Regarding the proposed amendments to Rule 24, concerning subsequent designations, the Delegation acknowledged that such an amendment would benefit the users, but still questioned whether the amendment went far enough. Currently, the date of recording of the subsequent designation would be delayed if the name or address was not exactly as recorded in the International Register. Therefore, the Delegation considered that a similar amendment could apply to the holder's name.

51. The Secretariat further explained that the PCT Regulations already had enough flexibilities and, therefore, did not need to specifically mention postal and delivery irregularities. However, the current Rule 5 covered postal and delivery irregularities and the proposed amendments provided further flexibilities in that regard. The Secretariat noted that, during the COVID-19 outbreak in Switzerland, the postal services had been suspended. Users worldwide were affected, not because of irregularities in the postal services in their locality but because it was not possible for the International Bureau to send communications. The proposed amendments expanded a bit on the current Rule 5, but still maintained a level of relief measures and flexibility, like the current PCT Regulations. The Secretariat explained that the time limit in Rule 5(4) referred to paragraph (1), which was the main rule. Rule 5(2) set out examples, following the wording of the current rule. Therefore, the six-month time limit covered and applied to both Rule 5(1) and 5(2). The Secretariat reminded delegations that the current Rule 5 only concerned communications addressed to the International Bureau and further explained that, given the effects that COVID-19 had on the users, a more flexible interpretation of communication was taken to also include payment of fees. Therefore, it was appropriate to expand Rule 5 by referring to an action rather than to communications.

52. The Delegation of Brazil said that it would like some time to consider the comments made by the Secretariat and the Delegation of Germany.

53. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for clarifying Rule 3(2)(a) and agreed to the proposed date of November 1, 2021, for entry into force.

54. The Delegation of Germany understood and agreed to the proposed amendments to Rule 5(1). However, the Delegation sought further clarification on Rule 5(2) and requested clearer wording. The Delegation stressed that it was not clear whether Rule 5(4) referred to only to Rule 5(1) or whether it also referred to Rule 5(2).

55. The Chair invited the Secretariat to respond to the Delegation of Germany.

56. In response to the Delegation of Germany, the Secretariat explained that Rule 5(1) concerned time limits specified in the Regulations to perform an action before the International Bureau. It was quite clear that it did not concern actions before the designated Contracting Parties. The time limit of six months, referred to in Rule 5(4), referred to both Rules 5(1) and 5(2). However, to address the concerns raised by the Delegation of Germany, the Secretariat proposed that Rule 5(4) be amended to also mention Rule 5(2).

57. The Delegation of Germany thanked the Secretariat for the proposed amendment to Rule 5(4) and asked whether the wording in Rule 5(2) could also be made clearer to reflect that the time limits referred to those required to perform an action before the International Bureau.

58. In response to the Delegation of Germany, the Secretariat stated that Rule 5(2) could also be amended further to reflect that the time limits referred to those required to perform an action before the International Bureau.

59. The Delegation of Brazil expressed that it was satisfied with the proposals agreed between the Secretariat and the Delegation of Germany.

60. The Chair summarized the discussions on Rule 5, and proposed moving the notion of disturbances to Rule 5(1) and deleting paragraph 5(2). Disturbances in postal and delivery services would then be part of the set of issues to be understood as *force majeure*. The Chair noted no objections to the proposal.

61. The Working Group agreed to recommend to the Madrid Union Assembly the adoption of the proposed amendments to the Regulations, as amended by the Working Group and as set out in Annex I to the present document, with November 1, 2021, as the date of entry into force.

AGENDA ITEM 5: NEW MEANS OF REPRESENTATION

62. Discussions were based on document MM/LD/WG/18/3.

63. The Secretariat introduced document MM/LD/WG/18/3 and explained that it continued the discussions of the previous session of the Working Group concerning the proposed amendments to Rule 9, giving applicants the possibility to file an international application with new means of representing the mark. The current Rule 9 required that the application contain a graphical reproduction of the mark that fits in the box provided in the international application form. The proposed amendment to Rule 9(4)(a)(v) would eliminate the graphical reproduction requirement and introduce a representation requirement. The Secretariat explained that, where the basic mark appeared in black and white and the applicant claimed color, Rule 9 required a second reproduction in color. The proposed elimination of the need to provide a second reproduction meant that one representation of the mark would be sufficient. The proposed amendments would require that the international application contain or indicate a representation of the mark furnished in accordance with the Administrative Instructions, which would specify the acceptable formats and technical specifications for the representation of the mark(s), as recommended in the relevant WIPO Standards. The document also proposed a number of consequential amendments to Rules 15, 17, 32, and item 2 of the Schedule of Fees. The Secretariat added that, to facilitate the registration of marks represented by non-traditional means, Offices and the International Bureau would need to exchange communications electronically. Proposed amendments to Rule 9 would allow a holder, whose basic mark was a sound mark represented by an electronic sound recording, such as MP3 file, the possibility to file an international application with that representation. The proposed amendments would enable the International Bureau to process the application, register the mark, publish and notify the designated Contracting Parties of the international registration. The proposed amendments did not have an impact on the Offices of the designated Contracting Parties, as it would still be for those Offices to determine whether the non-graphical means of representation is acceptable under their applicable laws and practices. Concerning the role of the Office of origin in the certification of the representation of the mark, the International Bureau proposed an amendment to the wording of Rule 9 to align it with Article 3 of the Protocol. The proposed amendment clarified that the Office of origin should certify that the mark in the international application corresponded to the basic mark, as required in the Protocol, rather than certify that it was the same. The Secretariat suggested that the proposed amendments enter into force on February 1, 2023, to allow the International Bureau sufficient time to make the required changes to its services and systems. The Secretariat acknowledged that there remained one issue to be resolved and that concerned the fact that a number of Contracting Parties still required a graphical representation of the mark and were either not allowed, by legislation or practice, or unable, due to technical constraints, to accept other means of representation. The Secretariat invited the Working Group to discuss the implications and effectiveness of introducing certain flexibilities into the rules that would allow users to meet various representation requirements. The Secretariat asked delegations to discuss how to solve the matter where the mark coming from the Office of origin was represented by one means, for example, a sound mark reproduced by graphical musical notation, and the designated Contracting Party required that the mark be represented by another means, for example, a digital sound file such as MP3.

64. The Chair opened the floor for comments on paragraphs 1 to 4 of the document concerning the introduction. After noting that there were no comments, the Chair opened the floor for comments on paragraphs 5 to 10 of the document concerning the proposed amendments to Rule 9 of the Regulations.

65. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for the preparation of the document and made a statement in response to the entire document. The Delegation indicated that the topic of the document was of crucial importance in light of the European Union's new harmonized legislation and that continued efforts by the International Bureau to address that complex issue in a comprehensive and solutions-oriented manner was greatly appreciated. The Delegation reiterated that the use and embracement of the latest technologies in processing applications would facilitate the modernization and digitalization of the Madrid System and would enhance its user-friendliness. Against that background, the Delegation welcomed the document for consideration and supported all the proposed amendments to Rule 9 of the Regulations, namely, the proposal to amend Rule 9(4)(a)(v) concerning the elimination of the graphic reproduction requirement and the introduction of a representation requirement. The Delegation also favored the proposed amendment to Rule 9(4)(a)(vii) concerning the elimination of the requirement to provide a second reproduction. Likewise, the Delegation supported the proposed amendment to Rule 9(5)(b)(iv) requiring the Office of origin to certify that the mark in the international application corresponded to the mark in the basic application or basic registration. Finally, the Delegation confirmed its support for the proposed consequential amendments to Rules 15(1)(iii), 17(2)(v), 32(1)(b) and 32(1)(c) and items 2.1.1 and 2.1.2 of the Schedule of Fees. As regards practical implications for the International Bureau, the Delegation was mindful of its estimation that it needed two years to develop, test and deploy the required changes to its services and systems. Nevertheless, it should be borne in mind that the Offices also needed to adapt their systems. The Delegation considered that a period of two years from the date on which the technical formats and specifications were established by WIPO, should also be sufficient for that purpose. If the technical formats and specifications were known by February 1, 2021, the Delegation could endorse the date of entry into force of the proposed amendments on February 1, 2023. As for introducing flexibilities that allow users to meet representation requirements in the designated Contracting Parties, the possible solution, namely, to allow a second representation of the mark, raised concerns related to legal certainty, practical feasibility and effectiveness. However, the Delegation was open to further exploring that solution and looked forward to hearing the opinions of the participants in the Working Group. The Delegation concluded by saying that it stood ready to work with the Secretariat, the members of the Madrid Union and interested users' associations in elaborating sound technical and legal solutions for adequate protection for non-traditional trademarks via the Madrid System.

66. The Delegation of Belarus referred to paragraphs 1 to 4 of the document and believed that it was vital to ensure that it was only possible to file international applications for new types of marks in the designated Contracting Parties where such marks would be accepted for protection. Otherwise, it would create additional costs for the designated Offices as they would need to issue refusals and, furthermore, it would discredit the Madrid System for users who, by having paid the fees, would not acquire any rights. The Delegation believed that it would be necessary to develop a system that could reduce or, ideally, completely exclude any risk of marks being filed and represented in a way that could not be protected. For those international marks submitted through the electronic filing system, the Contracting Parties that would not accept such marks could be automatically deactivated, with an explanation for users. For international applications filed on paper, the most efficient instrument would be the Fee Calculator where some Contracting Parties could become inactive for designation. Form MM2 could also be used for that purpose. The Contracting Parties that did not accept all types of marks could be presented, for example, in bold with a further footnote inviting applicants to consult the Madrid Member Profiles for more details. Members of the Madrid

System would be required to provide the most updated information in the profiles in that regard. The Delegation suggested that the International Bureau look into cooperating with the interested parties to consider more efficient ways to ensure that only the marks that could be protected were filed.

67. The Delegation of the Russian Federation, speaking on behalf of CACEEC, advised caution concerning the proposed amendments to Rule 9(5)(d)(iv). The Delegation noted that the current Rule 9(5)(d)(iv) stated that the Office of origin had to certify that the international mark was the same as the basic mark, and that the International Bureau had referred to certain Contracting Parties, that interpreted that, as meaning that the marks had to be absolutely the same. The Delegation explained that some Offices used that approach when certifying the international applications, by confirming that all elements of the international and basic marks were identical. The Delegation also noted that the International Bureau continued insisting that said Rule and such an interpretation went beyond what was foreseen by Article 3(1) of the Protocol. On that basis, the International Bureau proposed to amend Rule 9(5)(d)(iv) by requiring that the Office of origin certify that the mark in the international application correspond to the basic mark, instead of requiring it to certify that it was the same. The Delegation emphasized that such an amendment could lead to ambiguous situations for Offices and possible legal conflicts for applicants. The Delegation believed that the proposed concept of the correspondence of the mark was not sufficiently clear and that it should be defined in a more precise way. For example, there could be quite insignificant differences between the marks, like font design or the size of some elements that did not either substantively alter the mark or have a strong effect on its overall visual perception. Therefore, the Delegation was not, at that current time, able to support the suggested amendment to Rule 9(5)(d)(iv) of the Regulations and proposed to continue discussions to look at concrete proposals for another amendment.

