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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

Fourteenth Session
Geneva, April 18 to 22, 2005

REPORT[1]

adopted by the Standing Committee

[1] This report was adopted at the fifteenth session of the SCT.

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as "the Standing Committee" or "the SCT") held its fourteenth session, in Geneva, from April 18 to 22, 2005.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Australia, Austria, Bangladesh, Barbados, Belarus, Belgium, Brazil, Bulgaria, Cambodia, Canada, Chile, China, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Gabon, Georgia, Germany, Hungary, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Latvia, Lebanon, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Norway, Panama, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uzbekistan, Venezuela, Yemen, Zambia (78). The European Community was also represented in its capacity as member of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), Benelux Trademark Office (BBM), South Centre (4).

4. Representatives of the following international non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Association of European Trade Mark Owners (MARQUES), Center for International Industrial Property Studies (CEIPI), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), Exchange and Cooperation Centre for Latin America (ECCLA), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), Japan Trademark Association (JTA) (11).

5. The list of participants is contained in Annex II of this Report.

6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all observations made.

Agenda Item 1: Opening of the Session

7. Mr. Ernesto Rubio, Assistant Director General, opened the session and welcomed the participants on behalf of the Director General of WIPO.

8. Mr. Marcus Höpperger (WIPO) acted as Secretary to the Standing Committee.

Agenda Item 2: Election of a Chair and two Vice-Chairs

9. The Delegation of Australia proposed as Chair of the SCT for the year 2005, Mr. Li-Feng Schrock (Senior Ministerial Counsellor, Federal Ministry of Justice, Berlin, Germany) and as Vice-Chairs Mr. James Otieno Odek (Managing Director, Kenya Industrial Property Institute (KIPI), Ministry of Trade and Industry, Nairobi, Kenya) and Ms. Luz Celeste Ríos de Davis (Directora General, Registro de la Propiedad Industrial, Ministerio de Comercio e Industrias, Panama).

10. The Delegations of Canada, Iran (Islamic Republic of) and Japan, supported the proposal made by the Delegation of Australia.

11. Mr. Li-Feng Schrock (Germany) was elected as Chair of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) for the year 2005. Mr. James Otieno Odek (Kenya) and Ms. Luz Celeste Ríos de Davis (Panama) were elected as Vice-Chairs for the same period.

Agenda Item 3: Adoption of the Agenda

12. The SCT adopted the Draft Agenda (document SCT/14/1 Prov.2) without modifications.

Agenda Item 4: Accreditation of Certain Non-Governmental Organizations

13. Discussion was based on document SCT/14/6 (Accreditation of Certain Non-Governmental Organizations).

14. The SCT approved the representation, as observers, in sessions of the SCT, of the following non-governmental organizations: the China Trademark Association (CTA), the German Association for the Protection of Industrial Property (GRUR) and Healthchek.

Agenda Item 5: Adoption of the Draft Report of the Thirteenth Session

15. The Secretariat informed the Standing Committee that, following the preliminary publication of document SCT/13/8 Prov. on the Electronic Forum of the SCT, comments were received from the following delegations and observers: Germany (in respect of paragraph 303), Iran (Islamic Republic of) (concerning the inclusion of a new paragraph 35), Japan (concerning paragraph 154), and Switzerland (concerning paragraphs 17, 149, 208 and 310). The above-mentioned paragraphs had consequently been amended in document SCT/13/8 Prov.2.

16. The SCT adopted the Draft Report of the thirteenth session (document SCT/13/8 Prov.2) without modifications.

Agenda Item 6: Revision of the Trademark Law Treaty

17. Discussions were based on the following documents prepared by the Secretariat: "Draft Revised Trademark Law Treaty (TLT)" (document SCT/14/2), "Draft Revised Regulations under the Draft Revised Trademark Law Treaty (TLT)" (document SCT/14/3), and "Notes" (document SCT/14/4).

18. The Chair noted that, since this was the last session of the SCT prior to the Diplomatic Conference, the Standing Committee needed to finalize the texts of the Treaty and the Regulations, in order to facilitate the preparation, by the Secretariat, of the Basic Proposal for that Conference. With that perspective, the Chair suggested that the Committee review and discuss the texts of the Treaty and the Regulations in their entirety.

Article 1
(Abbreviated Expressions)

items (i) to (xxii).

19. These provisions were approved as proposed on the understanding that the term "or persons" in item (v) would be omitted.

item (xxiii).

20. The Delegation of Japan noted that, while the definition contained in this item referred to the "Trademark Law Treaty 1994", Article 28 referred to the "TLT 1994". The Delegation suggested to harmonize both provisions by replacing the first part of the definition for "TLT 1994 means". The Delegation further noted that a definition of the term "this Treaty" was perhaps also needed.

21. The Delegation of Australia supported the position expressed by the Delegation of Japan and added that both issues had been debated by the SCT in the past and that although they might seem obvious at first sight, such definitions could be added for the sake of clarity.

22. The Representative of CEIPI supported the first suggestion made by the Delegation of Japan but expressed doubts as to whether a definition of the term "this Treaty" was needed, particularly if it were to cover the Regulations. In conclusion, the Representative suggested deleting the reference to the Regulations in item (xxiii).

23. It was agreed to redraft this provision as follows:

> "'TLT 1994' means the Trademark Law Treaty done at Geneva on October 27, 1994".

24. The Delegation of Bangladesh suggested that definitions of the terms "Assembly" and "Diplomatic Conference" be added to the list of abbreviated expressions.

25. The Chair noted, in reply to the suggestion made by the Delegation of Bangladesh, that the term "Diplomatic Conference" was of a more universal nature, as it applied to the conclusion of any Treaty and thus, it could be understood to fall within the scope of the

Vienna Convention on the Law of Treaties. However, the term "Assembly" had a particular meaning in the context of WIPO-administered treaties and therefore a definition could be useful to clarify that particular meaning.

26. It was agreed to add a new item providing a definition of the term "Assembly".

Article 2
(Marks to Which the Treaty Applies)

Paragraph (1) [*Nature of Marks*]

27. The Delegation of Switzerland drew the attention of the Standing Committee to the fact that, under subparagraph (b), a Contracting Party would have the choice whether to apply or not to apply the Treaty to non-visible signs. It held the view that it was not timely to offer this choice in subparagraph (b) in view of the principle expressed in subparagraph (c). Pursuant to the latter provision, Contracting Parties would be free not to provide for the registration of non-visible signs and, accordingly, not to apply the Treaty to marks of this type. However, if non-visible signs were registrable as marks under domestic law, the Treaty should also apply to those marks. To realize this objective, it proposed to replace the words "may apply" with the words "is applicable".

28. The Delegation of Iran (Islamic Republic of) sought clarification as to whether there would be an impediment to the applicable law of a Contracting Party not accepting holograms if those signs could be registered in other Contracting Parties.

29. The Secretariat explained that the Treaty did not create any obligation to accept certain types of marks, even in a situation where certain Contracting Parties accepted certain signs while others did not.

30. The Delegation of Panama expressed support for the proposal by the Delegation of Switzerland. It explained that the proposal corresponded to newly enacted legislation in Panama. The application of the Treaty should not be limited to visible signs.

31. The Delegation of the United States of America wondered whether the proposal by the Delegation of Switzerland was to essentially delete subparagraphs (a) and (b). It held the view that the Treaty should cover non-visible signs if those signs were accepted for registration as marks under national law.

32. The Delegation of Switzerland explained that, pursuant to its proposal, the freedom to regulate –or not not to regulate– the registration of marks consisting of non-visible signs in domestic law would be retained. Once these signs were accepted for registration, however, the Treaty should be applied.

33. The Chair expressed the view that, instead of using the term "is applicable", the words "shall apply" could be used to replace the words "may apply" in subparagraph (b).

34. The Delegation of Australia pointed out that, on the basis of the proposal by the Delegation of Switzerland, users would not be faced with a wide range of different requirements in national laws. It expressed support for the proposal by the Delegation of Switzerland and use of the words "shall apply", as suggested by the Chair.

35. The Delegation of the Republic of Korea and the Delegation of Sweden expressed support for the proposal by the Delegation of Switzerland. These Delegations preferred to use the language "shall apply".

36. The Delegation of Italy informed the Standing Committee that a new industrial property code had entered into force in Italy, constituting a comprehensive law comprising all fields of industrial property. The Delegation supported use of the words "shall apply".

37. The Representative of OAPI expressed his concern as to the proposal from the Delegation of Switzerland. He held the view that the limitation of the application of the Treaty to visible signs constituted a common basis that should not be imperiled. He underlined that the use of the words "shall apply" would render subparagraph (b) pointless because, in consequence, the Treaty would apply to visible and non-visible signs alike.

38. The Representative of CEIPI expressed support for the proposal by the Delegation of Switzerland. He considered it advisable to merge subparagraphs (a) and (b).

39. The Chair proposed to replace subparagraphs (a), (b) and (c) with one single provision, expressing the principle underlying the proposal by the Delegation of Switzerland in a concise manner while, at the same time, taking into account the concerns expressed in this respect.

40. The Chair concluded that it was agreed to replace subparagraphs (a), (b) and (c) with one single provision having the following wording:

> "Any Contracting Party shall apply this Treaty to marks consisting of signs that can be registered as marks under its law".

Paragraph (2) [*Kinds of Marks*]

41. This provision was approved as proposed.

Article 3
(*Application*)

Paragraph (1) [*Indications or Elements Contained in or Accompanying an Application; Fee*]

Subparagraph (a), items (i) to (viii).

42. These provisions were approved as proposed.

items (ix) to (xiv).

43. The Delegation of Switzerland drew the attention of the Standing Committee to the fact that a Contracting Party could require an identification of the kind of mark under items (xi) and (xii) concerning three-dimensional and hologram marks. It held the view that a Contacting Party should also be able to request such an identification in the case of movement, color or position marks. Accordingly, it proposed to add the words "a movement mark, a color mark or a position mark" after the term "hologram mark" in item (xii). The Delegation pointed out that Rule 3(4) would have to be amended accordingly. Moreover, it proposed to add the words "and/or details of this mark, as prescribed by the applicable law of the Contracting Party" after the words "one or several reproductions of the mark" in Rule 3(4). The Delegation gave the example of a color mark where it should be possible to require a code of identification that is internationally recognized, such as the PANTONE code or the RAL code. With regard to item (xiii) of Article 3(1)(a), the Delegation suggested to replace the words "a statement to that effect" with the words "a statement specifying the type of mark" and to amend Rule 3(5) accordingly.

44. The Delegation of Australia expressed support for the proposal by the Delegation of Switzerland. With regard to items (xii) and (xiii), the Delegation feared that certain types of marks which might emerge in the future would not be included. It also recalled situations in which it would be necessary to specify whether protection was sought for a visible mark or a sound mark. In this context, the Delegation gave the example of a video clip sent to an Office in order to register a certain character featuring in that clip.

45. The Delegation of Germany expressed support for the proposal by the Delegation of Switzerland. With regard to Rule 3(5), it proposed to add the words "or other specification" after the term "representation" in order to allow for the furnishing of a description of a non-visible sign.

46. The Delegation of the United Kingdom suggested to refer to "one or more" reproductions instead of "one or several" reproductions in Rule 3(4), on the grounds that the term "several" could be understood to exclude a requirement to furnish two reproductions.

47. The Delegation of the United States of America held the view that, in line with the proposal by the Delegation of Switzerland, the word "reproductions" in Rule 3(4) could be replaced with the term "representations" rather than adding a reference to details of the mark. The Delegation said that this change of the wording would correspond to Rule 3(5) and could be understood to cover, for instance, further specifications in the case of color marks.

48. The Delegation of the Democratic People's Republic of Korea wondered whether it would be advisable to refer, in item (xvii), not only to the Nice Classification but also to the Vienna Classification.

49. The Secretariat explained that, unlike the Nice Classification, the Vienna Classification for the Figurative Elements of Marks was used mainly by Offices for internal search purposes, and it would not be appropriate to burden applicants with the use of this classification.

50. The Delegation of the Dominican Republic sought clarification as to the concept of standard characters referred to in item (ix).

51. The Secretariat explained that standard characters were used in connection with word marks. If a mark of this kind did not contain figurative elements, the Office could offer the applicant the option to make a statement to the effect that the standard characters ordinarily used by the Office should be used for registration and publication purposes of that mark.

52. The Delegation of Australia wondered whether there were still countries using the standard character provision laid down in Article 3(1)(a)(ix). It proposed to delete references to standard characters in Article 3(1) or to move these references to the Regulations in order to achieve more flexibility for future developments.

53. The Delegation of Sweden explained that, pursuant to the national practice in Sweden, figurative marks were published as presented, whereas standard characters were used with regard to word marks.

54. The Delegation of Denmark indicated that it had a similar national practice. The Delegation said that, irrespective of the unusual marks to which Rule 3 referred, the most common case still was a word mark published in standard characters.

55. The Delegation of Switzerland expressed support for the interventions made by the Delegations of Denmark and Sweden.

56. The Delegation of Japan confirmed that a standard character system was used pursuant to its national practice.

57. The Representative of the European Community expressed support for the intervention by the Delegation of Sweden. The Representative pointed out that standard characters were used under the European Community Trademark system.

58. The Delegation of the Russian Federation wondered about the consequences if a country was not using a standard character system.

59. The Secretariat clarified that, in this case, the rules on standard characters would not be applicable.

60. The Chair said that two principles seemed to lie at the core of the interventions made by Delegations. The first principle was that a Contracting Party should be free to require an application to contain one or more representations of the mark. The second principle would be that, in addition, the Contracting Party could require a statement indicating the type of mark for which registration was sought. He suggested to follow a more abstract approach reflecting these two principles in the text of the Treaty, while laying down the specific rules resulting from this approach in the Rules. With regard to the deliberations concerning standard characters, the Chair considered it preferable to propose to the Diplomatic Conference a text making reference to standard characters in Article 3(1).