68. The Delegation of the United Kingdom said that it would comment on the proposal in its entirety, rather than by paragraph. The Delegation thanked the International Bureau for preparing the document and welcomed the opportunity to consider how the Madrid System could take into account new means of representation. The Delegation mentioned that there was a degree of flexibility offered in the United Kingdom's trademark system in how marks could be represented and it was good to see that was being recognized as the way forward when seeking international protection through the Madrid System. As technology challenged and tested the boundaries of intellectual property, including the ways in which marks could be represented, the Delegation said it was essential that international systems were improved to enable them to adapt flexibly, as brand owners became increasingly more innovative in the way that they distinguished their brands. The changes that had been made in the previous few years to the United Kingdom's system ensured, for example, that sound marks could be registered as electronic files. That had ensured that the trademark regime was more adaptable and receptive to technological developments in how marks could be represented. The Delegation supported the proposed changes, in particular, to Rule 9(4)(a)(v) to eliminate the requirement to provide a second reproduction when the reproduction in the basic application or registration was in black and white and color was claimed. However, the Delegation shared concerns raised by other delegations about the specific change to Rule 9(5)(d)(iv) and was unable to support that proposal. The Delegation explained that, while that proposal was interesting, unfortunately, the law in the United Kingdom could not allow the mark to be certified for elements that were not contained in the original mark, or marks that could be perceived in any way other than as they had been filed for.

69. The Delegation of Madagascar thanked the Secretariat for the preparation of the document and said it would also make a general statement on its entirety. The Delegation said that the discussion on the representation of a mark within the Madrid System was interesting, particularly, as Madagascar was in the process of updating its own legislation to accept non-traditional marks. In that regard, the Delegation was looking at the types of representations of marks that were presented and the way in which they should be dealt with. With regard to

the proposal, the Delegation was in favor of flexibility with regard to the holders of non-traditional marks, but believed that, given the complexity of the subject, continued discussions were needed.

70. The Delegation of China indicated that it would provide a general statement on the document as a whole. The Delegation said that it was delighted to see the introduction of more flexibilities within the Madrid System. The proposed amendment to Rule 9(5)(d)(iv), requiring the Office of origin to certify that the international mark corresponded to the basic mark, rather than certifying that they were absolutely the same, provided the Office of origin with more flexibilities and autonomy. The Delegation also endorsed the proposed amendments to Rule 9(4)(a)(v), eliminating the requirement to provide a second reproduction of the mark in color when the reproduction in the basic application or registration was in black and white and color was claimed, as that would facilitate and streamline the process. However, the Delegation required further discussions on the proposed amendment to Rule 9(4)(a)(v) concerning the elimination of the graphic reproduction requirement and introduction of a representation requirement, as it would need to consider the impact that such a change would have on its Information and Communications Technology (ICT) infrastructure, and the time it would take to prepare for such changes. Furthermore, the Delegation noted that each Contracting Party had different understandings of non-traditional marks and of the relevant requirements.

71. The Delegation of Israel congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for the preparation of the documents. The Delegation said that it was in favor of the introduction of new means of representation of non-traditional marks to modernize the Madrid System and align it with the rapid developments in technology and trademark evolution. The law in Israel required a graphic representation of the mark and for non-traditional marks, such as sound marks, the applicant was required to file a digital sound file in addition to the graphic representation of the musical notation. The Delegation supported the flexibility regarding the means of the representation of the mark by providing for an option to submit a sound file along with the international application, allowing the applicant to meet the different representation requirements in the designated Contracting Parties. In view of that, the Delegation said it was open to eliminate the graphic representation requirement in its domestic legislation. According to its current examination practice regarding sound marks, a search for the sound file on the Office of origin's website was conducted. If the sound file was not available, the applicant would be required to submit such file during the examination stage. The Delegation was of the view that it was very important to promote the development of ICT infrastructure that would enable the exchange of digital files between the International Bureau and the Offices of the Contracting Parties. The Delegation confirmed that it agreed with all proposals in the document. With regard to the proposed amendments to the Schedule of Fees, the Delegation suggested that removing the difference between the fees for black and white marks and color marks should be considered, given that color marks no longer required special treatment.

72. The Delegation of France, after congratulating the Chair and Vice-Chairs on their election and thanking the Secretariat for the preparation of the documents, supported the statement made by the Delegation of the European Union. The Delegation informed that its domestic legislation was amended in 2019 and that new means of representation of marks had since been accepted. With regard to paragraphs 11 to 14 of the document, to date, the French Office requested the basic and international marks to be identical, rather than just to correspond, following Rule 9(5)(d)(iv). Therefore, the Delegation sought further guidance on the examination criteria for deciding on correspondence where there was not identity. The Delegation agreed that there should be the possibility to provide for a second representation of the mark when a designated Contracting Party could not accept new means of representation.

73. The Delegation of the Republic of Korea thanked the Secretariat for the preparation of the documents. The Delegation said that it understood that the purpose of the proposed amendments to the Regulations was to promote applicants to file international applications for non-traditional marks, such as sound marks, hologram marks and other non-graphical marks, and that it fully supported the amendments. However, the Delegation pointed out that establishing a relevant technical standard for the acceptable format of non-graphical representations might take time. Furthermore, it might take additional time for Offices to incorporate the newly established standards into their national and international filing systems. Therefore, the Delegation requested that the International Bureau proposed a date of entry into force of the amendment in accordance with the discussion or progress of the relevant WIPO Standards.

74. The Delegation of Mexico thanked the Secretariat for the preparation of the documents and congratulated the Chair and Vice-Chairs on their election. The Delegation supported the proposed amendments and explained that Mexico had begun accepting new means of representation of marks two years ago. The Delegation said that, although it had been challenging, the changes had been worth it. The Delegation also supported the proposed solution for countries that had not yet introduced new means of representation for non-traditional marks.

75. The Delegation of Belarus, commenting on paragraphs 11 to 14, supported the statements made by the Delegations of France and the Russian Federation. Although the Delegation understood that Rule 9(5)(d)(iv) did not correspond to Article 3(1), it believed that a simple replacement of the words “same mark” by words “mark that corresponds to” would not be the best solution. The Delegation considered the term “correspondence” too broad and said that it would like to see in Rule 9(5)(d)(iv) either some alternative option or an explanation of what correspondence meant in the context of that rule.

76. The Delegation of Japan thanked the Secretariat for the preparation of the documents and expressed its support for the amendments to Rule 9(4)(a)(v) and (vii) and for the proposal to harmonize Rule 9(5)(d)(iv) with the wording in Article 3 of the Protocol. The introduction of electronic data transfer would bring great benefit to the applicants and Offices. However, the acceptable formats and technical specifications for the representation of the mark should be specified in the Administrative Instructions before that introduction. It would take time for some Offices, including the Office of Japan, to revise their domestic law and develop their IP systems to handle the transfer of electronic data.

77. The Delegation of Australia congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for the organization of the meeting and preparation of the documents. The Delegation supported the proposed amendments to provide for new means of representing marks. The flexibility provided by the amendments would give users greater certainty and accessibility when using the Madrid System to protect non-traditional marks. The Delegation also supported the proposed amendment to align the wording of the Regulations and the Protocol in relation to the need for the subject mark to correspond to the mark in the basic application or basic registration. Finally, the Delegation agreed with the suggestion, made by the Delegation of Israel, to consider the elimination of different fees for marks in black and white, and color.

78. The Delegation of Switzerland referred to paragraphs 5 to 10 of the document and supported the amendments to the Regulations and to the Schedule of Fees, with regard to new means of representation, and the removal of the requirement for a second representation. The Delegation used the opportunity to explain a problem regarding the protection of marks in color. The Delegation indicated that the Madrid System envisaged that a national mark protected in color could be protected internationally in the same colors and that it was not possible for the international mark to contain more colors than the basic mark. The Delegation noted that some countries required a written description of the colors claimed, in addition to the color representation of the mark. Without a written description of the colors claimed, the mark was protected for all possible colors. The Delegation explained that some Offices of origin considered that the requirement of the written description of the colors at an international level was only necessary where the said written description of the colors was included in the basic mark, even if the basic mark was only protected in color. Therefore, the Delegation proposed a modification of Rule 9(4)(a)(vii) to solve that interpretation problem. The Delegation proposed to include the words “or protected in color” in the afore-mentioned Rule. The Delegation explained that the proposed amendment requires Offices that did not require a written description of the colors claimed at the national level to require such written description in the international application. The Delegation added that it was necessary to also amend Rule 9(5)(d)(iv) regarding the certification by the Office of origin, in particular, to add “or that the basic application or basic registration is protected in color”. Finally, the Delegation reiterated that the intention was to permit an international registration to be protected in color when the basic mark was protected in color without a color claim.

79. The Delegation of the United States of America thanked the Secretariat for the preparation of the documents and said it appreciated the need for the Working Group to consider possible amendments to Rule 9 to address the new means of representation of marks in international applications. The USPTO had an established non-traditional marks practice and had experienced problems over the years before it had decided on that practice. Nevertheless, the Delegation was open to discussion and finding areas of improvement. The USPTO’s experience with non-traditional marks found that the description of the mark was a critical part of defining what the mark was and identified the scope. The description was essential for public notice purposes and helped in searching and retrieving marks. The interested party could type the word, sound or scent in the mark description field in the USPTO trademark database to search for and retrieve marks comprising sounds or scents. For example, for marks comprising sound only, the USPTO did not require a drawing of the mark, as it did for a traditional mark, because there was no visual element to the mark. Instead, it required a recording of the sound itself and an accurate description of the sound. The sound recording was part of the record and the description of the mark explained what the sound was. While many sounds might be recognizable when heard, the description was important and helped to identify what the sound was when it was not clear from hearing the sound. For example, was it the sound of an airplane or the sound that a particular construction equipment made when operated? If the sound comprised music, with or without words, the USPTO encouraged the applicant to submit also the musical score sheet to understand better the sound and the mark description. Therefore, the Delegation recommended that the Working Group explore the possibility of implementing a description of the mark requirement for non-traditional marks. Currently, the description of the mark was optional in the international application. The Delegation also recommended Contracting Parties to consider adopting the requirement for a description of the mark for non-traditional marks in their national practices. In its role of Office of origin in certifying international applications, while recognizing the need to align Rule 9 with Article 3 of the Protocol, the Delegation recommended that the International Bureau considered defining or providing guidance on what constituted correspondence. The Delegation was concerned that an Office of origin might deem correspondence to include translations of the mark. If that was allowed, it would create difficulty in the likelihood of confusion analysis and central attack decision making. The Delegation believed that the word correspondence should not be read to mean a mark in a different language. If it did, the USPTO would consider it to mean a different

mark and would not certify it. As to the practical implications for the Offices, Contracting Parties should evaluate their practices, processes and IT systems and determine the time and resources needed to implement the changes to enable electronic filing, communication and transmission of new means of representation of marks. The Delegation explained that the USPTO would also be conducting a similar evaluation and implementing the relevant changes. The Delegation noted that the International Bureau had said that it would take two years to make the necessary changes to its infrastructure and had proposed the entry into force date of February 1, 2023. The USPTO however, would need more time and therefore, recommended February 1, 2024, as the implementation date.

80. The Delegation of India said it appreciated the Secretariat's efforts in the preparation of the documents and welcomed and supported the proposals in paragraph 9 of the document concerning the requirement for one representation of the mark in the case of color marks. The Delegation stated that, in general, it appreciated the reasons behind the proposed amendment to eliminate the graphic reproduction requirement and the requirement for the mark to be submitted in accordance with the Administrative Instructions. However, the Delegation remained uncertain about the manner of reproduction of non-traditional marks, because each State had its own domestic regulations regarding non-traditional marks and their representation. Furthermore, the WIPO Standards in that respect were not stable and did not provide enough detail about the reproduction of such marks. The Delegation desired to explore a harmonized manner of reproduction of non-traditional marks, as it was not clear how Offices in the designated Contracting Parties would receive and consider designations of such marks.

81. The Representative of JIPA congratulated the Chair and the Vice-Chairs on their election and thanked the Secretariat for the documents it had prepared for that session. The Representative, from a user's standpoint, welcomed the proposed amendment to Rule 9(5)(d)(iv) of the Regulations requiring the Office of origin to certify that the mark in the international application corresponded to the mark in the basic registration or basic application, instead of requiring the Office of origin to certify that it was the same. The Representative recalled that it had mentioned, in the Working Group sessions held in 2015, 2016 and 2017, that all Offices should consider a flexible reading of the term correspondence, in particular, in respect of a composite mark in English and Japanese Katakana or Hiragana in the basic application or registration and any part of such composite mark in an international application. The Representative said that the proposed amendments would help Japanese applicants to use the Madrid System and would result in more frequent use.

82. The Delegation of Germany agreed with the statement made by the Delegation of the European Union and said that the date of entry into force on February 1, 2023, could only be endorsed if the technical formats and specifications were known by February 1, 2021. A mere date, as requested by the Delegation of the United States of America, did not help because knowing the formats and specifications established by WIPO was needed before its IT systems could be adapted. Therefore, the Delegation suggested that the proposed wording be amended to indicate that, for example, the amendments would enter into force two, three or four years after the acceptable formats and technical specifications had been specified in the Administrative Instructions.

83. The Representative of CITMA congratulated the Chair and the Vice-Chairs and thanked the International Bureau for the preparation of the documents. The Representative welcomed the proposals that would make the system more flexible and, hopefully, allow for the filing of non-traditional marks in the future. Given that there were no requirements for substantial changes to be made locally in the Contracting Parties, the Representative expressed concern over the possibility that the proposed amendments create complexity, as users might designate countries where non-traditional marks were not allowed. If there was no warning in the Madrid System about countries that would not allow those types of marks, such complexities might incur and, therefore, the Representative suggested that the International Bureau created something like the Madrid Fee Calculator that could warn users when clicking countries that would object to such marks.

84. The Representative of MARQUES noted the concerns raised by delegations over the certification of the international mark in terms of the sameness of the non-traditional marks in the basic registration or basic application and the international application, and supported the need for complete clarity on that matter. The Representative referred to MARQUES' position paper and said that it generally supported several of the proposals in the document, believing that it was a good thing that brand owners were allowed to apply for non-traditional marks. The Representative agreed with the Representative of CITMA in that clarity of the process of filing was needed and that some kind of tool, put together by the International Bureau, could make it clear what countries allowed non-traditional marks and what countries did not, to avoid a waste of time and money. The Representative expressed concerns over the possibility of filing more than one reproduction of the mark, as that could give rise to a risk of creating uncertainties. The Representative reiterated that the entry into force was obviously important and was concerned about a date in 2024, mentioned by delegations. The Representative stressed a preference for a date sooner rather than later and requested Offices to prioritize IT developments.

85. The Delegation of Colombia commented on the entire document and supported the proposed amendments. The new means of representation for non-traditional marks were a good way to move forward for the Madrid System. The Delegation said that the amendments would benefit applicants of non-traditional trademarks; in particular, it would increase the use of the Madrid System among its nationals because non-traditional marks were being more frequently used. The Delegation explained that its national regulations already considered new non-graphical means of representations for non-traditional marks. The Delegation said that it was important to encourage the development of technological tools for new means of representation and that, while it understood that some members would need to adjust their IT systems, it believed that the proposed timeframe for adoption was acceptable. However, the Delegation mentioned that the analysis of the correspondence required more study.

86. The Delegation of Canada congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for the preparation and organization of the meeting. The Delegation welcomed and supported the adoption of the proposed amendments to the Regulations concerning the new means of representation and said that such changes would not require any significant changes to the Canadian legislation, Office practices or IT systems. The Delegation highlighted that the Canadian legislation allowed for the application and registration of non-traditional trademarks and did not require a graphic representation in all instances. Additionally, Canada, as an Office of origin, stood ready to certify that the mark in the international application corresponded to the trademark in the basic application or registration instead of requiring it be the same or identical in both representations and/or descriptions.

87. The Chair invited the Secretariat to take the floor to comment on some of the interventions made by the delegations.

88. The Secretariat noted that a number of delegations had agreed on the proposed amendments to Rule 9(5), but also that a number of delegations had raised concerns. The Secretariat explained that the proposed amendment to replace the word “same” with “corresponds” had been discussed in previous Working Group sessions, during the Roundtable, and that those discussions could continue at the next session of the Working Group, so as to provide more information on the word “same” versus the word “correspond”. The Secretariat wanted to remind delegations that, while the word “correspond” was in the Treaty, the Regulations referred to “same”. The Treaty and the Regulations were meant to be aligned, but it seemed that some delegations were interpreting the term “same” to be more restrictive than the term “correspond”. The Secretariat said that Offices needed to bear in mind the interest of the users, especially those that would like to file an international application based on an older national right, which might be reproduced in low quality paper format. The basic mark right might also be in a different font because that was the font used at that time. If Offices applied a very strict identity requirement, it would make it difficult for those holders to use the Madrid System because they would have to either go ahead with the mark as it looked, back when it was inscribed in the national register, or file a new national mark to be used as basis for an international application. However, the specific proposal concerning Rule 9(5)(d) could be further discussed. In response to delegations and representatives that had suggested the introduction of tools to make it easier for users to identify Offices that accepted certain types of marks, the Secretariat drew attention to the Madrid Member Profiles Database, available on WIPO’s website in the IP Portal. The Secretariat explained that the database had a new look and feel and that the International Bureau had been in consultations with avid users of the Madrid System, on the private practice side, to understand better what information would be useful and of interest to users of the Madrid System. The current Madrid Member Profiles Database contained information provided by over 90 Offices and included specific requirements that needed to be met, types of marks that were accepted and details concerning opposition, cancellation and other proceedings. The Secretariat further informed that the International Bureau would soon be sending out a revised questionnaire for Offices and urged delegations to reply. The information provided by Offices would be extremely useful for users to consider before filing an international application and designating Contracting Parties. Turning to the comments made by the Delegation of the European Union, and supported by a number of delegations, on the specific formats and technical specifications, the Secretariat clarified that those would be specified in the Administrative Instructions. The Secretariat noted the comments made by the Delegation of Germany concerning the timing of that information and the need for at least two years to adapt its IT systems. The Secretariat explained that the Administrative Instructions would be amended in a consultation process, under which the Director General of WIPO would send out the proposed amendments and invite Offices to make comments. The Secretariat stated that the proposed new Administrative Instructions could be sent out by the second quarter of 2021. The Administrative Instructions would cover the acceptable formats in line with applicable WIPO Standards. The Secretariat recalled the discussions in the previous session of the Working Group, where the findings of a survey based on formats as accepted by Offices, were presented. Acceptable formats were JPEG, MP3 and MP4 and those would be specified in the proposed amendments to the Administrative Instructions. The Secretariat acknowledged that the date of entry into force of February 1, 2023, proposed in the document might be particularly difficult for some members, and noted that the date reflected a balance between 2024, as requested by the Delegation of the United States of America, and those delegations and representatives that wanted it sooner than 2023. The Secretariat, therefore, sought clarification from the Delegation of the United States of America on whether 2023 would be feasible. The Secretariat addressed the proposal made by the Delegation of Switzerland concerning a further amendment to the proposed text of Rule 9(4)(a)(vii) and presented an amended version on the screen for comments.

89. The Delegation of Switzerland thanked the Secretariat and said that it required further clarification on the English version of the proposal regarding the use and meaning of the wording “or is meant to be protected” and “is protected”.

90. The Delegation of Belarus noted that the Madrid Member Profiles Database was useful, but that users tended to ignore written information and, therefore, the Delegation preferred the idea to have a technical tool that made it impossible to designate a Contracting Party that did not accept a certain type of mark.
91. The Secretariat acknowledged that the Delegation of Belarus was suggesting that there should be a more interactive nature between the Madrid Member Profiles Database and the application form, in the sense that that the application form prompted the user to do the right thing, or prevented the user from doing the wrong thing. The Secretariat said that such was the direction in which the International Bureau intended to go. The Secretariat highlighted the fact that the Madrid Application Assistant had already been deployed and that further technological developments were intended, over the coming months and years, to make the international application form much more interactive, not just in respect of that particular issue but also in respect to other relevant issues. The Secretariat said that, while it took on board the suggestion made by the Delegation of Belarus, it was not in a position to say that such technological advances would be ready on the proposed date of entry into force of the relevant rules.
92. In response to the Delegation of Switzerland, the Chair suggested that the proposed additional wording in Rule 9(4)(a)(vii) could be further clarified to address its concerns.
93. The Delegation of Switzerland indicated that its proposal was intended to refer to the basic application or basic registration. The Delegation added that it would agree with wording in the English version that referred to both an application filed in color and a registration in color.
94. The Chair clarified that the text would be first agreed in English and then translated into French and Spanish.
95. The Secretariat presented a new version of the proposed amendments to Rule 9(4)(d)(vii) for consideration and comments.
96. The Delegation of Switzerland expressed concerns over the comprehension of its proposal as translated into English.
97. The Delegation of the United States of America confirmed that, if the Administrative Instructions were sent by the second quarter of 2021, it could support the implementation date of February 1, 2023.
98. The Chair summarized the discussions on new means of representation and noted that there was agreement on the proposed amendments to Rule 9(4)(a)(v) and on the consequential proposed amendments to Rules 15, 17 and 32, and to the Schedule of Fees. The Working Group had not reached consensus on the proposed amendment to Rule 9(5)(d)(iv). Some delegations had agreed and some had disagreed. Some delegations had raised questions. Therefore, the Chair suggested that the Working Group continue the discussions on that subject at its next session. The Chair recalled the proposal made by the Delegation of Switzerland for a further amendment to Rule (9)(4)(a)(vii) and the consequential amendment to Rule 9(5)(d)(v), and the proposed text was displayed for comments. The Chair also presented a draft decision paragraph for consideration.
99. The Delegation of Germany sought further clarification on the entry into force date.

100. The Delegation of Belarus commented on the proposed amendment of Rule 9(5)(d)(iv) and suggested that the word “corresponds” be replaced with the words “almost exactly the same” noting that was the definition given in the first page of the Google results for the word “correspond”. The word correspond meant to match almost exactly as defined in the Oxford Dictionary. The Delegation said that it had consulted with other delegations, in particular, with the Delegation of the Russian Federation and noted that if the word corresponds was replaced with the words “almost exactly the same”, it would be possible to progress with the amendment of the Rule. Otherwise, discussions could be continued in the next Working Group session.

101. The Chair, in response to the Delegation of Belarus, explained that there was no agreement on the terms that would be used in Rule 9(5)(d)(iv) and that the debate on the wording would continue at that next session.

102. The Delegation of Japan expressed concern about allowing a second form of representation of a non-graphical mark, as it could cause confusion and disrupt examination of the mark in the designated Contracting Parties, especially, where correspondence between the original and second representation of the mark was not clear. The Delegation suggested establishing a provision that would allow the holder to select or amend the representation of the mark that would be notified to a given Office, to meet the representation requirement in the designated Contracting Party concerned.

103. The Chair, in response to the Delegation of Japan, explained that further discussions on that topic would continue at the next meeting, as there was no agreement at that time.

104. The Delegation of the European Union, speaking on behalf of the European Union and its member states, referred to the Chair’s draft decision paragraph and asked whether it would be possible to introduce a reference to the entry into force of the Administrative Instructions. The draft merely foresaw that the Administrative Instructions would be released for consultation during the second quarter, but it was uncertain as to the date on which they would enter into force.

105. The Chair, in response to the Delegation of the European Union, explained that the revised formats underlying the proposals would be nothing tremendously new. The WIPO Standards already specified these formats. The entry into force of the revised Administrative Instructions would depend on what Member States had to say about them. Ultimately, a reference to a date of entry into force would apply to Member States, not to the Director General. A fixed date for consultation would be an ultimatum for Member States, rather than for the International Bureau. Therefore, Member States would need to be comfortable with the concept of a fixed date for entry into force.