61. The Delegation of Australia asked whether the two principles mentioned by the Chair would replace items (ix) to (xiv). The Delegation wondered whether the first principle explained by the Chair would only aim at the number of representations or also the kind of representation required.

62. The Secretariat explained that items (ix) to (xiv) would be moved to the Regulations. It explained that the first principle referred to both the number and kind of representations.

63. The Delegation of Switzerland expressed the view that acceptance of the proposal by the Chair would depend on the exact wording of the Regulations.

64. The Delegation of Iran (Islamic Republic of) wondered whether the proposal by the Chair would mean that any new regulation regarding a specific type of mark would be dealt with in the Regulations. It sought clarification as to whether the Assembly could take decisions incompatible with Article 2(1)(c).

65. The Chair pointed out that, in the case of conflict, the Treaty would prevail pursuant to Article 23(4). He recalled that Article 2(1) had been redrafted. In respect of new Regulations, the Chair gave the example of position marks. If there would be a need to regulate this type of mark in more detail, the Assembly could decide on the specifics of processing corresponding applications.

66. The Delegation of Australia held the view that, if the Assembly would specify the Regulations in respect of certain types of marks, it would only concern those Contracting Parties which accepted those marks in their national laws. No obligation would be imposed on Contracting Parties to accept certain types of marks. The Delegation suggested to use the expression “representation as prescribed in the Regulations” in Article 3(1) to reflect the first principle explained by the Chair.

67. The Representative of FICPI proposed to use the expression “at least one representation as prescribed in the Regulations” to set forth the first principle in Article 3(1). He also proposed to use the expression “where applicable, a statement as prescribed in the Regulations, indicating the type of mark” to reflect the second principle explained by the Chair.

68. The Representative of the ICC suggested to add comments to the Notes with regard to standard characters. He expressed the view that each Contracting Party was free to define standard characters.

69. The Chair concluded that it was agreed to replace items (ix) to (xiv) with two items. The first item should become item (ix) and have the following wording:

> “*item (ix)* at least one representation of the mark, as prescribed in the Regulations;”.

The second item should become item (x) and have the following wording:

> “*item (x)* where applicable, a statement, as prescribed in the Regulations, indicating the type of mark as well as any specific requirements applicable to that type of mark, indicating that the applicant wishes that the mark be registered and published in the standard characters used by the Office, or indicating that the applicant wishes to claim color as a distinctive feature of the mark;”.

items (xv) to (xviii).

70. These provisions were approved as proposed subject to renumbering in accordance with the replacement of items (ix) to (xiv).

Subparagraphs (b) and (c).

71. These provisions were approved as proposed.

Paragraphs (2) to (5).

72. These provisions were approved as proposed.

Article 4
(Representation; Address for Service)

73. This provision was approved as proposed.

Article 5
(Filing Date)

74. The Chair noted that a consequential change had been made in Article 5(1)(vi) following the changes introduced in Article 3(1)(a)(xviii). The Chair further noted that references to Article 3 were likely to change again, as a result of the redrafting agreed at this session.

75. This provision was approved as proposed.

Article 6
(Single Registration for Goods and/or Services in Several Classes)

76. This provision was approved as proposed.

Article 7
(Division of Application and Registration)

77. This provision was approved as proposed.

Article 8
(*Communications*)

Paragraph (1) [*Means of Transmittal and Form of Communications*]

78. The Chair noted that the words “and form” had been added in the title and in the body of this Article, to further clarify that the intention of the Standing Committee was that Contracting Parties be given the freedom to choose the form and the means of transmittal of communications.

79. The Representative of CEIPI noted that the formulation of this paragraph in French seemed to unduly broaden the scope of the provision. The Representative suggested to add, before the word “form”, the words “, subject to paragraph (5),” since that paragraph dealt with the presentation of communications. The word “form” related to the presentation, whereas the means related to the actual transmittal of the communication, namely, on paper, by fax or electronically.

80. The Delegation of Australia supported the views expressed by the Representative of CEIPI and said that the use of the word “form” could be construed as means of presentation. However, the Notes on this paragraph gave a number of examples, which clarified the meaning of the provision. In this context, the Delegation asked what would be the status of the Notes in relation to the Treaty and the Regulations, since they had accompanied the negotiation of both texts and reflected their negotiating history. The Delegation held that it would be important to make the Notes accessible after the Diplomatic Conference, otherwise some of the explanations would be lost and the assumption that a particular provision is further clarified in the Notes would need to be revisited.

81. The Secretariat, in relation to the second remark by the Delegation of Australia, said that the Notes would form part of the Records of the Diplomatic Conference and would be made accessible through publication, both on paper and on the WIPO Website.

82. The Delegation of Yemen, supported by the Delegation of Egypt, held the view that the proposal by the Secretariat that “any Contracting Party had the right to choose the means of transmittal” was perhaps not balanced, because under contract law, both parties to a contract would have the right to choose the means of transmittal.

83. The Chair, in response to the intervention by the Delegation of Yemen, clarified that the term “Contracting Party” in this context referred to a Member State or a regional organization under public international law and not to the parties to a contract under contract law.

84. The Secretariat suggested the following alternative text for paragraph (1):

> “Any Contracting Party may choose the means of transmittal of communications and whether it accepts communications on paper, communications in electronic form or any other form of communication”.

85. This provision was approved with the new wording.

Paragraphs (2) to (4).

86. These provisions were approved as proposed.

Paragraph (5) [*Presentation of a Communication*]

87. The Representative of FICPI noted that this paragraph provided that any Contracting Party shall accept the presentation of any communication the content of which corresponds to the relevant Model International Form provided for in the Regulations. The provision was subject to the foregoing paragraphs (1) to (4) and, in particular, to paragraph (3) relating to signature of communications on paper. The forms all had a section on signature or seal. However, where a Model International Form was used for a communication in electronic form, it would be sufficient that the communication be authenticated in accordance with Rule 6(6). Therefore, at least a clarification in the Notes was needed to indicate that in the latter case, signature was not part of the relevant content of the form.

88. The Chair, with reference to the observation made by the Representative of FICPI, said that the SCT could ask the Secretariat to review the Notes on this point and to add any clarifications, if needed. The Chair also noted that the words “the content” as set forth in paragraph (5) should be kept and to replace any references to “the contents” in the rest of the Treaty and the Regulations.

89. The Delegation of Australia held the view that reference to paragraphs (1) to (4) in paragraph (5) might produce a circular provision and wondered if that reference had indeed any effect. The Delegation suggested to delete such reference.

90. This provision was approved with the following wording:

> “Any Contracting Party shall accept the presentation of a communication the content of which corresponds to the relevant Model International Form, if any, provided for in the Regulations”.

Paragraph (6)

91. This provision was approved as proposed.

Article 9
(Classification of Goods and/or Services)

92. This provision was approved as proposed.

Article 10
(Changes in Names or Addresses)

93. In reply to a question raised by the Delegation of Denmark in respect of Article 10(1)(a), the Secretariat explained that, because of the general effect of Article 4(1)(b), there was no need to include a reference to a representative in Article 10(1)(a).

94. The Delegation of Australia noted that a representative of the new owner would also be covered by Article 4(1)(b) and suggested to clarify that fact in the Notes.

95. The Representative of OAPI wondered about the amount of a fee to be paid to the Office under Article 10(1)(c), where a single request relating to more than one registration had been filed under Article 10(1)(d).

96. In reply to the query of the Representative of OAPI, the Secretariat referred to the general provision concerning fees in Article 3(1)(c) explaining that the TLT did not specify the amounts of fees to be paid to the Office, and under this Treaty the Contracting Parties remained free to structure their schedules of fees as they deemed appropriate.

97. The Delegation of Australia referred to Note 10.03 which stated that the amount of a fee could differ depending on the number of the registrations or applications involved.

98. The Representative of OAPI expressed concern about the difficulty of explaining the structure of fees to its member States and to the holders of registrations, and suggested that the Notes should be clarified in this respect.

99. The Chair noted that this provision was approved as proposed.

Article 11
(Change in Ownership)

100. The Secretariat pointed out that, in the French text of Article 11(1), the words "*la personne qui a acquis la titularité (ci-après dénommée "nouveau titulaire")*" should be changed to "*la personne qui a acquis la titularité (ci-après dénommée "nouveau propriétaire")*".

101. The Chair noted noted that this provision was approved as proposed.

Article 12
(Correction of a Mistake)

102. The Delegation of Sweden inquired about the nature of the mistakes referred to in Article 12, and wondered whether, in addition to evident errors, this provision would apply to, for example, mistakes concerning the facts or the status of the national law.

103. In reply to the question by the Delegation of Sweden, the Secretariat explained that Article 12(1)(a) applied to mistakes that were reflected in the register of marks and/or in any publication by the Office. In accordance with Article 12(6), a Contracting Party was not obliged to accept a request to correct a mistake that could not be corrected under its law.

104. The Chair noted that this provision was approved as proposed.

Article 13
(Duration and Renewal of Registration)

105. The Chair noted that this provision was approved as proposed.

Article 14
(Measures in Case of Failure to Comply with Time Limits)

106. The Secretariat noted that, at its last session, the Standing Committee had reached an agreement on the purpose and the substance of Article 14. However, several delegations had expressed the opinion that the wording of the provision could be improved, and it was decided to entrust the Secretariat with the task of reviewing this Article and presenting an improved draft at the current session.

107. The Chair recalled that at the last session of the SCT, there was a "gentlemen's agreement" amongst the members of the Standing Committee, to the effect that, failing consensus on the new drafting proposal at this fourteenth session, the previous draft of Article 14 should stand, since delegations had already agreed on the substance of the provision.

108. The Delegation of Australia thanked the Secretariat for the draft that was submitted to the Standing Committee, as it truly reflected the substance that was agreed at the thirteenth session and the language used was easier to understand.

Paragraph (1) [*Relief Measure Before the Expiry of a Time Limit*]

109. This provision was approved as proposed.

Paragraph (2) [*Relief Measures After the Expiry of a Time Limit*]

110. The Representative of CEIPI suggested to improve the wording of paragraph (2), by harmonizing the use of the expressions "interested party" and "interested person", both in the chapeau and in item (iii).

111. The Delegation of Australia supported the proposal made by the Representative of CEIPI and suggested that the Secretariat do a global review of the use of these terms in the whole text of the Treaty and the Regulations.

112. The Representative of INTA requested that definitions for the terms "continued processing" and "reinstatement of rights" be added in Article 1, since these notions did not seem to be as widely understood as other parts of Article 14. The definitions could be based on the explanations contained in the Notes to this article.

113. The Chair, with reference to the suggestion made by the Representative of INTA, said that Article 1 had already been adopted and it would not be possible to reopen the discussion on that article. However, if it became apparent that a definition of these terms was needed, a proposal could be made for consideration by the Diplomatic Conference.

114. This provision was approved as proposed. However, the Secretariat was entrusted with the task of checking for consistency, throughout the Treaty, the use of the words "interested party" or "interested person".

Paragraph (3) [*Exceptions*]

115. The Representative of CEIPI, supported by the Representative of the INTA, said that reference to paragraph (1) in this paragraph should be deleted. Paragraph (1) was a 'may' provision, therefore it did not seem appropriate to say that no Contracting Party "shall be obliged" to provide for the relief measure in paragraph (1) with respect to the exceptions prescribed in the Regulations.

116. This provision was approved as proposed, subject to deletion of the reference to paragraph (1).

Paragraph (4) [*Fees*]

117. This provision was approved as proposed.

Paragraph (5) [*Prohibition of Other Requirements*]

118. The Representative of FICPI, supported by the Delegation of Ireland and the Representatives of CEIPI and INTA, said that reference to paragraph (1) in this paragraph would have the effect of limiting the ability of Contracting Parties to request the reasons for an extension of time, prior to the expiry of the time limit. In the present structure of paragraph (5), no Contracting Party may demand that any requirements other than those referred to in this Article and in Article 8 be complied with in respect of any of the relief measures referred to in paragraphs (1) and (2). However, no requirements were stated in Article 14 or in Rule 9 for a request for relief under paragraph (1), although it was the practice of many Offices to ask the requesting person the reasons for that extension of time. Once the reasons were provided, those Offices granted the extension of time without the payment of a fee. The Representative added that this practice should be maintained and suggested to delete the reference to paragraph (1) in paragraph (5).

119. This provision was approved as proposed, subject to deletion of the reference to paragraph (1).

Article 15
(Obligation to Comply with the Paris Convention)

120. This provision was approved as proposed.

Article 16
(Service Marks)

121. This provision was approved as proposed.

Article 17
(Request for Recordal of a License)

122. The Chair noted that the changes introduced in paragraphs (1) and (4), in the current draft of Article 17 were the result of the discussions at the last session of the SCT and the suggestions made by several delegations at that session.

Paragraph (1) [*Contents of the Request for Recordal*]

123. The Representative of FICPI expressed concern about the change, which introduced a reference to supporting documents in Article 17(1)(ii). The Representative recalled that, according to the Joint Recommendation Concerning Trademark Licenses, "A Contracting Party shall accept the signature of the holder or his representative" on a request for the recordal of a license "whether or not its accompanied by the signature of the licensee or his representative". Since there was no longer a reference to signature in the draft Revised TLT, a change was needed in this respect. However, the requirement for supporting documents in every case was not in the interests of the users of the system, nor in the public interest. The Representative further noted that the Joint Recommendation distinguished between two cases. When the request for recordal was made by the holder, his signature was sufficient, and when the request was made by the licensee, only then it should be accompanied by supporting documents. The Representative suggested that, in order to avoid using the reference to signature, item (i) should be kept in the treaty, item (ii) should be deleted, and language should be added to the effect that "A Contracting Party shall accept that the request be made by the holder whether or not it is made jointly with the licensee. A Contracting Party shall also accept that the request be made by the licensee, even if it is not made jointly with the holder, provided that it is accompanied by the supporting documents prescribed in the Regulations".