106. The Delegation of the European Union, speaking on behalf of the European Union and its member states, clarified that it wanted to exclude a possible scenario where the Administrative Instructions were finally agreed upon, for example, in June 2022, or even later, and then the Regulations entered into force in February 2023. The Delegation asked whether that theoretical situation could be excluded.

107. The Chair suggested including a three-month deadline for the consultation with the Offices of the Contracting Parties, following the circulation of the proposed Administrative Instructions.

108. The Delegation of Japan reiterated its request to establish a possible provision in the Administrative Instructions that would allow the applicant to select a mark represented by means that were accepted by the designated Office.

109. The Chair responded to the Delegation of Japan and stated that such matter had not been discussed in a way that could be concluded in that session and advised that such matter instead be discussed at the next session.

110. The Delegation of Germany expressed concerns over the time it would need to adapt its IT systems and, in particular, reiterated that work on adapting its systems could not start until the format requirements in the Administrative Instructions were known. The Delegation asked the Chair to repeat the date mentioned for entry into force of the Administrative Instructions.

111. The Chair clarified that the end of consultations and the entry into force were two different dates. The date of entry into force would be February 1, 2023. The consultations would take place a long time before that. The acceptable formats would be known as soon as the proposed Administrative Instructions were circulated which would be as early as April 2021 and, at the very latest, in June 2021.

112. The Delegation of Germany said that formats in the revised Administrative Instructions might change during the consultation process; so, it would not be able to work on its systems until the end of the consultation phase. That was why the entry into force of the amendments should be subject to the Administrative Instructions entering into force in June 2021. Such scenario would allow for one year and seven months; otherwise, the Administrative Instructions should be sent earlier, for example, in the first quarter of 2021, with a deadline for consultations three months later, which was still not the entry into force.

113. On behalf of the Secretariat, the Chair proposed that the Administrative Instructions be sent in the first quarter of 2021, for a two-month consultation period, at the expiry of which the final version would be sent to members. The Chair reiterated that it did not mean a change to the proposed entry into force on February 1, 2023. However, Members would know the proposed formats during the first six months of 2021, which would give Offices 18 to 19 months to adapt their systems.

114. The Delegation of Germany asked for date on which the final version would be sent out to the Offices because that would be the date on which it could start adapting its systems.

115. The Chair summarized the discussions and explained that the revised version of the Administrative Instructions would be sent to Offices in the second quarter of 2021.

116. The Working Group:

- (i) recommended to the Madrid Union Assembly the adoption of the proposed amendments to the Regulations, as amended by the Working Group and as set out in Annex II to the present document, for entry into force on February 1, 2023;
- (ii) requested that the Director General send, in the first quarter of 2021, proposed amendments to the Administrative Instructions dealing with acceptable formats for representing marks for a two-month consultation period with the Offices of the Contracting Parties, and send the final version of the Administrative Instructions to these Offices in the second quarter of 2021; and,
- (iii) agreed to continue discussions on the role of the Office of origin in the certification of the representation of the mark and on possible flexibilities allowing users to meet representation requirements in the designated Contracting Parties.

AGENDA ITEM 6: PARTIAL REPLACEMENT

117. Discussions were based on document MM/LD/WG/18/4.

118. The Secretariat introduced document MM/LD/WG/18/4 and recalled that the Working Group, in the previous session held in 2019, agreed to include in Rule 21 the key principles governing replacement, which would enter into force on February 1, 2021. In that previous session, the Working Group could not reach consensus on the principle of partial replacement and requested that the International Bureau prepare a document on partial replacement for discussion at its next session. The document at hand described the historical records of various diplomatic conferences and information set out in the draft Regulations discussed in the Working Group for the Application of the Madrid Protocol, all of which expressly mentioned and gave examples of partial replacement. Accordingly, the International Bureau proposed an amendment to Rule 21 to acknowledge the possibility of partial replacement. Taking into consideration that some Contracting Parties would need to amend their domestic legislation and ICT systems, the International Bureau proposed to introduce a transitional provision in Rule 40 that would not require Offices to apply the new provision until February 1, 2025. The document proposed that the amendments enter into force two months following their formal adoption by the Madrid Union Assembly. However, following the recent discussion on the document on the proposed amendments in document MM/LD/WG/18/2/Rev., which had the same wording, for the sake of certainty, the Secretariat suggested that the amendments to Rules 21 and 40 enter into force on November 1, 2021. There was one additional change, which only referred to the French version, and the Secretariat asked the Chair to read that out.

119. As requested by the Secretariat, the Chair read out the change to the French version of paragraph 3(d) of Rule 21, in document MM/LD/WG/18/4, which had been amended to better align with the English and Spanish versions.

120. The Chair opened the floor for general comments on the document.

121. The Delegation of the United Kingdom welcomed the proposed changes to Rule 21 in document MM/LD/WG/18/4 covering partial replacement. Those changes made it clear that replacement might concern only some goods or services in a national or regional registration. The Delegation said that the practice in the United Kingdom already allowed for that and it was good to see that practice reflected more broadly in the Madrid System. Users of the Madrid System in the United Kingdom had also made it clear that it was a welcomed change.

122. The Delegation of China said that the document provided an overview of the Madrid System's process of partial replacement and had clarified the principles on partial replacement. It was clear that replacement could concern some goods and services in a national or regional registration. The Delegation endorsed the principle of partial replacement, however, it also acknowledged that some Contracting Parties might need to revise their national legislation and ICT systems and, therefore, agreed that there should be a transitional provision, so that Contracting Parties could have time to make the necessary preparations.

123. The Delegation of Japan expressed its appreciation to the International Bureau for its great efforts in considering and proposing the amendments to the Regulations. The Delegation believed that a unified interpretation of the rules under the Madrid System would be most beneficial for users and fully supported the proposed amendments.

124. The Delegation of the European Union, speaking on behalf of the European Union and its members states, reiterated its concerns as to the format of the proposed amendments, and stated that it was not ready to endorse that a national or regional registration be partially replaced by an international registration. At the same time, the Delegation agreed that replacement would benefit from a harmonization exercise and it supported the continuation of discussions aimed at finding a consensual solution. The Delegation had studied the explanation in the document concerning the different interpretations of Article 4*bis* of the Protocol and agreed that the flexible reading, which acknowledged partial replacement in respect of goods and services covered by both the international registration and the national or regional registration, was more in line with the purpose of replacement, which was to simplify the management of trademark portfolios for trademark holders. The Delegation highlighted that its concerns were related to implications necessitating changes in ICT systems and the complications in the examination of such requests, where the overlap was not straightforward. Against that background, the Delegation welcomed the proposal presented by the Secretariat to allow Offices time to make the necessary changes and prepare for ramifications in practices by means of introducing a transitional period provision in Rule 40, where no Office would be obliged to apply the amended provision on partial replacement before February 1, 2025. In light of the context of the proposed solution to achieve increased harmonization and replacement, the Delegation was in the position to endorse the concrete proposals made by the International Bureau.

125. The Delegation of New Zealand congratulated the Chair and Vice-Chairs on their election and the Secretariat for the high quality documents. The Delegation agreed with the proposed amendments to Rules 21 and 40. The proposed amendment to Rule 21 would help provide additional certainty by clarifying that partial replacement was possible, which would make replacement more beneficial for users of the Madrid System. The Delegation appreciated the additional information on partial replacement the Secretariat had provided in the document, which had built on earlier discussions of the Working Group.

126. The Delegation of Austria congratulated the Chair and Vice-Chairs on their election and the Secretariat for the organization of the session. The Delegation lent its support to the Delegation of the European Union and said that the Austrian Patent Office applied a literal interpretation of Article 4*bis* of the Protocol at that stage. However, to achieve an increased harmonization, it would consider changing its practice to allow for partial replacement.

127. The Delegation of the United States of America recognized that partial replacement offered flexibility to holders, namely the ability to pick and choose the goods and services to be replaced. It also allowed holders to decide whether to maintain the national registration, after the designated Office had taken note of replacement, or not. The USPTO did not offer partial replacement. The holder was required to delete or narrow the goods and services in the national registration that were not covered by the registered extension of protection. The United States of America recognized that its practice did not benefit the holder because the holder was forced to lose trademark rights for the goods and services no longer covered by the national registration. In other areas of its trademark practice, the USPTO did offer a partial option, for example, the USPTO allowed partial refusals, partial requirements, partial abandonment, and division of applications and registrations. Therefore, the Delegation could agree to take note of partial replacement of the national registration by the registered extension of protection. That would allow holders to decide whether to retain trademark protection for the goods and services remaining in the national registrations or to let the national registrations expire. However, the Delegation suggested a small language change in draft Rule 21(3)(d). The proposed language read: "Replacement may concern 'some only' of the goods and services listed in the national or regional registration". The wording "some only" was awkward, and changing it to "only some" was recommended. The Delegation welcomed and supported the proposal for a transitional period of February 1, 2025.

128. The Chair said that the proposal by the Delegation of the United States of America to change the wording “some only” to “only some” was acceptable. The Chair noted consensus on all matters discussed.

129. The Working Group agreed to recommend to the Madrid Union Assembly the adoption of the proposed amendments to the Regulations, as amended by the Working Group and as set out in Annex III to this document, with November 1, 2021, as the date of their entry into force.

AGENDA ITEM 7: STUDY OF THE COST IMPLICATIONS AND TECHNICAL FEASIBILITY OF THE GRADUAL INTRODUCTION OF THE ARABIC, CHINESE AND RUSSIAN LANGUAGES INTO THE MADRID SYSTEM

130. Discussions were based on documents MM/LD/WG/18/5 and MM/LD/WG/18/5 Corr³.

131. The Secretariat introduced documents MM/LD/WG/18/5 and MM/LD/WG/18/5 Corr. and recalled that the Working Group, at its previous session, had requested the Secretariat to prepare, for discussion at its following session, a comprehensive study of the cost implications and technical feasibility, including an assessment of the currently available WIPO tools, for the gradual introduction of the Arabic, Chinese and Russian languages into the Madrid System. The document discussed five options for the introduction of Arabic, Chinese and Russian languages into the Madrid System, namely as filing language, processing language, transmission language, communication language, and working language. The document stated that, from a technical point of view, all the afore-mentioned options were feasible. The document also stated that, while some options were less complex and costly, others were more so. In an attempt to find a concrete way forward, the document proposed the introduction of Arabic, Chinese and Russian as filing languages, with an assessment of the operational and financial impact after five years to decide on possible next steps. In the view of the Secretariat, the introduction of Arabic, Chinese and Russian as filing languages would be of particular benefit for local users, as it would allow them to file their applications in their own language, without having to carry the burden of its translation into English, French or Spanish. At the same time, it would be the least complex and financially onerous option to implement.

132. The Chair suggested that delegations comment on the document, section by section, starting with the introduction paragraphs 1 to 3, followed by the cost implications. However, general statements were also welcomed.

133. The Delegation of the Russian Federation stated that the issue of introducing new languages into the Madrid System was substantive and complex, and needed to be discussed in the most transparent and inclusive way. In that regard, the Delegation said it was convinced that the issue could not be discussed by paragraphs, as the Chairman had proposed. The Delegation reserved its right and possibility to make general statements in case the discussion by paragraphs took place.

134. The Delegation of the Russian Federation, speaking on behalf of CACEEC, noted that all the countries in its Regional Group were members of the Madrid System. The Delegation highlighted the importance of developing the language regime of the Madrid System by introducing new working languages to ensure the accessibility of the Madrid System for the users. The Delegation recalled that multilingualism was one of the key values of the United Nations (UN) and WIPO, enabling to increase the effectiveness of the multilateral system. The Russian, Arabic, Chinese, English, French and Spanish languages were the official languages of both the UN and WIPO. The Delegation also said that the General Assembly of the UN regularly emphasized the importance of multilingualism as a fundamental

³ Document MM/LD/WG/18/5 Corr. concerns the English version only.

value for achieving the UN goals, and that multilingualism of the organization should be reflected in its internal operating procedures to support the implementation of its mandate and enhance its efficiency, effectiveness and transparency. In that regard, the Delegation advocated leveling the existing disproportion and providing users with access to the most requested services in all official languages of the Organization. The Delegation recalled that its Regional Group supported the need to conduct a comprehensive study of the language regime of the Madrid System, to analyze the current situation and evaluate the costs of introducing new languages. However, the Delegation noted that the document did not contain the substantive components that would be necessary and important to reflect. The Delegation said that, having studied the document in detail, experts from national Offices had noted that the study was fragmentary and did not meet the principles of inclusiveness and transparency. The Regional Group was surprised by the fact that the documents of the current session did not include the proposals of the Member States of the Madrid Union, based on which the study was carried out, namely, the proposal of the Russian Federation, China and the Group of Arab countries. The Delegation noted that the Secretariat referred exclusively to the previous session of the Working Group, which might give an incorrect impression of the history of the issue. In that regard, the Delegation reminded of the need to apply a credible approach to the complex analysis of the required data. When substantive discussion on the language issue took place at the previous session, the Delegation asked the Secretariat to make the necessary adjustments to the study, as well as to make available all three proposals concerning Russian, Arabic and Chinese languages on the official web page of the Working Group, possibly, in the "Other related documents" section. In addition, the Delegation stated that there was also the wrong impression that the States that initiated the introduction of new languages into the Madrid System could agree to the limited nature of their use; however, there had been no consultations either with the countries of CACEEC or with the Regional Coordinator on that matter. The Delegation recalled that the mandate entrusted to the International Bureau at the previous session was to conduct a comprehensive study on the gradual introduction of new languages into the Madrid System. Since the document did not refer to a clear timeframe for such a gradual introduction, the Delegation considered that the fragmentation of the language regime of the Madrid System was unacceptable and that all six official languages of the UN should have the identical status. The Delegation noted that the current version of the document, provided by the International Bureau, contained neither justification for the costs nor detailed information on how those amounts were calculated. The Delegation believed that the document was incomplete in the absence of the analysis of the current situation with the language regime. The Delegation shared the position that it was important to ensure the sustainability of the Madrid System, but recalled that the existing practice of introducing new languages was not based on the principle of minimizing translation costs. The Delegation considered that the possibilities of automated translation and internal resources of the Organization for providing translation had not been sufficiently taken into account. The Delegation clarified that, on average, 92 per cent of experts working in the national Offices of CACEEC were fluent in Russian, and that the translation process could be optimized with the support of the Offices of the interested countries. In particular, the Contracting Parties from the region expressed their readiness to provide all possible assistance in adapting IT tools to use the Cyrillic alphabet and to propose Russian-speaking experts to work as candidates to work on translations. The Delegation also reminded that, for instance, the WIPO online tool Madrid Goods and Services Manager (MGS), as well as the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification), had Russian language versions. Moreover, the WIPO Translate platform was already actively and effectively used by a number of the UN specialized agencies. The Delegation concluded that the issue required careful discussion and close attention to the details in the implementation of introducing new languages and indicated that CACEEC still had a number of issues that required more detailed consideration and meaningful analysis.

135. The Delegation of Belarus fully supported both statements made by the Coordinator of CACEEC and the Delegation of the Russian Federation, and believed that the proposed document should be considered as a whole and not paragraph by paragraph. The Delegation stated that Belarus was one of the countries where Russian was an official state language. For that reason, the Delegation felt its duty to speak out on the issue, considered in the framework of document MM/LD/WG/18/5, on the introduction of Arabic, Chinese, and Russian languages to the Madrid System. The Delegation emphasized that by speaking in support of introducing the Russian language it was also supporting the introduction of Arabic and Chinese languages, being on an equal footing and pursuing the same goals. The Delegation noted that, unfortunately, its expectations for the document were not met. In addition to clarifying the approaches of the International Bureau, the document should have provided a clear picture of what financial and technical resources would be required for each of the options when introducing new languages. From the Delegation's point of view, the document lacked transparency in that regard. The possible plan of further actions, proposed in the fourth part of the document, did not appear acceptable for bringing together the information contained in the various parts of the document. The Delegation had concluded that the cost of introducing the three new languages, as processing languages, was only slightly higher than introducing those languages as filing languages. According to the Delegation's calculations, there was no significant difference between the cost of the filing languages and transmission languages. The year 2020 was taken as the basis for the calculation, and the document presented the operations cost of the International Bureau for that year. The Delegation believed that given the insignificant difference in costs, it should be possible to start the introduction of Arabic, Chinese and Russian as transmission languages. The Delegation emphasized, however, that its main goal remained the introduction of Russian as a working language of the Madrid System as quickly as possible. The Delegation also made some comments on the timeframes indicated in the document. After having analyzed the timeframes provided in paragraphs 15, 16 and 23 of the document, the Delegation concluded that it might take more than eight years before a decision on the possible introduction of new languages, with the higher status of transmission language, could be taken. Moreover, according to paragraph 16 of the document, such a decision might not be taken at all. The Delegation, unfortunately, could not accept the proposal outlined in the fourth part of the document, as that would actually mean to pause the decision on new languages for a long, if not indefinite, period. The Delegation stated its belief that such situation should not be allowed to happen and that it would be necessary to find a means to solve it. If such a decision was not possible during the current session, the Delegation suggested that it be postponed until the next session of the Working Group, which could reach a decision that would suit all interested parties. Finally, the Delegation drew attention to the fact that the Regional System for Trademark Registration within the Eurasian Economic Union was expected to start operations in 2022, bringing together Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation. The Republic of Moldova and Uzbekistan could also be included as observers. The working language of the Eurasian Economic Union was Russian. Naturally, a new trademark registration system would certainly lead to an outflow of a certain number of filings from the earlier created systems. Since that would inevitably happen, it would be in the interest of organizations administering earlier created systems to make every effort to minimize that outflow. At the same time, it would be the duty of the local Offices, in particular, the Offices from the States of the Eurasian Economic Union, to provide their citizens and legal entities with the most efficient, convenient and simple acquisition of trademark rights, including the international registration procedure under the Madrid System. That was the reason behind the Delegation making efforts to introduce the Russian language as a working language of the Madrid System as soon as possible. The Delegation believed that the Arabic and Chinese colleagues could provide their own arguments in favor of introducing their respective languages as working languages into the Madrid System.

136. The Delegation of Bahrain congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for organizing the session. The Delegation commented on the introduction of Arabic as one of the official languages in the Madrid System, noting that Arabic was one of the official languages of the UN and was spoken by 318 million people, 240 million of which were members of the Madrid System. Arabic was one of the five most widely spoken languages in the world and the introduction of the Arabic language, as one of the official languages, would facilitate the filing of applications and increase the number of marks registered in the system. The Delegation thanked the Secretariat for carrying out the study on the financial implications and technical feasibility of adding Arabic, Chinese, and Russian to the Madrid System. After having looked at those documents, the Delegation said it had a number of questions. Firstly, with regard to the decision made in the previous session, the study should include a comprehensive analysis about the financial implications and feasibility of the progressive introduction of Arabic, Chinese, and Russian, the Delegation asked the Secretariat to indicate the measures that would be taken to ensure that progressive introduction. Secondly, with regard to the different options and the analysis of the financial implications, the Delegation considered there to be a non-harmonized and incoherent introduction. For example, it would be possible to file an application in one language and then communicate in another language. The Delegation understood the technical challenges and had hoped that the languages would be introduced in a global way, which would facilitate translation. The Delegation asked the Secretariat to explain the various complexities that were mentioned in the document. Thirdly, regarding the tools that were proposed to facilitate the automatic translation, the Delegation understood that it was important for such tools to be of guaranteed quality and asked for more information on that issue, taking into account the current technology available. Fourthly, with regard to the working languages, the Delegation wanted to know what the differences were between the working language and the communication language, and the meaning in paragraph 17 of Annex I. Finally, the Delegation asked the Working Group to request the Secretariat to consult the various countries about that issue before the next session of the Working Group. The Delegation also proposed that the Working Group discuss the implications of the introduction of new languages in terms of the financial impact and technical feasibility. The Delegation stated that it wanted the three languages to be given an equal status to those of the other official languages, and a broadening of the linguistic coverage of WIPO in the future. The Delegation believed that the introduction of all of the official UN languages would help with international cooperation and would reinforce harmonization between countries according to the UN Charter.

137. The Delegation of Azerbaijan supported the statement made by the Delegation of the Russian Federation speaking on behalf of CACEEC. The inclusion of Russian as an official language of the Madrid System was a necessary and desirable step for the countries of the Organization since the Russian language was broadly used. The introduction of the Russian language as one of the working languages of the Madrid System would help to ensure an increase in the quality of services and applications. Working together with Russian-speaking experts would help speed up the process. With regard to the financial consequences and technical possibilities of the inclusion of new languages in the Madrid System and the stage-by-stage implementation, the Delegation believed that such was a good approach to ensure that language barriers were overcome. It would also broaden the use of the Madrid System and the scope of WIPO services. Linguistic flexibility would ensure that WIPO achieve its multilingualism goals and that all of the official languages of the Organization were on an equal basis. In conclusion, the Delegation strongly supported the inclusion of Russian, Arabic and Chinese within the Madrid System.

138. The Delegation of China remained of the view that the introduction of the three languages into the Madrid System as working languages was not only in line with the multilingual policies of the UN and WIPO, but also conducive to the sustainable development of the Madrid System. The Delegation informed that, in March 2019, the China Trademark Association (CTA) conducted an online survey on the addition of the Chinese language as a working language to the Madrid System. The questionnaire mainly included the advantages of introducing Chinese as a working language into the Madrid System and asked whether it would affect the responders' choice of using the Madrid System. The participants in the survey included corporate trademark managers, trademark agencies and other relevant practitioners. Ninety-eight per cent of the participants believed that adding Chinese as a working language would be more convenient for the use of the Madrid System, and 95 per cent said that, after adding Chinese as a working language, they would give more consideration to the use of the Madrid System when registering trademarks abroad. According to the International Bureau, China's Madrid market share in 2017 was only 36 per cent of overseas trademark filings, a relatively small number. Based on the results of that survey, the Delegation foresaw that, if the Chinese language was introduced to the Madrid System, the proportion of Chinese applicants using the Madrid System for overseas filing would likely increase by 61 per cent, which would greatly benefit the development of WIPO's services given the pandemic situation. New languages would attract more users and would benefit the long-term development of the Madrid System. The Delegation mentioned that the document included a possible way forward, as well as proposed amendments to the Regulations, and suggested that the proposed amendments entered into force no earlier than February 1, 2024. The Delegation understood that the introduction of new languages into the Madrid System would involve complex system modifications and possible financial implications. However, considering that WIPO, as the only specialized agency in the UN System dealing with intellectual property rights and innovation, would have a fairly high-level degree of capacity and efficiency in applying the new technology. With that in mind, the Delegation indicated that it would do its best to work with the International Bureau, and that the date set for entry into force, was not too far into the future. The Delegation noted that China would work with the International Bureau, especially on the Madrid Monitor interface, the Madrid Member Profiles Database and the international Madrid Application Assistant tool, as well as other translation-related tasks, and expressed its belief that other members would do the same. The China National Intellectual Property Administration (CNIPA) had been working for a long time with the Madrid Team at WIPO, including providing Chinese translations of the Chinese domestic goods and services for the MGS database, as well as of the annual revision of the alphabetical list of the Nice Classification. In addition, China had laid the groundwork for the introduction of the Chinese language as a working language into the Madrid System, such as developing an online application system for Madrid international registrations, which covered the whole process of the Madrid international application and receipt of the notification of territorial extension of the International Bureau electronically. The Delegation believed that those efforts and cooperation would greatly reduce the complexity of communication and cost of introducing new languages. The Delegation recalled that the Working Group had, at the sixteenth and seventeenth sessions, discussed the overall revision of the working languages translation policy. While the documents compiled for that session did not propose a solution to that problem, the Delegation noted that the new Director General, Mr. Daren Tang, had stated in his address to the Working Group, that the introduction of new languages in the Madrid System was not only inevitable due to the geographical expansion, but also desirable because it brought the Madrid System closer to all users. That showed that the Director General attached great importance to this matter. However, the Delegation did not see the same level of ambition in the current document and, therefore, sought clarification from the Secretariat of the current language policy of the Madrid System for French and Spanish translation. For example, the Delegation questioned whether external contracted translation services were used or whether it was machine translation. In addition, the Delegation recalled that some delegations had stressed that the resistance and barrier to the introduction of new languages was cost, and the Delegation sought clarification of the costs of filing an international application if Chinese, Arabic and Russian were introduced, and the costs of filing an