124. The Delegation of the United States of America expressed support for the intervention made by the Representative of FICPI. The Delegation noted that, although it had not focussed on the specific wording proposed by the Representative, it agreed with the direction of the proposal.

125. The Delegation of Australia supported the comments made by the Representative of FICPI, regarding the substantive content of the provisions. The Delegation said that, as to the structure of the Article and corresponding Rule 10, it would prefer that Article 17(1) simply state that the request for recordal should "be filed in accordance with the requirements prescribed in the Regulations", as item (i) currently stated. Item (ii) was not necessary, since one of the requirements prescribed in the Regulations could include a requirement to be accompanied by supporting documents. Additionally, and in order to clarify the content of Rule 10, the heading of that Rule could be changed from "Details" to "Requirements" concerning the request for recordal, and then subparagraph (1) would relate to content and subparagraph (2) would relate to supporting documents.

126. The Delegations of Sweden and Switzerland and the Representative of the European Community supported the comments made by the Representative of FICPI.

127. The Representative of OAPI, in reaction to the proposal made by the Representative of FICPI, asked whether there were particular problems that the users faced when a license was recorded with the approval of the licensee. A good number of delegations had agreed on that principle. The Representative added that the provision in Article 17(1) should remain as a "may" and not a "shall" provision, as proposed by FICPI.

128. The Delegation of the Russian Federation expressed its gratitude to the Secretariat for the new wording of Article 17, which took into account the proposal made by that Delegation at the last session of the SCT. The Delegation expressed concern that the discussion on these provisions was once more reopened. With reference to comments made by an earlier speaker, the Delegation noted that, while it agreed that the recordal of a license was done in the interest of the public, it was more important for the public to establish a mechanism that would promote proper behavior in the marketplace and would avoid bad faith. The provision of documents to the Office, containing the conditions of the license, would help establish good faith relations in the market. Therefore, the Delegation supported the wording prepared by the Secretariat and did not support the proposal made by the Representative of FICPI.

129. The Delegation of Japan expressed support for the current drafting of Article 17(1). The Delegation believed that the SCT had reached a compromise on this matter at its previous sessions. The Delegation noted that an Office should be allowed to require an extract of the license contract or an uncertified statement of license, even where the request for the recordal of the license was submitted by the holder, because the purpose of the recordal system was to ensure the stability of trademark rights and to allow users to recognize who held the right and to whom it was licensed. For that purpose, it was essential for the Office, to require a document related to the license, irrespective of who submitted the request for recordal. It was of the utmost importance to keep accurate records and to ensure the validity of those records, through a verification of the documents submitted.

130. The Delegation of the Democratic People's Republic of Korea suggested to change the word "contents" in the title of paragraph (1), to harmonize it with the provision contained in the Regulations. The Delegation suggested to add the words "accompanying documents" or "supporting documents" for recordal of a license.

131. The Chair noted that the change of title would depend on whether or not a decision was made to retain item (ii) in the text of the Article.

132. The Representative of AIM expressed support for the proposal made by the Representative of FICPI. It was particularly useful to distinguish who filed the request for recordal, and in the case where the licensor filed such request, there seemed to be no grounds for concern about the risk of fraud or bad faith. In addition, any filings made by the holder of a given trademark would contribute to the integrity of the records, and therefore, when the licensor filed a request for recordal of a license, there should not be any problems of integrity of the records. The Representative added that, if the proposal made by the Representative of FICPI could not be accepted, a compromise solution could be the proposal made by the Delegation of Australia to move the details to the Regulations.

133. The Delegation of Morocco supported the position expressed by the Delegation of Japan and declared that the text of Article 17(1), as currently drafted, was coherent with its national legislation.

134. The Representative of FICPI, in reply to the comments made by the Representative of OAPI, said there was no problem for the users of the system to provide supporting documents, if so required. The issue was rather the actual purpose of Article 17 and of the original Joint Recommendation. In the view of the Representative, that purpose was to facilitate the recordal of licenses. He further noted that once a license agreement was concluded, the parties understood that the negotiations had gone through, and it was difficult for a holder to get another document signed in relation to each country in which the license had to be recorded. The Representative added that this seemed to be an unnecessary and inhibiting step for the holder, who was giving away part of his rights, and had decided to record in good faith his license with the Office.

135. The Chair noted that, from the interventions made by Delegations, he would have a tendency to recommend that the heading of paragraph (1) be changed to "Requirements with respect to the Request for Recordal" and that the text of the paragraph be simplified by the following: "Where the law of a Contracting Party provides for the recordal of a license with its Office, that Contracting Party may require that the request for recordal be filed in accordance with the requirements prescribed in the Regulations". In this manner, the details concerning the requirements would be placed in the Regulations.

136. The Delegation of Panama, with regard to the proposal made by the Chair, said that given the structure of Rule 10, it would be necessary to check whether such a general reference to the Regulations would be sufficient to clarify that Rule 10 referred to both the elements of the request and the supporting documents.

137. The Chair replied that the term "requirements" was broad enough to include both the elements of the request and the supporting documents.

138. The Delegation of the Russian Federation, supported by the Delegation of Mexico, noted its preference for keeping the text as it was presented at the current session.

139. The Delegation of Australia said that it did seem that the term "requirements" would cover both requirements as to content, as well as requirements as to supporting documents. The Delegation suggested that in order to further clarify this point, the heading of Rule 10 should also be changed from "Details" to "Requirements".

140. The Delegation of Japan reserved its position on this paragraph, pending the discussion on Rule 10.

141. The Chair suggested that the SCT should leave the discussion on Article 17(1)(ii) pending, until a decision on Rule 10 was adopted.

142. The Delegation of the European Community expressed support for the proposal made by the Chair as a compromise solution for Article 17(1).

143. The Representative of the ICC said that he supported the proposal made by the Chair on Article 17(1) and Rule 10. The Representative added that he preferred to leave the text of the Treaty as simple as possible and to include the detailed provisions in the Regulations, as this would allow the system to have greater flexibility.

144. After the discussion on Rule 10 was completed, the SCT considered Article 17(1), as presented to the meeting and decided that this provision be approved as proposed. It was also agreed to replace the word "Contents" with the word "Requirements" in the heading of the paragraph.

Paragraph (2) [*Fees*]

145. The Delegation of Mexico made a general comment as to the wording used in the Treaty, in relation to fees. In some instances, the text read "fees" in plural and in some other instances it read "a fee". The Delegation thought that it would be appropriate to harmonize this wording throughout the Treaty.

146. The Chair said that the point raised by the Delegation of Mexico was noted and that the Secretariat would take it into account when preparing the text of the Basic Proposal.

147. This provision was approved as proposed.

Paragraph (3) [*Single Request Relating to Several Registrations*]

148. This provision was approved as proposed.

Paragraph (4) [*Prohibition of Other Requirements*]

149. The Delegation of Australia said that it wished to state its position that, from a legal point of view, new paragraph (4)(b) was not needed. However, if the provision served as a compromise solution, in the context of previous discussions on this matter, the Delegation would be ready to support it.

150. This provision was approved as proposed.

Paragraph (5) [*Evidence*]

151. This provision was approved as proposed.

Paragraph (6) [*Requests Relating to Applications*]

152. The Representative of CEIPI noted that the wording of this provision and others in the draft revised TLT included the terms "applicable law". The Representative suggested that the Secretariat should check the use of these terms throughout the Treaty and the Regulations and consider the deletion of the word "applicable", since a law that was not applicable could not be relevant.

153. The Chair replied that the terms "applicable law" had an important meaning in Private International Law and it was preferable to retain the expression. However, it would be advisable for the Secretariat to check these terms for consistency throughout the Treaty and the Regulations, and in relation to the specific context in which they were used.

154. This provision was approved as proposed.

Article 18
(Request for Amendment or Cancellation of the Recordal of a License)

155. The Delegation of Morocco, supported by the Representative of CEIPI, suggested that the reference to Article 17(2) to (5) in paragraph (2) be changed to "Article 17(2) to (6)", in order to also cover requests for amendment or cancellation with regard to applications.

156. This provision was approved as proposed, subject to the change in the reference to "Article 17(2) to (6)" in paragraph (2). It was agreed to replace the word "Contents" for the word "Requirements" in the heading of paragraph (1).

Article 19
(Effect of the Non-Recordal of a License)

157. The Secretariat explained that, as compared to the draft Treaty presented at the previous session and following a suggestion made at that meeting, the content of former Article 19(2)(b) had been moved to Article 30(2).

158. This provision was approved as proposed.

Article 20
(Use of a Mark on Behalf of the Holder)

159. The Secretariat explained that the new drafting of this Article was the result of the discussions at the last session of the SCT. At that session, several delegations debated on the purpose of the provision and a common understanding resulted that, since the TLT dealt with administrative procedures at the trademark Office, the ambit of this provision and the recordal of a license itself, should be kept within that scope. The wording proposed at this meeting followed a proposal made at the previous session by the Delegation of Canada and supported by several other delegations.

160. The Delegation of the Russian Federation said that, its position had not changed on this matter. According to the system applied in the Russian Federation, an unregistered license was not valid and that could create problems for licensees, since they could be seen as using the mark in a situation of infringement. Only through recordal, could the Office check if the mark was used in a legal manner. The Delegation further noted that, in its present wording, the provision could create problems for those countries which required the recordal of licenses, as it implied that a person could be using the mark without the consent of the holder. Therefore, this Article should be completed with some alternative wording to the effect that use by the licensee was to constitute use by the holder.

161. The Delegation of Mexico expressed the view that, under the current drafting of this Article, the purpose of the recordal procedure was no longer clear, since the effects of the recordal seemed to have practically disappeared, or at least the Delegation failed to see what were the effects of the recordal of a license under the terms of the Treaty.

162. The Delegation of Morocco said that the recordal of licenses in Morocco did not in itself give the right to prove use or evidence of use of the mark. However, it allowed third parties to oppose the infringement of a mark that was used.

163. The Secretariat recalled the drafting history of this provision, particularly, as the original text of the provision said that use of the licensee should be deemed to constitute use by the holder if this was done with the consent of the licensor. That particular wording seemed to go too far for the Standing Committee in establishing a standard of substantive law. Thus, a decision was made not to have a text that indicated what type of use by the licensee should constitute use by the holder.

164. The Representative of OAPI expressed support for the current wording of Article 20, which had addressed all the concerns expressed by delegations at the last session of the SCT.

165. The Delegation of the Russian Federation said that the purpose of the use of the mark should be indicated, bearing in mind that in some countries, a trademark right arose as a result of use. The Delegation proposed to add the following wording to the text presented by the Secretariat "in proceedings relating to the acquisition, maintenance and enforcement of marks."

166. The Delegation of Australia said that, with its new drafting, Article 20 seemed to be another provision regarding the effects of the non-recordal of a license and from a purely stylistic and drafting point of view, it would be simpler to merge that provision with Article 19. The provision would become paragraph (3) of Article 19 and a new heading would be needed, as the current heading of Article 20 would no longer fit.

167. It was agreed to redraft this provision, to integrate it as paragraph (3) of Article 19 with the following wording, and with a new heading, to be proposed by the Secretariat:

> "A Contracting Party may not require the recordal of a license as a condition for the use of a mark by a licensee to be deemed to constitute use by the holder in proceedings relating to the acquisition, maintenance and enforcement of marks."

Article 21
(Indication of the License)

168. This provision was approved as proposed.

169. It was decided to renumber this Article and the remaining Articles of the Treaty, as a consequence of the merger of former Article 20 and Article 19.

Article 22
(Observations in Case of Intended Refusal)

170. The Delegation of Germany stated that some elements of the provision were incompatible with the national law of its country. The Delegation proposed to add to the end of Article 22 the following sentence: "except if the refusal is based on the non-payment or insufficient payment of a fee". Alternatively, if this addition was not approved by the SCT,

the sentence in Note 22.01: "The notion of "refusal" includes the cases where those applications or requests are deemed withdrawn, abandoned or not to have been filed." should be deleted. The Delegation further pointed out that Note 22.02 did not reflect the wording of the Article and suggested the deletion of the Note.

171. The Delegation of Mexico noted that the current provision was not compatible with the national law of its country. The Delegation suggested that, if an application or a request was not signed or a fee was not paid, an applicant, holder or third party should be given an opportunity to rectify the omission.

172. The Representative of FICPI expressed disappointment that the previous Rule 6(7) concerning notifications, was not integrated in the Article. The Representative assumed, however, that Offices were not unwilling to provide the requesting party an opportunity to comply with the requirements. The Representative further pointed out that Article 22 contained the principle of the right to be heard. With regard to the substance of this provision, the Representative noted that there was no reference to Article 14 concerning relief measures in case of failure to comply with time limits. The Representative held the view that not giving an opportunity to make observations on the intended refusal under Article 14(2)(iii) seemed unusual. The Representative suggested a review of Article 22.

173. The Representative of CEIPI supported the remarks expressed by the Representative of FICPI. The Representative objected to the suggestion made by the Delegation of Germany, stating that the consequences of refusing an application or a request on a basis of insufficient payment of a fee, without giving the requesting party an opportunity to make observations, would be too harsh, for example, in the case where a bank had charged commissions. The Representative emphasized that the corresponding provision of the current TLT did not contain such a sentence.