application in the current working languages of English, French and Spanish. More importantly, the Delegation highlighted that it was not a technical issue but one of equal status of all UN languages. The Delegation was of the view that the proposal to introduce Chinese, Arabic and Russian into the Madrid System as filing languages failed to meet the requirements of relevant delegations to introduce the three languages into the Madrid System as working languages equally, and the current proposed implementation took too long to enter into force. Therefore, the Delegation proposed, subject to objection from the Working Group, that such concerns be reflected in the decision text of that session. The Delegation also asked the Secretariat to consult with the relevant countries on the cost analysis to introduce the three languages, provide a cost estimate and to assess the current language tools and the internal translation capacities. The Delegation believed that the cost implication and the technical feasibility should be further discussed at the next session, including the assessment of current WIPO tools, and the gradual introduction of Chinese, Arabic and Russian languages into the Madrid System, to give them the same status as the other UN languages.

139. The Delegation of Kyrgyzstan congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for preparing the document. The Delegation supported the statement made by the Delegation of the Russian Federation, speaking on behalf of CACEEC. The Delegation expressed the belief that the initiated work on the addition of Russian, Arabic and Chinese languages to the Madrid System was a wise step forward. Though that meant a heavy workload, the Delegation underlined the importance of the need to move forward and said it was ready to work together with the International Bureau. The Delegation said that it did not agree with the proposed step-by-step approach and timetable, and acknowledged that a multilingual policy required the use of all six official languages. The experts in its region could bring their skills and their knowledge to help include Russian, Arabic and Chinese as working languages of the Madrid System.

140. The Delegation of Armenia underlined the importance of developing the language regime of the Madrid System by introducing new working languages aimed at expanding its availability. Multilingualism was a key value at the UN and at WIPO. The UN General Assembly regularly emphasized the importance of multilingualism as a fundamental value for achieving UN goals. The Delegation expressed the belief that the organization's multilingualism should be reflected in its internal operating procedures, to support the implementation of its mandate and improve its efficiency and transparency. In that regard, the Delegation advocated the leveling of the existing imbalances by providing users with access to services in all official languages of the Organization. The Delegation shared the belief that it was necessary to preserve the stability of the Madrid System. At the same time, the Delegation recalled that the existing practice of introducing new languages was not based on the principle of minimizing translation costs. The document presented did not contain justification for the costs nor did it contain detailed information on how those amounts were calculated and could be complemented with an analysis of the current language regime. The Delegation concluded by lending its support to the statement made by the Delegation of the Russian Federation, speaking on behalf of CACEEC, especially with regard to the importance of the use of the Russian language.

141. The Delegation of Sudan, after congratulating the Chair and Vice-Chairs on their election, expressed its support for the proposal to include Arabic, Chinese and Russian into the Madrid System and its belief that linguistic diversity was very important in the Madrid System.

142. The Delegation of Turkmenistan thanked the Secretariat for the preparation of the document and the Delegation of the Russian Federation for speaking on behalf of CACEEC on the importance of developing the Madrid System through the inclusion of new languages. The Delegation explained that its users demanded the possibility of using Russian as a working language in the Madrid System. Including the Russian language as one of the working languages of the System could lead to an increase in international filings from the CACEEC countries and greater use of the Madrid System by the national Offices in the region. The Delegation expressed its belief that the introduction of the Russian language would achieve equality among the UN languages and that this would increase WIPO's multilingualism.

143. The Delegation of the Russian Federation supported the statement made by the Delegation of the Russian Federation, speaking on behalf of CACEEC. The Delegation noted with gratitude that WIPO was taking steps forward to promote multilingualism. The Delegation, however, shared its belief that additional efforts were required to ensure the implementation of the basic principles. First of all, the equality of all six official languages of the UN, including within the major services provided by WIPO. The Delegation said that the strategic sector of the Madrid System was directly related to its intensive development and increase of the number of users in newly joined members. The Delegation recalled that the study made by the Secretariat, on possible options for introducing new languages, concluded that the development of the Madrid System, by expanding the language regime, was inevitable due to its geographical extension, and that it was also desirable from the point of view of bringing the System closer to users. The Delegation supported the thesis made by WIPO's Director General, Mr. Daren Tang, in his opening speech, of having noted the extremely important role of removing language barriers, particularly for small and medium sized enterprises (SMEs) and individual entrepreneurs. In the current difficult conditions of economic instability, additional support measures were needed. The Delegation shared the position of CACEEC that the study carried out by the Secretariat required additional refinement. First of all, it was necessary to provide a clearer justification for each of the budget lines and detail the stages of the gradual introduction of new languages. The Delegation expressed its belief that the costs could be optimized. It was also noted that WIPO's internal resources could carry out the necessary work required for a more balanced assessment. Although WIPO had been using innovative tools in its work, for example, the WIPO Translate platform, the study paid rather modest attention to the use of automated translation tools. The Delegation reiterated that the Russian Federation was ready to provide all necessary assistance, including updates to the IT systems to work with the Cyrillic script, bringing in the necessary specialists and populating translation databases for training neural networks. The Delegation informed the International Bureau that applicants in the Member States of CACEEC and Russian users were actively using the Russian version of the alphabetical list of the Nice Classification and the MGS. The Delegation supported China and the Group of Arab Countries in their intention to introduce all three languages as working languages of the Madrid System. To conclude, the Delegation confirmed its intention to have an intensive dialogue with the Secretariat, involving all interested parties, in particular, experts in the new technology fields of the Global Infrastructure Sector and specialists from the Human Resources and Financial Departments. The Delegation also confirmed its interest in continuing consultations with the Secretariat and interested States to develop effective modalities for expanding the language regime.

144. The Delegation of the Syrian Arab Republic congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for preparing the document. The Delegation supported the statement made by the Delegation of Bahrain and emphasized the importance of expanding the Madrid System to include the six official languages of the UN. The Delegation said that such would guarantee that all users benefit from the System and it would lead to an increase in the development and prosperity of the Madrid System. The Delegation further emphasized the importance of the progressive introduction of the Arabic, Chinese and Russian languages into the Madrid System and referred to the proposal to include the Arabic language as an official language of the Madrid System, as indicated in the proposal presented during

the seventeenth session of the Working Group. The Delegation referred to the study prepared by the Secretariat regarding the financial consequences and the technical feasibility of the progressive introduction of the Arabic, Chinese and Russian languages in the Madrid System, and said that it was necessary to have further clarification on some of its content. For example, clarifying whether the International Bureau planned to use any of the existing artificial intelligence tools relating to translation, such as WIPO Translate, to reduce the costs and guarantee the financial and technical feasibility. A more in-depth study would help facilitate discussions in the following session of the Working Group, on the active solutions in terms of costs, the consequences of those costs and the technical feasibility of the introduction of the Arabic, Chinese and Russian languages into the Madrid System. The aforementioned would be necessary to achieve the objective of providing those three languages with a status equal to the current working languages of the Madrid System, and to contribute to the linguistic coverage of WIPO in the future, leading to an increase in its activity and benefit for all users around the world.

145. The Delegation of Uzbekistan congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for all its work on introduction of the new languages. The Delegation supported the statement made by the Russian Federation on introducing the Russian language into the Madrid System.

146. The Delegation of the United States of America thanked the Secretariat for conducting the study and noted the International Bureau's proposal to simultaneously add three new filing languages to the Madrid System, namely, Arabic, Chinese and Russian. The Delegation indicated that the study confirmed the heavy financial burden of adding new languages. The Delegation reiterated its concerns raised at the previous session about the heavy resources required and the time needed for adding new languages to the Madrid System. The Delegation said that it would like to understand what existing WIPO online electronic tools and services could serve the same purpose as adding filing languages to the System. For example, the MGS tool already contained translations of goods and services in the three proposed languages, and that tool could accommodate even more languages if Contracting Parties contributed to the translation process. Further improving that tool would be less expensive than adding new working languages. The Delegation was concerned about shifting the burden of translation from the applicant and the Office of origin to the International Bureau, because that created more work for the International Bureau. The System faced delays as it was and those delays could be made worse if it the International Bureau had to translate more documents. There were already delays in processing quality translations, delays in the timely receipt of Paris Convention priority claims in extensions of protection, and costs for users. The USPTO had experienced translations that were inaccurate or awkwardly worded, perhaps due to the fact that the translators were not native English speakers. Ultimately, the delays in getting translations done or corrected in the international application's data sent to the designated Offices caused delays in sending convention priority claims in the extensions of protection. The Delegation stated that such was a serious problem as there was no statutory authority to *ex officio* cancel registrations when an intervening Madrid registration priority claim suddenly appeared. The affected Madrid holder would need to petition the USPTO to cancel the national registration, which increased costs for that international holder. Until the Delegation could be assured that the existing translation services were not causing any delays, it did not make sense for the International Bureau to take on translations of additional languages. Finally, the Delegation shared its belief that adding languages would add costs to the Madrid System, which were borne by its users. The United States of America was one of the top filing Offices of origin and the Delegation was concerned that its stakeholders would feel the impact of an increase in Madrid fees to pay for additional languages. Therefore, the Delegation asked the International Bureau to examine a number of issues: (i), to evaluate the existing tools and services to see whether there was room for improvement; (ii), to determine whether new tools and services could be offered to make the filing experience more user-friendly and costless than adding new filing languages; (iii), assess how to keep costs down if three new filing languages

were introduced simultaneously; (iv), to analyze whether the Madrid System fees would be increased; and (v), to evaluate whether further fee increases were necessary to ensure that the Madrid System was able to fund its own direct and indirect operating costs and contribute to WIPO as a whole, as required by the Treaty. In that regard, the Delegation referred to its previously submitted proposal entitled Contribution to the Financial Wellbeing of the Organization. In that proposal, the Delegation had noted that the Madrid System was not contributing its full financial share to the common expenses of WIPO or even the indirect expenses of the Madrid Union. Instead, the Madrid System was subsidized by the PCT Union, which in turn was unhealthy for WIPO in the long-term. The Delegation recalled that the Madrid Union fee revision was identified as a topic to be discussed in the Roadmap of the Working Group, and asked that the fee issue be made a priority to be discussed sooner rather than later. The cost of adding new languages bore directly on the amount of fees charged to users to cover both the direct and indirect expenses of the Madrid System.

147. The Delegation of Japan said that it agreed that it was important for the Working Group to continue to work on improving the Madrid System to enhance its user-friendliness. However, the Delegation supported the statement made by the Delegation of the United States of America and said that the issue of languages needed very careful consideration.

148. The Delegation of Georgia congratulated the Chair and the Vice-Chairs on their election and thanked the Secretariat for the in-depth study on the practical and financial implications of the possible addition of new languages into the Madrid System. The Delegation firmly stated that its position had not changed and that it considered the introduction of new languages, for example, Russian, into the Madrid System would cause extra workload for the International Bureau. Therefore, the Delegation expressed its belief that such impact would damage the user-friendliness of the Madrid System and make it more complicated. More languages would increase the possibility of translation errors, which would also lead to the need for reexamination by the designated Contracting Parties.

149. The Delegation of the United Kingdom thanked the Secretariat for the work that had gone into the document to assess the implications of adding languages to the Madrid System. The Delegation said that, while it recognized the importance of an inclusive approach to languages at WIPO to make IP systems and information available to a wider audience, it shared some of the concerns expressed by the Delegation of the United States of America about the potential impact on users. The Delegation could only support the addition of new languages if the International Bureau could provide assurances that any additional costs were not passed on to users of the Madrid System in the form of increased fees. The Delegation also requested assurances that the addition of new languages into the System would not introduce delays for users and sought further information in that regard.

150. The Delegation of Saudi Arabia congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for its work on the documents. The Delegation expressed its support for the statement made by the Delegation of Bahrain, on behalf of the Group of Arab countries. The Delegation remarked that the issue of languages was very important for Saudi Arabia and for users of the Madrid System, in particular, the adoption of new languages would help speed up its accession to the Protocol thereby increasing users and members.

151. The Chair noted that there were a number of questions and concerns raised by a number of delegations. Under the circumstances, the Chair suggested that discussions continue at the next Working Group session, following a revised study by the Secretariat.

152. The Delegation of China reminded all delegations that introducing new languages into the Madrid System was a decision made at a previous session of the Working Group, and whether new languages should be introduced was not a matter for discussion. In responding to delegations concerned about costs implications, the Delegation said that such concerns and deficits were ungrounded, as the Madrid System was running at a surplus and not a deficit, according to WIPO Financial Reports. The Delegation highlighted that the Madrid System had a long history and had introduced new languages in promoting the development of the System. The Delegation believed that introducing the Chinese, Arabic and Russian languages into the Madrid System was not a cost increase issue, but a fundamental issue for the long-term development of the System. The Delegation referred to the PCT System, by way of example, noting that 10 languages were included and that it had become the largest income source for WIPO. Finally, the Delegation further emphasized that it was not a question of whether the three proposed new languages should be introduced into the Madrid System, but rather how those languages should be introduced.

153. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for preparing the study of the cost implications and technical feasibility of the gradual introduction of the Arabic, Chinese and Russian languages into the Madrid System. As a result of the study, the proposal to add new languages had become much clearer in its scope and sufficient light had been shed on the overall context. The new document had helped put the Delegation in a much better position to assess the actual financial and administrative burdens implied by the introduction of new languages. The Delegation had studied with interest the further elaboration on whether, and to what extent, a new translation regime could appropriately address all the complexities involved. However, the Delegation still had a number of doubts about the introduction of Arabic, Chinese and Russian as filing languages at that point. It might cause an increase of errors, due to translation differences, and administrative delays, due to an increase of workload. Against the background of a prudent approach necessitated by the current global economic uncertainty, the Delegation did not consider it the right time to decide on the measures that would impose more burdens on the Madrid System. As the proposed amendments to Rules 6 and 9 were meant to enter into force no earlier than February 1, 2024, a decision could be taken when it was possible to have a better assessment of the consequences of the worldwide pandemic on the Madrid System.

154. The Delegation of Brazil was of the view that anything that made the Madrid System easier and more accessible benefitted the entire IP system, the economy of each of the countries involved and IP Offices acting as both Office of origin and designated Office. The Delegation recognized the value of adding new languages to the Madrid System and understood, from its experience in Brazil, that language was in many cases an important tool to guarantee accessibility and proximity to users, and noted that some users might postpone or set aside the plan to protect their trademarks internationally due to language barriers. The Delegation raised three separate issues. First, the Delegation considered it important to have an analysis of the return on investment, financial or by volume, of the five options presented in the document. The Delegation said that it was paramount that the inclusion of new languages in the System did not result in an increase in basic fees or impede any plans to reduce the basic fee for marks reproduced in color, to match the fees for those reproduced in black and white. An economic analysis could consider whether a reduction of the basic fee could have a positive impact on the total revenue driven by the increase in volume of users. That could be the case in Brazil, because 65 per cent of exporting enterprises were SMEs with low average revenues. The exchange rate from the Brazilian real to the Swiss franc was a factor that drove away Brazilian business from using the Madrid System. The current registration fee in Brazil was particularly high. The second point the Delegation raised, was the importance of not increasing the processing time of applications, especially given the anticipated extra volume of applications. Increasing the processing times remained a concern for the Delegation, as delays in processing would increase the risk and problems for Offices that may grant a protection to a similar national mark before the international designation had been

processed and received. In Brazil, that would result in judicial actions leading to higher costs for both applicants that were in conflict. The Delegation understood from the document that there would not be an increase in processing time, but sought confirmation from the Secretariat on that point. The final point raised by the Delegation concerned the harmonization of practices. The Delegation shared its belief that sharing information was the key to better management of the Madrid System, especially regarding the issuance of irregularities. Having a better understanding, for example, of acceptable goods and services was a way to reduce translation costs. The MGS was particularly relevant, given its accessibility to users and its function that allowed the user to check acceptable terms. Though the Delegation understood that the MGS tool had some limitations, it was still a helpful tool, particularly, if Offices kept the International Bureau up to date and could help reduce translation problems.

155. The Delegation of Colombia thanked the Secretariat for preparing the document. The Delegation stated that the document reflected the cost implications concerning the introduction of the Arabic, Chinese and Russian languages to the Madrid System. However, the Delegation did not believe that it was the right time to adopt a decision. Instead, the Delegation would rather discuss the feasibility of how those languages could be introduced, the costs implications and the potential risks. The Delegation indicated that it believed those issues were of paramount importance, and highlighted that potential translation errors could affect the scope of protection of rights.

156. The Delegation of Belarus supported the statement made by the Delegation of China. The Delegations said that it was not a question of whether or not to add the Arabic, Russian and Chinese languages to the Madrid System, but rather the best manner in which to include those languages in the Madrid System.

157. The Delegation of Switzerland supported the statement made by the Delegation of the European Union.

158. The Chair acknowledged the questions and concerns raised by delegations and suggested that the Working Group request the Secretariat to conduct consultations and prepare a more detailed study in advance of the next session of the Working Group. The Chair presented the draft decision language for discussion.

159. Taking into account the exchange of opinions and the restrictions relating to the hybrid format of the session, the Delegation of the Russian Federation, speaking on behalf of CACEEC, said that it was appropriate to postpone, until the following session, the substantive discussion on financial implications and technical feasibility of introducing the Arabic, Chinese and Russian languages into the Madrid System. The Delegation indicated that it was important to reflect in the decision of the Working Group that, following the results of the current session, interested States intended to continue intensive consultations with the Secretariat on the language issue and to present the results of those consultations during the next session of the Working Group.

160. The Chair suspended the meeting.

161. Resuming the session, the Chair informed the Working Group that informal consultations had been conducted among the delegations.

162. The Working Group, recalling the decisions taken at its sixteenth and seventeenth sessions:

(i) requested the Secretariat to provide, in advance of the nineteenth session of the Working Group, a revised Study of the Cost Implications and Technical Feasibility of the Gradual Introduction of the Arabic, Chinese and Russian Languages into the Madrid System (document MM/LD/WG/18/5) and other relevant information, so as to address the issues raised by delegations at the eighteenth session of the Working Group, and submit it for consideration by the Working Group at its next session; and,

(ii) requested the Secretariat to consult with interested Contracting Parties of the Protocol and other WIPO Member States, in advance of the nineteenth session of the Working Group, to clarify issues and relevant information so as to support the Working Group in its consideration of this subject matter.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

163. The Working Group approved the Summary by the Chair, as amended, to take account the interventions of a number of delegations.

AGENDA ITEM 9: CLOSING OF THE SESSION

164. The Chair closed the session on October 16, 2020.

[Annexes follow]

ANNEX I: PROPOSED AMENDMENTS TO THE REGULATIONS UNDER THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS*

Regulations Under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

as in force on ~~February 1, 2021~~ November 1, 2021

Chapter 1 **General Provisions**

[...]

Rule 3 **Representation Before the International Bureau**

[...]

(2) *[Appointment of the Representative]*

- (a) The appointment of a representative may be made in the international application ~~or in a subsequent designation~~ or by the new holder of the international registration in a request under Rule 25(1)(a)(i) and shall indicate the name and address, given in accordance with the Administrative Instructions, and the electronic mail address of the representative.

[...]

(4) *[Recording and Notification of Appointment of a Representative; Effective Date of Appointment]*

- (a) Where the International Bureau finds that the appointment of a representative complies with the applicable requirements, it shall record the fact that the applicant or holder has a representative, as well as the name, address and electronic mail address of the representative, in the International Register. In such a case, the effective date of the appointment shall be the date on which the International Bureau received the international application, ~~subsequent designation,~~ request or separate communication in which the representative is appointed.

[...]

[...]

* Amended Rule 3 of the Regulations, as approved by the Assembly of the Madrid Union in September 2020. The amendments to Rule 3 will enter into force on February 1, 2021. See Annex of document MM/A/54/1 "COVID-19 Measures: Making E-mail a Required Indication" (https://www.wipo.int/edocs/mdocs/govbody/en/mm_a_54/mm_a_54_1.pdf).

(6) *[Cancellation of Recording; Effective Date of Cancellation]*

[...]

- (d) The International Bureau shall, upon receipt of a request for cancellation made by the representative, notify accordingly the applicant or holder, ~~and add to the notification copies of all communications sent to the representative, or received by the International Bureau from the representative, during the six months preceding the date of the notification.~~

[...]

Rule 5

~~**Irregularities in Postal and Delivery Services and in Communications Sent Electronically**~~
Excuse in Delay in Meeting Time Limits

- (1) ~~*[Excuse in Delay in Meeting Time Limits due to Force Majeure Reasons*~~ *Communications Sent Through a Postal Service* Failure by an interested party to meet a time limit specified in the Regulations to perform an action before ~~for a communication addressed to the International Bureau and mailed through a postal service~~ shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau, that such failure was due to war, revolution, civil disorder, strike, natural calamity, irregularities in postal, delivery or electronic communication services owing to circumstances beyond the control of the interested party or other force majeure reason.

- (i) ~~that the communication was mailed at least five days prior to the expiry of the time limit, or, where the postal service was, on any of the ten days preceding the day of expiry of the time limit, interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, that the communication was mailed not later than five days after postal service was resumed,~~ [Deleted]
- (ii) ~~that the mailing of the communication was registered, or details of the mailing were recorded, by the postal service at the time of mailing, and~~ [Deleted]
- (iii) ~~in cases where all classes of mail do not normally reach the International Bureau within two days of mailing, that the communication was mailed by a class of mail which normally reaches the International Bureau within two days of mailing or by airmail.~~ [Deleted]

- (2) ~~*[Communications Sent Through a Delivery Service]*~~ Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and sent through a delivery service shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau, [Deleted]

- (i) ~~that the communication was sent at least five days prior to the expiry of the time limit, or, where the delivery service was, on any of the ten days preceding the day of expiry of the time limit, interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, that the communication was sent not later than five days after the delivery service was resumed, and~~ [Deleted]
- (ii) ~~that details of the sending of the communication were recorded by the delivery service at the time of sending.~~ [Deleted]

- (3) ~~*[Communication Sent Electronically]* Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and submitted by electronic means shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau, that the time limit was not met because of failure in the electronic communication with the International Bureau, or which affects the locality of the interested party owing to extraordinary circumstances beyond the control of the interested party, and that the communication was effected not later than five days after the electronic communication service was resumed.~~[\[Deleted\]](#)
- (4) *[Limitation on Excuse]* Failure to meet a time limit shall be excused under this Rule only if the evidence [and action](#) referred to in paragraph (1), ~~(2) or (3) and the communication or, where applicable, a duplicate thereof~~ are received by [and performed before](#) the International Bureau [as soon as reasonably possible and](#) not later than six months after the expiry of the time limit [concerned](#).