174. The Delegation of Australia agreed with the position expressed by the Delegation of Mexico and proposed to add a provision to the effect that an applicant, a holder or a third party should be given a possibility to rectify an application or a request in case of missing elements, such as a missing signature or the insufficient payment of a fee. The Delegation supported the comments made by the Representative of FICPI to include a reference to Article 14 in Article 22. The Delegation wondered whether those Delegations that previously were against a reference to Article 14, would accept a reference to Article 14 as redrafted in document SCT/14/2.

175. The Delegations of Portugal and Italy agreed with the comments made by the Representative of FICPI. The Delegation of Portugal held the view, however, that a reference to Article 14 would be too broad and suggested a reference to Article 14(2)(iii). As regards Note 22.02, the Delegation of Portugal expressed a preference to keep the wording as it was.

176. The Delegation of Sweden recalled that, in the previous sessions of the SCT, a reference to Article 14(2)(iii) caused problems for some delegations but not Article 14(2)(i) or (ii). The Delegation raised a question whether a reference to Article 14(2)(i) and (ii) could be inserted into Article 22.

177. The Delegation of Australia supported the views expressed by the Delegation of Sweden. The Delegation proposed a new wording for Article 22, which would state that an Office did not have to give a requesting party an opportunity to make observations, where the requesting party had already had a possibility to fully present its case.

178. The Representative of the European Community, supported by the Delegations of France and Germany, expressed the view that, if a requesting party had fully presented its case and had no legally valid reasons for requesting a reinstatement of the rights under Article 14(2)(iii), there was no reason for giving the requesting party an opportunity to make observations. The Representative of the European Community stated that it was in favor of the current wording of Article 22, which did not refer to Article 14.

179. The Delegation of Australia suggested to insert a reference to Article 14 in Article 22 and to add the following sentence to Article 22: "In respect of Article 14, no Office would need to give an opportunity to make observations where the requesting party has already had an opportunity to present observations on the facts on which the decision is to be based".

180. The Chair noted that this provision was approved with the following wording and on the understanding that a clarification reflecting the content of the provision would be added to the Notes:

> "An application under Article 3 or a request under Articles 7, 10 to 14, 17 and 18 may not be refused totally or in part by an Office without giving the applicant or the requesting party, as the case may be, an opportunity to make observations on the intended refusal within a reasonable time limit. In respect of Article 14, no Office would need to give an opportunity to make observations where the requesting party has already had an opportunity to present an observation on the facts on which the decision is to be based".

Article 23
(Regulations)

181. This provision was approved as proposed.

Article 24
(Assembly)

182. This provision was approved as proposed.

183. The Representative of the ICC expressed gratitude for and satisfaction about the establishment of an Assembly, 11 years after the adoption of the TLT 1994. He emphasized that this was one of the most important decisions taken by the Standing Committee.

Article 25
(International Bureau)

184. This provision was approved as proposed.

Article 26
(Revision and Amendment)

185. The Delegation of Iran (Islamic Republic of) held the view that, in respect of the revision of the Treaty, it was not clear in which way States would be bound, and when the revision would enter into force. To clarify the situation, the Delegation proposed to state clearly that the revision would enter into force after written notifications of acceptance were received by the Director General from all countries. The Delegation pointed out that, alternatively, it could be stated that a decision on this matter would be taken by the Diplomatic Conference. The Delegation expressed support for the deletion of the relative clause in line 4 of Article 26(2)(c).

186. The Delegation of Japan sought clarification as to the manner in which Articles 24 and 25 could be modified. It expressed the view that Article 26 offered two possibilities. First, Articles 24 and 25 could be amended by the Assembly in accordance with paragraph (2). Second, the Articles could be revised by a Diplomatic Conference in accordance with paragraph (1). Recalling Article 19(2) of the Patent Law Treaty, the Delegation wondered whether language reflecting this understanding could be added to Article 26. In particular, it deemed it necessary to ensure that the entitlement of the Assembly to amend Articles 24 and 25 would not limit the power of a Diplomatic Conference to revise these Articles.

187. The Delegation of Australia wondered whether it could be clarified in the Notes that Article 26(2)(a) did not reduce the powers of a Diplomatic Conference. With regard to Article 26(2)(c), the Delegation expressed support for undoing the deletion of the words “thus accepted” to ensure consistency in treaties administered by WIPO. Recalling the intervention made by the Delegation of New Zealand at the thirteenth session of the Standing Committee, as reflected in paragraph 278 of document SCT/13/8, the Delegation said that it should be clarified in the Notes that the expression “thus accepted” referred to the receipt of written notifications of acceptance from three-fourths of the Contracting Parties by the Director General.

188. The Secretariat pointed out that a Diplomatic Conference was free to take whatever decision it considered appropriate. It suggested not to preclude the outcome of a Diplomatic Conference by an additional provision on the entry into force of future decisions.

189. The Delegation of the United States of America recalled that any amendment of Articles 24 and 25 by the Assembly had to be accepted by three-fourths of the Contracting Parties pursuant to Article 26(2)(c). Against this background, the Delegation wondered whether it would be more accurate to use the expression “Amendments to Articles 24 and 25 may be adopted by the Assembly.” in Article 26(2)(a). The Delegation felt that this expression would also set apart an amendment by the Assembly from the possibility of a revision by a Diplomatic Conference.

190. The Chair proposed that, on the basis of the Vienna Convention on the Law of Treaties, clarifications be added to the Notes reflecting the concerns expressed by delegations. On this understanding, he suggested to approve Article 26(1) and (2)(a) and (b), and to reinstate the words appearing crossed out in Article 26(2)(c).

191. The Delegation of Japan stated that, for the time being, it could accept the suggestion by the Chair. The Delegation pointed out that the final decision on whether or not it would raise the issue again at the Diplomatic Conference would depend on the Notes to be tabled by the Secretariat.

192. The Delegation of Iran (Islamic Republic of) indicated that it could accept the suggestion by the Chair for the time being. The Delegation stated that it wished to reserve the right to raise the issues it had addressed again at the Diplomatic Conference.

Paragraph (1) [*Revision of the Treaty*]

193. The Chair concluded that paragraph (1) was approved as proposed on the understanding that a clarification as to the powers of a Diplomatic Conference be added to the Notes, in conformity with the Vienna Convention on the Law of Treaties.

Paragraph (2) [*Amendment by the Assembly of Certain Provisions of the Treaty*]

Subparagraphs (a) and (b).

194. These provisions were approved as proposed.

195. The Delegation of Japan made a reservation with regard to subparagraph (a).

Subparagraph (c).

196. This provision was approved as proposed on the understanding that the words which appeared crossed out in the proposal be retained.

197. The Delegation of Iran (Islamic Republic of) made a reservation with regard to subparagraph (c).

Article 27
(Becoming Party to the Treaty)

198. This provision was approved as proposed.

Article 28
(Application of the TLT 1994 and This Treaty)

199. The Representative of the European Community sought clarification as to the functioning of Article 28. She wondered whether the Treaty would constitute a new treaty or, as the title “Revised Trademark Law Treaty” suggested, a revision of the TLT 1994.

200. The Secretariat explained that Article 28 reflected principles of public international law, as laid down in Article 30 of the Vienna Convention on the Law of Treaties. The underlying intention was not to deviate from the existing set of established international rules but to clarify the situation on the basis of these rules. It pointed out that the TLT 1994 and the Revised Trademark Law Treaty constituted successive treaties on the same subject matter.

The Secretariat clarified that the title of the Treaty was provisional and could be changed by the Diplomatic Conference.

201. The Delegation of Australia wondered why a Contracting Party should wish to become a Contracting Party to both the TLT 1994 and the Revised TLT, as envisaged in Article 28. It explained that, according to national practice in Australia, there was only one procedure to be followed before the Office. The Delegation said that the provision could raise problems if applications would have to be dealt with differently. It submitted that there was in fact no "mutual" relationship between a Contracting Party bound only by the TLT 1994 and a Contracting Party bound only by the Revised Trademark Law Treaty.

202. The Delegation of Iran (Islamic Republic of) expressed support for the present text of Article 28.

203. The Delegation of Chile expressed support for the present wording of Article 28. The Delegation explained that it wished to maintain the standard set forth in the Vienna Convention on the Law of Treaties in view of Free Trade Agreements it had concluded with the United States of America.

204. The Delegation of Sweden expressed the view that the relations between Contracting Parties were clearly set out in Article 28. The Delegation said that such "relations" could occur in case an international action were taken against a Contracting Party failing to comply with its treaty obligations.

205. The Representative of AIPLA recalled that the Madrid System was formed by two independent international treaties. With regard to the relationship between a country bound only by the TLT 1994 and a country bound only by the Revised Trademark Law Treaty, he mentioned the situation under the various versions of the Berne Convention for the Protection of Literary and Artistic Works.

206. The Representative of the ICC felt that the relations between Contracting Parties would be simpler with only one treaty instrument.

207. The Chair concluded that the provision was approved as proposed.

Article 29
(Entry into Force;
Effective Date of Ratifications and Accessions)

Paragraph (1) [*Instruments to Be Taken into Consideration*]

208. This provision was approved as proposed.

Paragraph (2) [*Entry into Force of the Treaty*]

209. The Delegation of Iran (Islamic Republic of) held the view that, before allowing accessions to the Treaty, the Revised Trademark Law Treaty should first enter into force by virtue of the deposit of five instruments of ratification. The Delegation recalled that, pursuant

to Article 32(2), there was a period of one year for signing the Treaty after its adoption. The Delegation proposed to omit the reference to instruments of accession in Article 29(2).

210. The Chair explained that the inclusion of accessions was intended to offer more possibilities to bring the Treaty into force. He pointed out that there was a precedent in other treaties administered by WIPO in the sense that no distinction was to be made between ratification and accession as a basis for the entry into force of a treaty. Article 27(2) clearly dealt with both cases.

211. The Representative of the European Community asked why Article 29(2) referred only to instruments deposited by States. She wondered about the reasons for excluding intergovernmental organizations. The Representative pointed out that, in the case of the European Community, the ratification or accession would concern 25 States.

212. The Chair expressed the view that it would be consistent to count a ratification or accession by the European Community.

213. The Delegation of Iran (Islamic Republic of) proposed to make a reference to Article 27(1)(ii) in order to include intergovernmental organizations.

214. The Delegation of Australia expressed support for the inclusion of the European Community in Article 29(2).

215. The Chair proposed to use the expression “five States or intergovernmental organizations referred to in Article 27(1)(ii)” in order to include intergovernmental organizations.

216. The Delegation of Iran (Islamic Republic of) wondered whether it was sufficiently clear that there was no need for five States and, in addition, five intergovernmental organizations to deposit their instruments of ratification or accession.

217. The Chair clarified that the expression should be understood in the sense that five instruments deposited either by States or intergovernmental organizations were necessary.

218. The Representative of the European Community expressed gratitude for the inclusion of intergovernmental organizations.

219. It was agreed to redraft the provision as follows:

> “This Treaty shall enter into force three months after five States or intergovernmental organizations referred to in Article 27(1)(ii) have deposited their instruments of ratification or accession”.

Paragraph (3) [*Entry into Force of Ratifications and Accessions Subsequent to the Entry into Force of the Treaty*]

220. This provision was approved as proposed.

Paragraph (4) [*Closing of the Trademark Law Treaty 1994*]

221. The Delegation of the United States of America held the view that Article 29(4) was not needed. It explained that the provision could form an obstacle to compliance with the Free Trade Agreements that certain countries had concluded with the United States of America and which provided for accession to the TLT 1994. The Delegation said that the content of the Revised Trademark Law Treaty was a sufficiently strong incentive for countries to join.

222. The Delegation of Mexico expressed support for the intervention by the Delegation of the United States of America. The Delegation said that it was not understandable why the TLT 1994, as an independent international treaty besides the envisaged Revised Trademark Law Treaty, should disappear. Instead, both treaties should be maintained.

223. The Delegation of Australia agreed that Article 29(4) should be omitted in view of the need to allow for the fulfillment of obligations under existing free trade agreements. The Delegation emphasized the need to encourage countries to join the Revised Trademark Law Treaty.

224. The Delegation of Iran (Islamic Republic of) expressed support for the omission of Article 29(4).

225. The Representative of OAPI expressed the view that Article 29(4) should be maintained. Explaining that OAPI was constituted by two sub-regional organizations, he expressed the fear that it would raise problems if Member States of intergovernmental organizations were party to different treaties. He considered it preferable to close the TLT 1994. The Representative said that Article 28(2) would be sufficient to solve potential problems arising under bilateral free trade agreements.

226. The Representative of the ICC supported the maintenance of two independent treaties as a kind of “TLT umbrella”. He explained that certain countries may prefer to adhere first to the TLT 1994 before later becoming party to the Revised Trademark Law Treaty.

227. It was agreed that the provision should be omitted.

Article 30
(Reservations)

228. The Secretariat explained that Article 19(5), as presented in document SCT/13/2, had been moved to Article 30(2).

229. The Delegation of Australia expressed support for the new text of Article 30, including the former Article 19(5). It proposed that a clarification be added to the Notes on Article 19 as to the shift of paragraph (5) to Article 30(2).

230. The Chair concluded that the provision was approved as proposed.

Article 31
(Denunciation of the Treaty)

231. This provision was approved as proposed.

Article 32
(Languages of the Treaty; Signature)

232. This provision was approved as proposed.

Article 33
(Depositary)

233. This provision was approved as proposed.

Rule 1
(Abbreviated Expressions)

234. This provision was approved as proposed, subject to the addition of the word "Revised" before the words "Trademark Law Treaty" in paragraph (1)(a).

Rule 2
(Manner of Indicating Names and Addresses)

Paragraph (1) [*Names*]

235. This provision was approved as proposed.

Paragraph (2) [*Addresses*]

Subparagraphs (a), (b) and (c).

236. These provisions were approved as proposed.

Subparagraph (d).

237. The representative of FICPI held the view that this subparagraph should be moved to paragraph (1) of Rule 2 because it rather indicated a name than an address.

238. The Chair qualified the content of the subparagraph as a *sui generis* type of indication. He proposed to move it to a new paragraph (3) of Rule 2.

239. The provision was approved as proposed on the understanding that its content would be moved to a new paragraph (3) of Rule 2.

Subparagraph (e).

240. This provision was approved as proposed on the understanding that it would be renamed as subparagraph (d) of Rule 2(2).

Paragraph (3) [*Script to Be Used*]

241. This provision was approved as proposed on the understanding that it would become a new paragraph (4) of Rule 2.

Rule 3
(Details Concerning the Application)

Paragraph (1) [*Standard Characters*]

242. The Secretariat, in view of the decision of the Standing Committee to replace items (ix) to (xiv) of Article 3(1)(a) with two items, proposed to omit the reference ", pursuant to Article 3(1)(a)(ix)," in paragraph (1). It suggested to add the words "letters and numbers" in brackets after the expression "standard characters" in the third line of that paragraph for the purpose of clarification.

243. The Delegation of Italy feared that the proposed changes to paragraph (1) would result in an obligation on Contracting Parties to provide for a standard character system. The Delegation expressed doubts as to the usefulness of such a system. It wondered about the legal grounds for a request for standard characters. The Delegation expressed the view that the publication of a mark should correspond to the representation filed by the applicant. It suggested not to refer to standard characters in Rule 3.

244. The Delegation of Australia held the view that an obligation to provide for standard characters arose from the proposed changes to paragraph (1).

245. The Delegation of Panama expressed support for the proposed changes to paragraph (1). The Delegation recalled that protection would be broadened in the case of a registration and publication in standard characters. It wondered whether, without any statement of the applicant, the registration and publication of a word mark could still be effected in standard characters.

246. The Delegation of Croatia proposed to add the expression "if it is applicable" at the end of paragraph (1).

247. The Chair proposed to make it clear at the beginning of paragraph (1) that the use of standard characters was at the option of the Office, and that, accordingly, the use of standard characters could only be requested by the applicant, if the Office offered that possibility.

248. It was agreed to redraft this provision as follows:

> "Where the Office of a Contracting Party uses characters (letters and numbers) that it considers as being standard, and where the application contains a statement to the effect that the applicant wishes that the mark be

registered and published in the standard characters used by the Office, the Office shall register and publish that mark in such standard characters".

Paragraph (2) [*Number of Reproductions*]

249. The Secretariat, in view of the decision of the Standing Committee to replace items (ix) to (xiv) of Article 3(1)(a) with two items, proposed to move the content of item (x) of Article 3(1), as set out in document SCT/14/2, to a new paragraph (2) of Rule 3. It proposed the following wording for this paragraph:

"(2) [*Mark Claiming Color*] Where the application contains a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, the application shall indicate the name or code of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color."

250. The Secretariat explained that the present text of paragraph (2) of Rule 3, as set out in document SCT/14/3, in consequence, would have to be moved to a new paragraph (3) of that Rule.

251. The Delegation of the United Kingdom pointed out that the requirement to provide a color code should not be made mandatory. It held the view that, in most cases, a description in words would be sufficient. The Delegation said that, similarly, an indication of the parts to which a color relates may be impractical and should not be made mandatory.

252. The Representative of the European Community supported the Delegation of the United Kingdom. She said that an application should not be turned down because of a missing indication of the color code. The Representative indicated that she would prefer an optional requirement.

253. The Delegation of Australia held the view that countries wishing to require a color code should be able to establish this requirement. Referring to potential future developments towards code indications, the Delegation proposed to insert the words "a Contracting Party may require that" before the expression "the application shall indicate the name or code".

254. The Chair proposed to use the expression "the Office may require that" to achieve more consistency of the wording throughout the text of the Treaty and the Regulations.

255. The Delegation of Germany expressed support for the requirement of furnishing a color code. It expressed the view that the wording proposed by the Secretariat would not make mandatory this requirement because it referred to the name "or" code.

256. The Delegation of the United Kingdom expressed support for the proposal by the Delegation of Australia. It considered use of the word "or" inappropriate because it would allow the publication of the mark to show only the code. The Delegation stated that the indication of the color code should always be accompanied by a description.

257. The Representative of the European Community expressed the view that an indication of color should always be given, whereas it should be optional to add the color code. The Representative supported the proposal by the Chair.

258. The Delegation of Switzerland and the Delegation of Sweden expressed support for the intervention by the Representative of the European Community and the proposal by the Chair.

259. The Delegation of Panama stated that the possibility of code indications should be maintained but not be made mandatory. It supported the proposal by the Chair.

260. The Delegation of Latvia feared that the requirement to indicate a color code would place an additional burden on small and medium-sized enterprises. If different code systems were used by Contracting Parties, a mandatory requirement of code indication could make it necessary for those enterprises to seek additional advice. The Delegation underlined that it did not see any need for indicating the color code if the application contained a clear reproduction of the color.

261. The Chair concluded that it was agreed to insert a new paragraph (2) in Rule 3 having the following heading and wording:

> "(2) [*Mark Claiming Color*] Where the application contains a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, the Office may require that the application indicate the name or code of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color".

262. The Chair recalled that, in consequence, the text of paragraph (2) of Rule 3, as set out in document SCT/14/3, would become a new paragraph (3) of that Rule.

263. The Delegation of Australia, with regard to paragraph (2) of Rule 3, as set out in document SCT/14/3, proposed to clarify in the Notes on Rule 3 that "reproduction" was a form of "representation". This would make clear that the requirement of furnishing reproductions was covered by item (ix) of Article 3(1)(a) as redrafted.

264. The Representative of FICPI pointed out that it should be clarified that "reproduction" was covered by the notion of "representation".

265. The Chair concluded that paragraph (2) of Rule 3, as set out in document SCT/14/3, was approved as proposed on the understanding that its content would be moved to a new paragraph (3) of Rule 3, and that a clarification reflecting the understanding that the term "representation" used in Article 3(1)(a)(ix) covers the term "reproduction" used in the provision would be added to the Notes.

Paragraph (3) [*Reproduction of a Three-Dimensional Mark*]

266. The Chair, in view of the decision of the Standing Committee to replace items (ix) to (xiv) of Article 3(1)(a) with two items, pointed out that slight differences in the wording of this provision would have to be made. He recalled that, as a consequence of the changes to paragraph (2) of Rule 3, the provision would have to be moved to a new paragraph (4) of Rule 3.

267. It was agreed that the content of this provision should be moved to a new paragraph (4) of Rule 3, and that its heading should be redrafted as follows: "[*Three-Dimensional Mark*]".

Subparagraph (a).

268. This provision was approved as proposed on the understanding that the words ", pursuant to Article 3(1)(a)(xi)," should be omitted.

Subparagraphs (b) to (d).

269. These provisions were approved as proposed.

Subparagraph (e).

270. It was agreed to redraft this provision as follows:

"Paragraph (3)(a)(i) and (b) shall apply *mutatis mutandis*".

Paragraph (4) [*Reproduction of a Hologram Mark*]

271. The Chair explained that, in the light of the discussion on items (ix) to (xiv) of Article 3(1)(a), as set out in document SCT/14/2, the field of application of this provision would have to be extended to motion marks, color marks and position marks. He recalled that, as a consequence of the changes to paragraph (2) of Rule 3, the provision would have to be moved to a new paragraph (5) of Rule 3.

272. The Representative of FICPI wondered whether the confinement to four categories of marks would allow Contracting Parties to advance with new types of marks potentially emerging in the future. He gave the example of subliminal marks in this context.

273. The Delegation of Australia held the view that the provision offered much flexibility. It said that the provision did not dictate the range of acceptable marks. It only regulated in more detail specific requirements as to certain types of marks.

274. It was agreed to move this provision to a new paragraph (5) of Rule 3 and redraft its heading and wording as follows:

"(5) [*Hologram Mark, Motion Mark, Color Mark, Position Mark*] Where the application contains a statement to the effect that the mark is a hologram mark, a motion mark, a color mark or a position mark, a Contracting Party may require one or more reproductions of the mark and details concerning the mark, as prescribed by the law of that Contracting Party".

Paragraph (5) [*Representation of a Mark Consisting of a Non-Visible Sign*]

275. The Chair explained that, in the light of the discussion on items (ix) to (xiv) of Article 3(1)(a), as set out in document SCT/14/2, this provision would have to be amended to allow Contracting Parties to require one or more representations of the mark, an indication of the type of mark and details concerning the mark. He recalled that, as a consequence of the changes to paragraph (2) of Rule 3, the provision would have to be moved to a new paragraph (6) of Rule 3.

276. It was agreed to move this provision to a new paragraph (6) of Rule 3 and redraft its heading and wording as follows:

> "(6) [*Mark Consisting of a Non-Visible Sign*] Where the application contains a statement to the effect that the mark consists of a non-visible sign, a Contracting Party may require one or more representations of the mark, an indication of the type of mark and details concerning the mark, as prescribed by the law of that Contracting Party".

Paragraphs (6) to (8).

277. These provisions were approved as proposed on the understanding that they would become paragraphs (7) to (9) of Rule 3 respectively, and that references to Article 3(1)(a) would be adjusted in accordance with the renumbering of the items of that Article.

278. The Representative of CEIPI drew the attention of the Standing Committee to the fact that in the French version of the text, the word "*type*" was used with different meanings in new Rule 3(6), in the title of Article 2(2) and in new Article 3(1)(a)(x).

Rule 4
(Details Concerning Representation and Address for Service)

279. This provision was approved as proposed.

Rule 5
(Details Concerning Filing Date)

280. The Secretariat explained that, as compared to the draft presented at the thirteenth session, the only change which had been introduced in this Rule was the transfer of former paragraph (3) to Rule 6(7). The rationale behind this change was twofold: on the one hand, it appeared that the provision concerning the date of receipt had a wider scope than merely applications for registration, and on the other, the new provision would respond to the concerns expressed at the last session, that an Office should have the freedom to designate a facsimile or an e-mail address to which communications must be sent in order to be considered as received by the Office.

281. The Delegation of Latvia suggested to move current Rule 5(3) to Rule 6, as this provision had a scope broader than only applications.

282. The Chair noted that the suggestion put forward by the Delegation of Latvia followed the same logic as the transfer of the provision on date of receipt and it was therefore appropriate to move it to Rule 6. The Chair further noted that, the word "application", which appeared several times in the text of the paragraph, should be replaced by "communication".

283. This provision was approved on the understanding that the content of paragraph (3) be moved to Rule 6, and that the word "application" be changed by "communication".

Rule 6
(*Details Concerning Communications*)

Paragraphs (1) to (5).

284. These provisions were approved as proposed.

Paragraph (6) [*Authentication of Communications in Electronic Form*]

285. This provision was approved as proposed.

286. The Delegation of Iran (Islamic Republic of) made a reservation with regard to this provision.

Paragraph (7) [*Date of Receipt*]

287. The Representative of FICPI said that while he agreed with the proposed amendment, the insertion of the words “in particular” broadened significantly the scope of the provision, As a consequence, each Contracting Party would have the freedom to determine the circumstances in which the receipt of a document or the payment of a fee should be deemed to constitute receipt by or payment to the Office. Rule 5(3), in its previous form, dealt with the date accorded to documents which had been filed in four particular sets of circumstances, defined in items (i) to (iv) of that paragraph. The amended provision would give Offices too much latitude and would allow them to determine, for example, that the circumstances in which documents were actually received by them were not sufficient. The Representative held that in the interest of the users of the system, these circumstances should be much more tightly defined. The Representative further noted that the provision should be targeted at the filing of documents in electronic form or by electronic means of transmittal, where a Contracting Party could nominate an address or addresses to which communications should be sent in order to be deemed as received by the Office.

288. The Representative of CEIPI supported the views expressed by the Representative of FICPI and noted that, in the French version of the text, the words “in particular” did not appear.

289. The Delegation of Australia agreed with the position expressed by the Representative of FICPI that the provision as redrafted had a broader effect. Regarding the need for a provision dealing specifically with electronic filing, the Delegation proposed that a new paragraph (8) be added in Rule (6) with the following wording: “Where a Contracting Party chooses to allow a communication to be received in electronic form or by electronic means of transmittal, that Contracting Party may require that the communication be sent to a nominated address”.

290. The Delegation of Latvia suggested to discuss this provision in tandem with former Rule 5(3) which had been moved to Rule 6(8) and dealt with the electronic filing of any communication. In the view of the Delegation, this new paragraph completed the provision, as there was now a date of receipt for paper documents and for electronic communications.

291. The Delegation of Australia noted that in paragraph (7), a new item was needed, so as to allow an Office to designate an address to which communications would be sent, and to determine the circumstances in which, if the communication was not received at the addresses indicated in items (i) to (iv), arrival of a document or payment of a fee would constitute receipt by or payment to the Office. The Delegation suggested that new item (v) have the following wording "an address other than a nominated address by the Office".

292. The Delegation of Panama supported the proposal made by Australia and declared that in its country, it was possible to file applications at specific information points. There was an information center for use by entrepreneurs and also a center at the Technological University of Panama. Such centers constituted additional possibilities to those mentioned in current Rule 6(7). The Delegation further noted that Panama was in the process of modifying its legislation to provide for the filing of communications by facsimile or by electronic means. Nevertheless, the filing of any application was effective once it reached the Office and there was an accredited receipt of that filing.