[...]

Rule 5bis **Continued Processing**

(1) *[Request]*

- (a) Where an applicant or holder has failed to comply with any of the time limits specified or referred to in Rules 11(2) and (3), [12\(7\)](#), [20bis\(2\)](#), 24(5)(b), 26(2), [27bis\(3\)\(c\)](#), 34(3)(c)(iii) and 39(1), the International Bureau shall, nevertheless, continue the processing of the international application, subsequent designation, payment or request concerned, if:
- (i) a request to that effect, signed by the applicant or holder, is presented to the International Bureau on the official form; and
 - (ii) the request is received, the fee specified in the Schedule of Fees is paid and, together with the request, all of the requirements in respect of which the time limit concerned applied are complied with, within two months from the date of expiry of that time limit.

[...]

[...]

Chapter 4
Facts in Contracting Parties Affecting International Registrations

[...]

Rule 22
**Ceasing of Effect of the Basic Application, of the Registration Resulting Therefrom,
or of the Basic Registration**

(1) *[Notification Relating to Ceasing of Effect of the Basic Application, of the Registration Resulting Therefrom, or of the Basic Registration]*

[...]

- (c) Once the proceeding referred to in subparagraph (b) has resulted in the final decision referred to in the second sentence of Article 6(3) of the Protocol or in the withdrawal or renunciation referred to in the third sentence of Article 6(3) of the Protocol, the Office of origin shall, where it is aware thereof, promptly notify the International Bureau accordingly and shall give the indications referred to in subparagraph (a)(i) to (iv). Where the ~~judicial action or~~ proceedings referred to in subparagraph (b) has been completed and has not resulted in any of the aforesaid final decisions, withdrawal or renunciation, the Office of origin shall, where it is aware thereof or at the request of the holder, promptly notify the International Bureau accordingly.

[...]

Chapter 5
Subsequent Designations; Changes

Rule 24
Designation Subsequent to the International Registration

[...]

(3) *[Contents]*

- (a) Subject to paragraph (7)(b), the subsequent designation shall contain or indicate

[...]

- (ii) the name ~~and address~~ of the holder,

[...]

[...]

Chapter 9
Miscellaneous

Rule 39
Continuation of Effects of International Registrations in Certain Successor States

- (1) Where any State (“the successor State”) whose territory was, before the independence of that State, part of the territory of a Contracting Party (“the predecessor Contracting Party”) has deposited with the Director General a declaration of continuation the effect of which is that the Protocol is applied by the successor State, the effects in the successor State of any international registration with a territorial extension to the predecessor Contracting Party which is effective from a date prior to the date fixed under paragraph (2) shall be subject to

[...]

- (ii) the payment to the International Bureau, within the same time limit, of ~~the fee of 41 Swiss francs~~ specified in item 10.1 of the Schedule of Fees for the International Bureau, and of the fee specified in item 10.2 of the Schedule of Fees, which shall be transferred by the International Bureau to ~~the Office of the successor State, and of a fee of 23 Swiss francs for the benefit of the International Bureau.~~

[...]

Schedule of Fees

as in force on ~~February 1, 2021~~ [November 1, 2021](#)

Schedule of Fees

Swiss francs

[...]

10. Continuation of Effects

10.1 Fee for the International Bureau 23

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International Bureau to the successor
State 41

[Annex II follows]

ANNEX II: PROPOSED AMENDMENTS TO THE REGULATIONS UNDER THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS AND CONSEQUENTIAL AMENDMENTS TO THE SCHEDULE OF FEES

Regulations Under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

as in force on ~~February 1, 2020~~ February 1, 2023

[...]

Chapter 2 **International Applications**

[...]

Rule 9 **Requirements Concerning the International Application**

[...]

(4) *[Contents of the International Application]*

(a) The international application shall contain or indicate

[...]

(v) a ~~reproduction~~ representation of the mark, furnished in accordance with the Administrative Instructions, that ~~shall fit in the box provided on the official form; that reproduction shall be clear and shall, depending on whether the reproduction in the basic application or the basic registration is in black and white or in color, be in black and white or~~ shall be in color where color is claimed under item (vii),

[...]

(vii) where color is claimed as a distinctive feature of the mark in the basic application or basic registration, or where the applicant wishes to claim color as a distinctive feature of the mark and the mark contained in the basic application or basic registration is in color or is applied to be or is protected in color, an indication that color is claimed and an indication by words of the color or combination of colors claimed ~~and, where the reproduction furnished under item (v) is in black and white, one reproduction of the mark in color,~~

[...]

(5) *[Additional Contents of the International Application]*

[...]

- (d) The international application shall contain a declaration by the Office of origin certifying

[...]

- (v) that, if color is claimed as a distinctive feature of the mark in the basic application or the basic registration, or the mark in the basic application or the basic registration is applied to be or is protected in color, ~~the same a color~~ claim is included in the international application or that, if color is claimed as a distinctive feature of the mark in the international application without having being claimed in the basic application or basic registration, the mark in the basic application or basic registration is in fact in the color or combination of colors claimed, and

[...]

[...]

[...]

Chapter 3
International Registrations

[...]

Rule 15
Date of the International Registration

- (1) *[Irregularities Affecting the Date of the International Registration]* Where the international application received by the International Bureau does not contain all of the following elements:

[...]

- (iii) a ~~reproduction~~representation of the mark,

[...]

[...]

Chapter 4
Facts in Contracting Parties Affecting International Registrations

[...]

Rule 17
Provisional Refusal

[...]

(2) *[Content of the Notification]* A notification of provisional refusal shall contain or indicate

[...]

- (v) where the grounds on which the provisional refusal is based relate to a mark which has been the subject of an application or registration and with which the mark that is the subject of the international registration appears to be in conflict, the filing date and number, the priority date (if any), the registration date and number (if available), the name and address of the owner, and a ~~reproduction,~~representation of the former mark or an indication of how to access that representation, together with the list of all or the relevant goods and services in the application or registration of the former mark, it being understood that the said list may be in the language of the said application or registration,

[...]

[...]

Chapter 7
Gazette and Data Base

Rule 32
Gazette

(1) *[Information Concerning International Registrations]*

[...]

- (b) The ~~reproduction,~~representation of the mark shall be published as it ~~appears~~was furnished in the international application. Where the applicant has made the declaration referred to in Rule 9(4)(a)(vi), the publication shall indicate that fact.
- (c) ~~[Deleted]Where a color reproduction of the mark is furnished under Rule 9(4)(b)(v) or (vii), the Gazette shall contain both a reproduction of the mark in black and white and the reproduction in color.~~

[...]

Schedule of Fees

as in force on ~~February 1, 2020~~ February 1, 2023

Schedule of Fees

Swiss francs

1. [Deleted]

2. *International application*

The following fees shall be payable and shall cover 10 years:

2.1. Basic fee (Article 8(2)(i) of the Protocol)*

2.1.1. where no ~~reproduction~~representation of the mark is in color 653

2.1.2. where any ~~reproduction~~representation of the mark is in color 903

[...]

[Annex III follows]

* For international applications filed by applicants whose country of origin is a Least Developed Country, in accordance with the list established by the United Nations, the basic fee is reduced to 10% of the prescribed amount (rounded to the nearest full figure). In such case, the basic fee will amount to 65 Swiss francs (where no ~~reproduction~~representation of the mark is in color) or to 90 Swiss francs (where any ~~reproduction~~representation of the mark is in color).

ANNEX III: PROPOSED AMENDMENTS TO RULES 21* AND 40 OF THE REGULATIONS UNDER THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

Regulations Under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

as in force on ~~February 1, 2021~~ November 1, 2021

[...]

Chapter 4 **Facts in Contracting Parties Affecting International Registrations**

[...]

Rule 21 **Replacement of a National or Regional Registration by an International Registration**

- (1) *[Request and Notification]* From the date of the notification of the international registration or of the subsequent designation, as the case may be, the holder may present directly to the Office of a designated Contracting Party a request for that Office to take note of the international registration in its Register, in accordance with Article 4*bis*(2) of the Protocol. Where, following the said request, the Office has taken note in its Register that a national or a regional registration or registrations, as the case may be, have been replaced by the international registration, that Office shall notify the International Bureau accordingly. Such notification shall indicate
- (i) the number of the international registration concerned,
 - (ii) where the replacement concerns only one or some of the goods and services listed in the international registration, those goods and services, and
 - (iii) the filing date and number, the registration date and number, and, if any, the priority date of the national or regional registration or registrations which have been replaced by the international registration.

The notification may also include information relating to any other rights acquired by virtue of that national or regional registration or registrations.

- (2) *[Recording]*
- (a) The International Bureau shall record the indications notified under paragraph (1) in the International Register and shall inform the holder accordingly.
 - (b) The indications notified under paragraph (1) shall be recorded as of the date of receipt by the International Bureau of a notification complying with the applicable requirements.

* Amended Rule 21 of the Regulations, as approved by the Assembly of the Madrid Union in October 2019. The amendments to Rule 21 will enter into force on February 1, 2021. See documents MM/A/53/1 "Proposed Amendments to the Regulations under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks", Annex II (https://www.wipo.int/edocs/mdocs/govbody/en/mm_a_53/mm_a_53_1.pdf) and MM/A/53/3 "Report", paragraph 16 (https://www.wipo.int/edocs/mdocs/govbody/en/mm_a_53/mm_a_53_3.pdf).

(3) *[Further Details Concerning Replacement]*

- (a) Protection to the mark that is the subject of an international registration may not be refused, even partially, based on a national or regional registration which is deemed replaced by that international registration.
- (b) A national or regional registration and the international registration that has replaced it shall be able to coexist. The holder may not be required to renounce or request the cancellation of a national or regional registration which is deemed replaced by an international registration and should be allowed to renew that registration, if the holder so wishes, in accordance with the applicable national or regional law.
- (c) Before taking note in its Register, the Office of a designated Contracting Party shall examine the request referred to in paragraph (1) to determine whether the conditions specified in Article 4*bis*(1) of the Protocol have been met.
- (d) The goods and services concerned with replacement, listed in the national or regional registration, shall be covered by those listed in the international registration. Replacement may concern only some ~~only~~ of the goods and services listed in the national or regional registration.
- (e) A national or regional registration is deemed replaced by an international registration as from the date on which that international registration takes effect in the designated Contracting Party concerned, in accordance with Article 4(1)(a) of the Protocol.

[...]

Rule 40
Entry into Force; Transitional Provisions

[...]

(7) *[Transitional Provision Relating to Partial Replacement]* No Office shall be obliged to apply Rule 21(3)(d), second sentence, before February 1, 2025.

[Annex IV follows]



MM/LD/WG/18/INF/3
ORIGINAL : FRANÇAIS / ENGLISH
DATE : 16 OCTOBRE 2020 / OCTOBER 16, 2020

**Groupe de travail sur le développement juridique du système
de Madrid concernant l'enregistrement international des marques**

Dix-huitième session
Genève, 12 – 16 octobre 2020

**Working Group on the Legal Development of the Madrid System for
the International Registration of Marks**

Eighteenth Session
Geneva, October 12 to 16, 2020

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LIST OF PARTICIPANTS

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* On October 12, 2020, the Government of Trinidad and Tobago deposited its instrument of accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. The Madrid Protocol will enter into force with respect to Trinidad and Tobago, on January 12, 2021.

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