293. The Delegation of Australia, in relation to the comments made by the Delegation of Panama, held the view that the information centers mentioned by that delegation would not be covered by any of the items in Rule 6(7) or by the proposed new item (v). The Delegation of Australia suggested to change the wording of item (iv) by deleting the words "other than a postal service" and replacing them by the words "or an agency", which would cover the situation described by the Delegation of Panama.

294. The Delegation of Croatia stated that it saw no real difference in meaning between the formulation of paragraph (7) with the words "in particular" and without them. The Delegation preferred to keep the text as proposed by the Secretariat.

295. The Representative of CEIPI said that, in his view, having the words "in particular" or not had consequences on legal security. If the words were included, the users of the system would have no certainty as to what the rules were, since Offices were given complete freedom to determine when a document or a fee was received. As a practical matter, it was safer to have more exhaustive provisions, which could later be amended by the Assembly if they proved to no longer be useful. The Representative further noted that it was necessary to clarify the relationship between paragraph (7) and proposed paragraph (8), by establishing a certain hierarchy between the two norms. Therefore, in a situation where a communication was filed in electronic form or by electronic means of transmittal, an applicant could rely on the fact that he had sent the communication to the Office, even though he did not send it to the address nominated by the Office. The Representative suggested to add the words "subject to paragraph (7)" at the beginning of paragraph (8).

296. The Delegation of the Russian Federation noted, in relation to the proposal made by the Delegation of Latvia, that it agreed with transferring the provision contained in Rule 5(3) to Rule 6 and to change the word "application" by "communication". However, it was necessary to look at other parts of Rule 6 to make sure that the new text was not contradictory. In the view of the Delegation, proposed paragraph (8) would be similar in content to new paragraph (7) and both would contradict the provision contained in paragraph (5), according to which the Office could require the original of a communication that had been transmitted by electronic means, prior to giving a filing date. The Delegation proposed to link new paragraphs (7) and (8), but not to make one provision subject to the other.

297. The Delegation of China, with regard to the relationship between new paragraph (7) and proposed paragraph (8), said that there seemed to be some difficulty in that the transferred Rule clearly dealt with electronic filing, while in Rule 6(7)(iv), the words “a delivery service” did not seem to clearly indicate electronic filing. While the proposal to transfer the Rule about electronic filing into Rule 6(8) was a valuable one, the relationship between the two provisions was unclear and it was important to specify the means of electronic filing and perhaps cut out particular forms of electronic filing that the Office could not handle.

298. The Secretariat, in reply to the observation made by the Delegation of the Russian Federation, said that the date of receipt of a communication which was sent by electronic means of transmittal, was the date on which the communication arrived in the Office. According to Rule 6(5), a Contracting Party could require that the original of a communication so filed be sent to the Office within one month, but the date of receipt of the paper copy of the communication did not affect the filing date as long as it was received by the Office within that one month period.

299. The Delegation of Australia noted that a difference needed to be drawn between communications on paper, which could only be received by the Office during working hours, and communications sent by electronic means of transmittal, which could arrive in the Office at any time. Former Rule 5(3) seemed to deal with that particular case and its transfer to Rule 6 did not seem to contradict any other provisions of that Rule.

300. The Delegation of the Russian Federation pointed out that, according to current Rule 5(3), a Contracting Party which required the presentation of the original of a communication filed by electronic means of transmittal, might apply a penalty if that original was not provided. In the view of the Delegation, it was not clear how this could be applied if the provision was integrated in Rule 6.

301. The Delegation of Australia held the view that the presentation of the paper copy of a communication transmitted by electronic means, within a time limit, appeared to be an absolute requirement in those Contracting Parties which provided for it. If an applicant failed to comply with such a requirement, he could risk losing the filing date.

302. The Secretariat noted that Rule 6(5) was a provision of the TLT 1994 and it was originally designed to cover communications sent via facsimile, where the Office could require the original paper communication within a month. The new provisions covered the case of communications in electronic form, where the starting point was not paper, and such cases were covered by former Rule 5(3).

303. The chapeau of this provision was approved as proposed, subject to the deletion of the words “in particular”.

items (i) to (iii)

304. These items were approved as proposed.

item (iv)

305. This item was approved with the following wording:

> "a delivery service or an agency specified by the Contracting Party".

306. It was decided to include a new item (v) with the following wording:

> "an address other than the nominated addresses of the Office".

307. It was also decided to add a new paragraph (8), with the contents of former Rule 5(3), which would have the following wording:

> "(8) [*Electronic Filing*] Subject to paragraph (7), where a Contracting Party provides for the filing of a communication in electronic form or by electronic means of transmittal and the communication is so filed, the date on which the Office of that Contracting Party receives the communication in such form or by such means shall constitute the date of receipt of the communication".

308. The Secretariat explained that former paragraphs (7) "Notification" and (8) "Sanctions for Non-Compliance with Requirements" appeared struck-through in the current draft, and that it was suggested to delete these paragraphs. The Secretariat recalled that, at the thirteenth session of the SCT, several delegations expressed concern on the fact that these provisions overlaped with Article 22 "Observations in Case of Intended Refusal". Article 22 was the more general provision, which effectively implied the making of notifications. This was further emphasized by Rule 5(1) which provided that in case of non-compliance with filing date requirements, the Office shall promptly "invite" the applicant to comply with such requirement.

309. It was decided to delete former paragraphs (7) and (8).

Rule 7
(Manner of Identification of an Application Without Its Application Number)

310. This provision was approved as proposed.

Rule 8
(Details Concerning Duration and Renewal)

311. This provision was approved as proposed.

Rule 9
(Requirements Relating to Measures in Case of Failure to Comply with Time Limits)

312. The Delegation of France suggested to redraft that the text of Rule 9(1)(i) in French, "*contienne l'indication du requerant*" to read: "*comprenne l'identification du déposant et l'indication du délai considéré*", since it was not linguistically correct to speak of the identification of a time limit.

313. The Delegation of Belgium said that Rule 2 had a wording similar to that proposed by the Secretariat for Rule 9(1)(i) "*l'indication du requérant*" and that the notion did not seem to have caused any problems of interpretation.

314. The Chair noted that the language issue raised by the Delegation of France, as well as any other language issue could be better addressed by the Drafting Committee of the Diplomatic Conference, whose only task would be to check the texts of the Basic Proposal in all six official languages for equivalence and idiomatic accuracy.

315. The Delegation of Japan recalled that at the thirteenth session of the SCT, it had suggested to add a reference to Article 14(1) in Rule 9(4)(i). The Delegation noted that it seemed clear that the general principle established by Article 14(3) and Rule 9(4)(i) was that there should not be double relief once relief has been granted. In the current structure of Article 14, the relief provided in paragraph (1) was an optional clause. Nevertheless, where a Contracting Party provided for the extension of a time limit under Article 14(1) and relief had already been granted, the Contracting Party should not be required to grant any second or subsequent relief measures. The Delegation further noted, with regard to Rule 9(4)(vii), that it supported the text prepared by the Secretariat, which reflected the suggestion made by the Delegation of Japan at the thirteenth session. However, the Delegation deemed it necessary to include more detailed explanations on this item in the Notes, in order to avoid any future misunderstanding as to the purpose of the provision.

316. The Delegation of Germany noted that, under the new drafting of Article 14, the extension of a time limit before the expiry of the time limit in paragraph (1), was different in nature to the other extension under paragraph (2)(i) as the first one was a discretionary measure for those States that had such measure in their law. In that light, paragraph (1) was simply a reminder to those States that they could keep their law and practice. The Delegation noted that the real relief was the extension of the time limit after the expiry of the time limit. Thus, it was the understanding of the Delegation that an extension under paragraph (1) could well be followed by a reinstatement of rights if the extended time limit had expired, and the failure was unintentional. This situation should not be considered as double relief.

317. The Delegation of Japan said that it was prepared to accept the text of Rule 9(4) as presented at the current session. However, the Delegation would continue to study the question of whether a reference to Article 14(1) should be included in that Rule 9(4)(i) and if still necessary, the Delegation would bring back its concerns to the Diplomatic Conference.

318. The Representative of FICPI noted that the sentence in paragraph 3(ii) ended with “time limit”, whereas in other parts of the Rule, the formulation was “the time limit concerned”. The Representative asked that the word “concerned” be added at the end of item (ii) for consistency.

319. This provision was approved as proposed, on the understanding that the Notes on paragraph (4)(vii) would be further clarified and that the word “concerned” would be added at the end of paragraph (3)(a)(ii).

Rule 10
(Contents of the Request for Recordal of a License
or for Amendment or Cancellation of the Recordal of a License)

320. It was decided to change the word “Details” for “Requirements” in the heading of Rule 10.

Paragraph (1) [*Contents of Request*]

321. The Chair noted that a change in wording had been introduced in Rule 10(1)(a)(xi).

322. This provision was adopted as proposed, subject to a change of the word “Contents” for “Content” in the heading of Rule 10(1).

323. It was also agreed to introduce the same change throughout the Treaty, the Regulations and the Notes.

Paragraph (2) [*Supporting Documents for Recordal of a License*]

324. The Secretariat noted that, with regard to supporting documents, there was a change in approach in this paragraph, as compared with the draft presented at earlier sessions. This change had to do with the general approach throughout the revised TLT, namely that the entitlement to make a request or to file an application did not flow from the presentation of the request or the application but it could be proven through supporting documentation. This was important, because there was a general shift away from the paper-based approach of the TLT 1994, which provided that an application or a request had to be accepted if it was presented on paper and signed. The current approach was more flexible, because there was a choice to use electronic means of communication. The Secretariat drew the attention of the Standing Committee to the fact that the uncertified statement of license referred to in Rule 10(2)(a)(ii) was a very simplified way of showing entitlement for the recordal of a license. In addition, a new paragraph (b) had been introduced in Rule 10(2), to take care of the situation where a co-holder was not a party to the license agreement and this co-holder was required to give his express consent to the recordal of the license.

325. The Delegation of the Republic of Korea, supported by the Delegation of Chile, held the view that the provision contained in Rule 10(2)(b), regarding the recordal of a license for a trademark belonging to several co-holders should be moved to the Treaty. The Delegation noted that there was no provision in the Treaty mandating that a more detailed norm be included in the Regulations. In addition, the purpose of this provision was similar to Article 11(1)(d) of the Treaty, regarding change of ownership of a trademark owned by

co-holders. Therefore, the provision contained in Rule 10(2)(b) should be prescribed in the same manner, and concretely, it should be moved to Article 18(2).

326. The Delegation of Mexico said that the wording in Rule 10(2)(a) opened the possibility for the Office of a Contracting Party to require that the request for recordal of a license be accompanied by one of the two documents contemplated in items (i) and (ii). However, the choice of document was left to the licensor or other requesting party. The Delegation said that it would be more appropriate to eliminate this part of the Rule and to allow the Office to decide which of the two documents had to be submitted by the requesting party.

327. The Delegation of Switzerland, supported by the Representative of the European Community, renewed its position regarding Rule 10(2)(a)(ii), that the holder should be allowed to request recordal of a license by affixing his signature only and suggested to delete the rest of the sentence.

328. The Delegation of Morocco supported the drafting proposed by the Secretariat.

329. The Representative of OAPI, regarding the proposal made by the Delegation of Switzerland, said that it would be prudent, before making a recordal, to have at least the signatures of all the parties involved in the license, so that the responsibility of the Office should not be committed.

330. The Delegation of Australia, with regard to the comments made by the Delegation of Korea, said that that a head of power in the Treaty to have the provision in Rule 10(2)(b) would seem to be found in the wording of Article 18, which read that the requirements would be specified in the Regulations. According to the Delegation, Rule 10(2)(b) was another such requirement. The Delegation further noted that this provision should also apply to the cancellation and amendment of the recordal of a license and added that it would support the suggestion made by the Delegation of Japan at the last session of the SCT, to include a provision similar to subparagraph 10(2)(b) in paragraphs (3) and (4).

331. The Delegation of Japan expressed support for the current drafting of Rule 10(2). The Delegation also supported the proposal made by the Delegation of Australia to add a provision similar to subparagraph (2)(b) in paragraphs (3) and (4).

332. The Chair noted that it might be more appropriate to include such a provision in paragraph (4) rather than in paragraph (3).

333. The Representative of FICPI said that from the point of view of the users of the system, it would be preferable that Rule 10(2)(b) should not apply in the case where the holder made the request, but only when the licensee made the request. With regard to the suggestion made by the Delegation of Mexico, that the phrase “at the option of the requesting party” be deleted or changed by “at the option of the Office”, the Representative said that the first phrase was perhaps the most important part of the licensing provisions and that it should therefore stay in the Regulations.

334. The Delegation of Sudan supported the comments made by the Representative of OAPI, to the effect that the Office should be able to require the signatures of all co-holders. The Delegation also supported the suggestion made by the Delegation of the Republic of Korea, regarding the transfer of Rule 10(2)(b) to the Treaty itself.

335. The Delegation of the Russian Federation said that, in the text of Rule 10(2), (3) and (4), there was a reference to the representative of both the licensor and the licensee. The Delegation added that this reference could be deleted, as it had been done in other provisions of the Treaty.

336. The Representative of FICPI noted that if the words "or his representative" were to be deleted from the text of the three paragraphs, there should be some form of assurance in the Notes that the supporting documents mentioned in those paragraphs were seen as being within the general provision of Article 4, so that it was deemed that the signature of the representative was that of the holder.

337. The Chair, after holding informal consultations with all delegations involved, declared that it seemed that the text of paragraph (2), as it had been presented to the current session, had all the elements of a compromise solution. In fact, the draft contained elements which satisfied the parties in some way. To advance the discussion, the Chair suggested that the SCT adopt this text, on the understanding that it should be considered only as a starting point for the discussion at the Diplomatic Conference.

338. This provision was approved as proposed, subject to the deletion of the words "or his representative" in item (ii).

Paragraph (3) [*Supporting Documents for Cancellation of Recordal of a License*]

339. This provision was approved as proposed, subject to the deletion of the words "or his representative" in item (ii).

Paragraph (4) [*Supporting Documents for Amendment of Recordal of a License*]

340. This provision was approved as proposed, on the understanding that a new subparagraph (b) would be added, having the same effect as subparagraph (2)(b), and subject to the deletion of the words "or his representative".

341. The Representative of FICPI noted that the Model International Forms were part of the Rules and consequential amendments would need to be included in those forms. Although the SCT itself might not be able to work on those changes, they should be included at some stage.

342. The Chair proposed to entrust the Secretariat with the task of identifying the consequential changes that were needed in the Model International Forms, and to approve them subject to those changes.

343. It was decided to reverse the order of paragraphs (3) and (4).

Agenda Item 7: Questionnaire on Trademark Law and Practice

344. The Secretariat stated that a provisional version of document SCT/14/5 "Summary of Replies to the Questionnaire on Trademark Law and Practice (SCT/11/6)" had been made available prior to the current session of the SCT for comments by delegations that had submitted replies to the questionnaire. All comments received were incorporated into the

document presented to the meeting. The Secretariat invited SCT members and observers to submit any further replies or corrections, which would be integrated in a revised version of the document.

345. The Representative of the ICC expressed appreciation for the efforts made by the Secretariat in preparing document SCT/14/5.

346. The Chair noted that the SCT had taken note of document SCT/14/5 "Summary of Replies to the Questionnaire on Trademark Law and Practice (SCT/11/6)" and it had expressed its thanks and appreciation for the Secretariat's efforts in preparing that document.

Agenda Item 8: Future Work

347. The Secretariat invited the SCT members and observers to identify topics for the future work of the SCT and to submit in writing concise proposals to the Secretariat, by July 1, 2005. The Secretariat pointed out that the work of the Committee pertained to the law on trademarks, industrial designs and geographical indications and welcomed proposals for the future work in any of those areas. The proposals would be translated and circulated prior to the fifteenth session of the SCT in November 2005, and would serve as a basis for future work of the SCT.

348. The Representative of the European Community expressed her understanding that geographical indications and Internet domain names would be retained in the agenda of the SCT.

349. The Delegation of Iran (Islamic Republic of) expressed support to the proceedings and timetable in respect of future work proposed by the Secretariat.

350. The Representative of AIM raised the issue of well-known marks, as it may impact the future work of the SCT. The Representative mentioned that national registers for well-known marks had been established in some countries and recalled that at the eleventh session of the SCT he had suggested that this issue be included in the agenda of the next session. However, at the twelfth session of the SCT, there was no discussion on registers for well-known marks. The Representative noted that he introduced this topic to the present session with a position paper which was made available to delegates. This position paper had received support from ECTA and MARQUES and had been communicated to the International Bureau. The Representative further noted that the position paper raised a more general question concerning the implementation of the 1999 Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks. AIM fully supported the flexible catalogue of criteria set forth in the Joint Recommendation to assess whether a mark is well-known or not. The Representative further proposed that the Secretariat conduct a survey on the implementation of, and compliance with the 1999 Joint Recommendation at the national level. Such a survey may, for example, measure implementation paragraph by paragraph, or otherwise, and there should be some questions on the existence of official well-known mark registers –whether mandatory or optional to obtain well-known mark recognition– as distinct from listings or compilations of marks held well known in court or administrative decisions. In the view of the Representative, this type of exercise would fit nicely in the objectives of the SCT.

351. The Representative of MARQUES supported the views expressed by the Representative of AIM. The Representative underlined his concerns about the inflexible handling of marks that would arise due to the possible existence of registers for well-known marks, and the danger of creating a two-class registration system for marks.

352. The Representative of ICC urged the Committee to find ways to enlarge the membership of the Madrid Union.

353. Members and observers of the Committee were invited to submit to the Secretariat, by July 1, 2005, in writing, concise proposals for future work of the SCT, including the issues to be dealt with and priorities for addressing them. The Secretariat will translate these proposals and make them available as SCT working documents.

354. The Chair announced as tentative dates for the fifteenth session of the SCT, November 28 to December 2, 2005.

Agenda Item 9: Adoption of the Summary by the Chair

355. The Chair noted that the following changes should be included in the Draft Summary by the Chair (document SCT/14/7 Prov.): in the Spanish text of Article 29(2), the words "*, o cinco*" in the second line of the provision, should be replaced by the word "*u*"; the phrase "This provision was approved as proposed" should be added after the headings of Articles 30 to 33; and the phrase "The SCT took note of document SCT/14/5" should be included under Agenda Item 7: Questionnaire on Trademark Law and Practice.

356. The Chair noted that Agenda Item 8: Future Work, should be completed as follows: "Members and observers of the Committee were invited to submit to the Secretariat, by July 1, 2005, in writing, concise proposals for future work of the SCT, including the issues to be dealt with and priorities for addressing them. The Secretariat will translate these proposals and make them available as SCT working documents".

357. The Standing Committee adopted the draft of the Summary by the Chair contained in document SCT/14/7 Prov. with the modifications noted by the Chair.

Agenda Item 10: Closing of the Session

358. The Chair closed the fourteenth session of the Standing Committee.

[Annex I follows]

ANNEX I

E

WIPO

SCT/14/7
ORIGINAL: English
DATE: April 22, 2005

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

Fourteenth Session
Geneva, April 18 to 22, 2005

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the Session

1. Mr. Ernesto Rubio, Assistant Director General of the World Intellectual Property Organization (WIPO), opened the session and welcomed the delegates on behalf of the Director General of WIPO.

Agenda Item 2: Election of a Chair and two Vice-Chairs

2. Mr. Li-Feng Schrock (Germany) was elected as Chair of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) for the year 2005. Mr. James Otieno-Odek (Kenya) and Ms. Luz Celeste Ríos de Davis (Panama) were elected as Vice-Chairs for the same period.

Agenda Item 3: Adoption of the Agenda

3. The SCT adopted the Draft Agenda (document SCT/14/1 Prov.2) without modifications.

Agenda Item 4: Accreditation of Certain Non-Governmental Organizations

4. Discussion was based on document SCT/14/6 (Accreditation of Certain Non-Governmental Organizations).

5. The SCT approved the representation in sessions of the Committee of the non-governmental organizations referred to in the Annex to document SCT/14/6.

Agenda Item 5: Adoption of the Draft Report of the Thirteenth Session

6. The SCT adopted the Draft Report (document SCT/13/8 Prov.2) without modifications.

Agenda Item 6: Revision of the Trademark Law Treaty

7. Discussion was based on the following documents: SCT/14/2 (Draft Revised Trademark Law Treaty (TLT)), SCT/14/3 (Draft Revised Regulations under the Draft Revised Trademark Law Treaty) and SCT/14/4 (Notes on the Draft Revised Trademark Law Treaty and the Draft Revised Regulations).

Article 1
Abbreviated Expressions

items (i) to (xxii). These provisions were approved as proposed on the understanding that the term "or persons" in item (v) would be omitted.

item (xxiii). It was agreed to redraft this provision as follows:

> "'TLT 1994' means the Trademark Law Treaty done at Geneva on October 27, 1994".

It was agreed to add a new item providing a definition of the term "Assembly".

Article 2
Marks to Which the Treaty Applies

(1) [*Nature of Marks*]

The Chair concluded that it was agreed to replace subparagraphs (a), (b) and (c) with one single provision having the following wording:

> "Any Contracting Party shall apply this Treaty to marks consisting of signs that can be registered as marks under its law".

(2) [*Kinds of Marks*]

This provision was approved as proposed.

Article 3
Application

(1) [*Indications or Elements Contained in or Accompanying an Application; Fee*]

Subparagraph (a), items (i) to (viii). These provisions were approved as proposed.

items (ix) to (xiv). The Chair concluded that it was agreed to replace these provisions with two items. The first item should become item (ix) and have the following wording:

> "*item (ix)* at least one representation of the mark, as prescribed in the Regulations;".

The second item should become item (x) and have the following wording:

> "*item (x)* where applicable, a statement, as prescribed in the Regulations, indicating the type of mark as well as any specific requirements applicable to that type of mark, indicating that the applicant wishes that the mark be registered and published in the standard characters used by the Office, or indicating that the applicant wishes to claim color as a distinctive feature of the mark;".

items (xv) to (xviii). These provisions were approved as proposed subject to renumbering in accordance with the replacement of items (ix) to (xiv).

Subparagraphs (b) and (c). These provisions were approved as proposed.

Paragraphs (2) to (5). These provisions were approved as proposed.

Article 4
Representation; Address for Service

This provision was approved as proposed.

Article 5
Filing Date

This provision was approved as proposed.

Article 6
Single Registration for Goods and/or Services in Several Classes

This provision was approved as proposed.

Article 7
Division of Application and Registration

This provision was approved as proposed.

Article 8
Communications

(1) [*Means of Transmittal and Form of Communications*]

This provision was approved with the following wording:

> "Any Contracting Party may choose the means of transmittal of communications and whether it accepts communications on paper, communications in electronic form or any other form of communication".

Paragraphs (2) to (4). These provisions were approved as proposed.

(5) [*Presentation of a Communication*]

This provision was approved with the following wording:

> "Any Contracting Party shall accept the presentation of a communication the content of which corresponds to the relevant Model International Form, if any, provided for in the Regulations".

Paragraph (6). This provision was approved as proposed.

Article 9
Classification of Goods and/or Services

This provision was approved as proposed.

Article 10
Changes in Names or Addresses

This provision was approved as proposed.

Article 11
Change in Ownership

This provision was approved as proposed.

Article 12
Correction of a Mistake

This provision was approved as proposed.

Article 13
Duration and Renewal of Registration

This provision was approved as proposed.

Article 14
Relief Measures in Case of Failure to Comply with Time Limits

(1) [*Relief Measure Before the Expiry of a Time Limit*]

This provision was approved as proposed.

(2) [*Relief Measures After the Expiry of a Time Limit*]

This provision was approved as proposed. However, the Secretariat was entrusted with the task of checking for consistency, throughout the Treaty, the use of the words “interested party” or “interested person”.

(3) [*Exceptions*]

This provision was approved as proposed, subject to deletion of the reference to paragraph (1).

(4) [*Fees*]

This provision was approved as proposed.

(5) [*Prohibition of Other Requirements*]

This provision was approved as proposed, subject to deletion of the reference to paragraph (1).

Article 15
Obligation to Comply with the Paris Convention

This provision was approved as proposed.

Article 16
Service Marks

This provision was approved as proposed.

Article 17
Request for Recordal of a License

This provision was approved as proposed. It was agreed to replace the word “Contents” for the word “Requirements” in the heading of paragraph (1).

Article 18
Request for Amendment or Cancellation of Recordal of a License

This provision was approved as proposed, subject to the change in the reference to “Article 17(2) to (6)” in paragraph (2). It was agreed to replace the word “Contents” for the word “Requirements” in the heading of paragraph (1).

Article 19
Effects of the Non-Recordal of a License

This provision was approved as proposed.

Article 20
Use of a Mark on Behalf of the Holder

It was agreed to redraft this provision, to integrate it as paragraph (3) of Article 19 with the following wording, and with a new heading, to be proposed by the Secretariat:

> "A Contracting Party may not require the recordal of a license as a condition for the use of a mark by a licensee to be deemed to constitute use by the holder in proceedings relating to the acquisition, maintenance and enforcement of marks".

Article 21
Indication of the License

This provision was approved as proposed.

It was decided to renumber this Article and the remaining Articles of the Treaty, as a consequence of the merger of former Article 20 and Article 19.

Article 22
Observations in Case of Intended Refusal

This provision was approved with the following wording on the understanding that a clarification reflecting the content of the provision would be added to the Notes:

> "An application under Article 3 or a request under Articles 7, 10 to 14, 17 and 18 may not be refused totally or in part by an Office without giving the applicant or the requesting party, as the case may be, an opportunity to make observations on the intended refusal within a reasonable time limit. In respect of Article 14, no Office would need to give an opportunity to make observations where the requesting party has already had an opportunity to present an observation on the facts on which the decision is to be based".

Article 23
Regulations

This provision was approved as proposed.

Article 24
Assembly

This provision was approved as proposed.

Article 25
International Bureau

This provision was approved as proposed.

Article 26
Revision and Amendment

(1) [*Revision of the Treaty*]

This provision was approved as proposed on the understanding that a clarification as to the powers of a Diplomatic Conference be added to the Notes in conformity with the Vienna Convention on the Law of Treaties.

(2) [*Amendment by the Assembly of Certain Provisions of the Treaty*]

Subparagraphs (a) and (b). These provisions were approved as proposed.

The Delegation of Japan made a reservation with regard to subparagraph (a).

Subparagraph (c). This provision was approved as proposed on the understanding that the words which appeared crossed out in the proposal be retained.
The Delegation of Iran (Islamic Republic of) made a reservation with regard to subparagraph (c).

Article 27
Becoming Party to the Treaty

This provision was approved as proposed.

Article 28
Application of the TLT 1994 and This Treaty

This provision was approved as proposed.

Article 29
Entry into Force;
Effective Date of Ratifications and Accessions

(1) [*Instruments to Be Taken into Consideration*]

This provision was approved as proposed.

(2) [*Entry into Force of the Treaty*]

It was agreed to redraft this provision as follows:

> "This Treaty shall enter into force three months after five States or intergovernmental organizations referred to in Article 27(1)(ii) have deposited their instruments of ratification or accession".

(3) [*Entry into Force of Ratifications and Accessions Subsequent to the Entry into Force of the Treaty*]

This provision was approved as proposed.

(4) [*Closing of the Trademark Law Treaty 1994*]

It was agreed that this provision should be omitted.

Article 30
Reservations

This provision was approved as proposed.

Article 31
Denunciation of the Treaty

This provision was approved as proposed.

Article 32
Languages of the Treaty; Signature

This provision was approved as proposed.

Article 33
Depositary

This provision was approved as proposed.

Rule 1
Abbreviated Expressions

This provision was approved as proposed, subject to the addition of the word “Revised” before the words “Trademark Law Treaty”.

Rule 2
Manner of Indicating Names and Addresses

(1) [*Names*]

This provision was approved as proposed.

(2) [*Addresses*]

Subparagraphs (a), (b) and (c). These provisions were approved as proposed.

Subparagraph (d). This provision was approved as proposed on the understanding that its content would be moved to a new paragraph (3) of Rule 2.

Subparagraph (e). This provision was approved as proposed on the understanding that it would be renamed as subparagraph (d) of Rule 2(2).

(3) [*Script to Be Used*]

This provision was approved as proposed on the understanding that it would become a new paragraph (4) of Rule 2.

Rule 3
Details Concerning the Application

(1) [*Standard Characters*]

It was agreed to redraft this provision as follows:

> "Where the Office of a Contracting Party uses characters (letters and numbers) that it considers as being standard, and where the application contains a statement to the effect that the applicant wishes that the mark be registered and published in the standard characters used by the Office, the Office shall register and publish that mark in such standard characters".

(2) [*Number of Reproductions*]

This provision was approved as proposed on the understanding that its content would be moved to a new paragraph (3) of Rule 3, and that a clarification reflecting the understanding that the term "representation" used in Article 3(1)(a)(ix) covers the term "reproduction" used in the provision would be added to the Notes. It was agreed that a new paragraph (2) should be inserted in Rule 3 having the following heading and wording:

> "(2) [*Mark Claiming Color*] Where the application contains a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, the Office may require that the application indicate the name or code of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color".

(3) [*Reproduction of a Three-Dimensional Mark*]

It was agreed that the content of this provision should be moved to a new paragraph (4) of Rule 3, and that its heading should be redrafted as follows: "[*Three-Dimensional Mark*]"

Subparagraph (a). This provision was approved as proposed on the understanding that the words ", pursuant to Article 3(1)(a)(xi)," should be omitted.

Subparagraphs (b) to (d). These provisions were approved as proposed.

Subparagraph (e). It was agreed to redraft this provision as follows:

> "Paragraph (3)(a)(i) and (b) shall apply *mutatis mutandis*".

(4) [*Reproduction of a Hologram Mark*]

It was agreed to move this provision to a new paragraph (5) of Rule 3 and redraft its heading and wording as follows:

> "(5) [*Hologram Mark, Motion Mark, Color Mark, Position Mark*] Where the application contains a statement to the effect that the mark is a hologram mark, a motion mark, a color mark or a position mark, a Contracting Party may require one or more reproductions of the mark and details concerning the mark, as prescribed by the law of that Contracting Party".

(5) [*Representation of a Mark Consisting of a Non-Visible Sign*]

It was agreed to move this provision to a new paragraph (6) of Rule 3 and redraft its heading and wording as follows:

> "(6) [*Mark Consisting of a Non-Visible Sign*] Where the application contains a statement to the effect that the mark consists of a non-visible sign, a Contracting Party may require one or more representations of the mark, an indication of the type of mark and details concerning the mark, as prescribed by the law of that Contracting Party".

Paragraphs (6) to (8). These provisions were approved as proposed on the understanding that they would become paragraphs (7) to (9) of Rule 3 respectively, and that references to Article 3(1)(a) would be adjusted in accordance with the renumbering of the items of that Article.

Rule 4
Details Concerning Representation and Address for Service

This provision was approved as proposed.

Rule 5
Details Concerning the Filing Date

This provision was approved on the understanding that the content of paragraph (3) be moved to Rule 6, and that the word "application" be changed by "communication".

Rule 6
Details Concerning Communications

Paragraphs (1) to (5). These provisions were approved as proposed.

(6) [*Authentication of Communications in Electronic Form*]

This provision was approved as proposed.

The Delegation of Iran (Islamic Republic of) made a reservation with regard to this provision.

(7) [*Date of Receipt*]

The chapeau of this provision was approved as proposed, subject to the deletion of the words "in particular".

items (i) to (iii) were approved as proposed.

item (iv) was approved with the following wording:

> "a delivery service or an agency specified by the Contracting Party".

It was decided to include a new *item (v)* with the following wording:

> "an address other than the nominated addresses of the Office".

It was also decided to add a new paragraph (8), with the contents of former Rule 5(3), which would have the following wording:

> "(8) [*Electronic Filing*] Subject to paragraph (7), where a Contracting Party provides for the filing of a communication in electronic form or by electronic means of transmittal and the communication is so filed, the date on which the Office of that Contracting Party receives the communication in such form or by such means shall constitute the date of receipt of the communication".

Rule 7
Manner of Identification of an Application Without Its Application Number

This provision was approved as proposed.

Rule 8
Details Concerning Duration and Renewal

This provision was approved as proposed.

Rule 9
Relief Measures in Case of Failure to Comply with Time Limits

This provision was approved as proposed, on the understanding that the Notes on paragraph (4)(vii) would be further clarified and that the word “concerned” would be added at the end of paragraph (3)(a)(ii).

Rule 10
Details Concerning the Request for Recordal of a License or for Amendment or Cancellation of the Recordal of a License

It was decided to change the word “Details” for “Requirements” in the heading of Rule 10.

(1) [*Contents of Request*]

This provision was adopted as proposed, subject to a change of the word “Contents” for “Content” in the heading of Rule 10(1).

It was also agreed to introduce the same change throughout the Treaty, the Regulations and the Notes.

(2) [*Supporting Documents for Recordal of a License*]

This provision was approved as proposed, subject to the deletion of the words “or his representative” in item (ii).

It was decided to reverse the order of paragraphs (3) and (4).

(3) [*Supporting Documents for Cancellation of Recordal of a License*]

This provision was approved as proposed, subject to the deletion of the words “or his representative” in item (ii).

(4) [*Supporting Documents for Amendment of Recordal of a License*]

This provision was approved as proposed, on the understanding that a new subparagraph (b) would be added, having the same effect as subparagraph (2)(b), and subject to the deletion of the words “or his representative”.

Agenda Item 7: Questionnaire on Trademark Law and Practice

8. The SCT took note of document SCT/14/5.

Agenda Item 8: Future Work

9. Members and observers of the Committee were invited to submit to the Secretariat, by July 1, 2005, in writing, concise proposals for future work of the SCT, including the issues to be dealt with and priorities for addressing them. The Secretariat will translate these proposals and make them available as SCT working documents.

10. The Chair announced as tentative dates for SCT/15, November 28 to December 2, 2005.

[Annex II follows]

ANNEX II

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États)
(in the alphabetical order of the names in French of the States)

AFRIQUE DU SUD/SOUTH AFRICA

Natalie Annastasia SUNKER (Ms.), Deputy Director, Intellectual Property (IP) Policy and Legislation, Department of Trade and Industry, Pretoria
<nsunker@thedti.gov.za>

Simon Z. QOBO, First Secretary, Permanent Mission, Geneva
<simon.qobo@bluewin.ch>

ALGÉRIE/ALGERIA

Boualem SEDKI, ministre plénipotentiaire, Mission permanente, Genève
<sedki@mission-algerie.ch>

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Senior Ministerial Counsellor, Federal Ministry of Justice, Berlin
<schrock-li@bmj.bund.de>

Franziska LANG (Ms.), Counsellor, Federal Ministry of Justice, Berlin
<lang-fr@bmj.bund.de>

Carolin HÜBENETT (Ms.), Head of International Registration Team, German Patent and Trademark Office, Munich

AUSTRALIE/AUSTRALIA

Michael ARBLASTER, Deputy Registrar of Trade Marks and Designs, IP Australia, Sydney
<michael.arblaster@ipaustralia.gov.au>

AUTRICHE/AUSTRIA

Robert ULLRICH, Head, Legal Departement, International Trademark and Design Affairs, Austrian Patent Office, Vienna
<robert.ullrich@patentamt.at>

Petra ASPERGER (Mrs.), Deputy Head, Austrian Patent Office, Vienna
<petra.asperger@patentamt.at>

BANGLADESH

Mohammad AYUB MIAH, Joint Secretary, Ministry of Industries, Dhaka
<ayubmiah@hotmail.com>

BARBADE/BARBADOS

Godfrey W. HINDS, Deputy Registrar, Corporate Affairs and Intellectual Property Office, Ministry of Industry and International Business, St. Michael
<ghinds@caipo.gov.bb>

BÉLARUS/BELARUS

Yury BOBCHONOK, Deputy Director General, National Intellectual Property Centre, Minsk
<y.bobchonok@belpatent.giu.by>

BELGIQUE/BELGIUM

Monique PETIT (Mme), attaché, Office de la propriété intellectuelle, Bruxelles
<monique.petit@mineco.fgov.be>

BRÉSIL/BRAZIL

Guilherme PATRIOTA, Counsellor, Permanent Mission, Geneva
<guilherme.patriota@ties.itu.int>

Terezinha DE JESUS GUIMARÁES (Mrs.), Director of Trademarks, National Industrial Property Institute (INPI), Rio de Janeiro
<terezinha@inpi.gov.br>

Maria Lucia MASCOTTE (Mrs.), Trademark Coordinator, National Industrial Property Institute (INPI), Rio de Janeiro
<malu@inpi.gov.br>

Valeria MUSAFIR (Mrs.), IT Specialist, SERPRO, Rio de Janeiro
<valeria.musafir@serpro.gov.br>

Antonio Sergio CANGIANO, Director, SERPRO, Rio de Janeiro
<sergio.cangiano@serpro.gov.br>

BULGARIE/BULGARIA

Chtiziana KRASTEVA VALTCHANOVA (Mrs.), State Examiner, “Disputes”, International Cooperation Department, Patent Office, Sofia
<ivaltchanova@bpo.bg>

CAMBODGE/CAMBODIA

Penn SOVICHEAT, Deputy Director, Intellectual Property Department, Ministry of Commerce, Phnom Penh
<ipd@moc.gov.kh>
<sovicheatpenn@yahoo.com>

CANADA

Douglas KUNTZE, Director, Trade-Marks Branch, Canadian Intellectual Property Office, Quebec
<kunze.doug@ic.gc.ca>

Lisa POWER (Mrs.), Assistant Director, Trade-Marks Branch, Canadian Intellectual Property Office, Quebec
<power.lisa@ic.gc.ca>

CHILI/CHILE

Eleazar BRAVO MANRIQUEZ, Jefe, Departamento de Propiedad Industrial, Ministerio de Economía, Santiago
<ebravo@dpi.cl>

CHINE/CHINA

AN Qinghu, Director General, Trademark Office, State Administration for Industry and Commerce (SAIC), Beijing
<waiban.sbj@saic.gov.cn>

WANG Wei (Ms.), Deputy Director, Legal Affairs Division, Trademark Office, State Administration for Industry and Commerce (SAIC), Beijing
<tmoww@hotmail.com>

Teresa Helen GRANT (Ms.), Assistant Director, Intellectual Property Department, The Government of the Hong Kong Special Administrative Region, Hong Kong
<grant@ipd.gov.hk>

ZHANG Ze, attaché, Permanent Mission, Geneva
<zhang_ze@mfa.gov.cn>

COSTA RICA

Alejandro SOLANO, Minister Counsellor, Permanent Mission, Geneva
<alejandro.solano@ties.itu.int>

CÔTE D'IVOIRE

Kidio COULIBALY, directeur par intérim, Office ivoirien de la propriété industrielle (OIPI), Ministère de l'industrie et du développement du secteur privé, Abidjan
<ckkidio@yahoo.fr>

CROATIE/CROATIA

Željko MRŠIĆ, Assitant Director General, State Intellectual Property Office, Zagreb
<zeljko.mrsic@patent.htnet.hr>

DANEMARK/DENMARK

Ellen BREDDAM (Mrs.), Senior Legal Adviser, Danish Patent and Trademark Office, Minitry of Economic and Business Affairs, Taastrup
<pvs@dkpto.dk>

Majbritt M. D. VESTERGAARD, Special Legal Adviser, Danish Patent and Trademark Office, Ministry of Economy and Business Affairs, Taastrup
<kpe@dkpto.dk>

ÉGYPTE/EGYPT

Mostafa ABDEL-GHAFFAR, Director General, Administration of Commercial Registration, Ministry of Supply and Domestic Trade, Cairo

Ragui EL-ELETREBY, First Secretary, Permanent Mission, Geneva

ESPAGNE/SPAIN

José María DEL CORRAL PERALES, Consejero Técnico, Departamento de Signos Distintivos, Oficina Española de Patentes y Marcas, Madrid
<josem.delcorral@oepm.es>

ESTONIE/ESTONIA

Ingrid MATSINA (Ms.), Deputy Head, Trademark Department, The Estonian Patent Office, Tallinn
<ingrid.matsina@epa.ee>

Kristiina LAURI (Ms.), Head, International Agreements and EU Division, Legal Department, The Estonian Patent Office, Tallinn
<kristiina.lauri@epa.ee>

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Amy P. COTTON (Mrs.), Attorney-Advisor, United States Patent and Trademark Office (USPTO), Department of Commerce, Washington, D.C.
<amy.cotton@uspto.gov>

EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE/THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Simčo SIMJANOVSKI, Head of Department, State Office of Industrial Property (SOIP), Skopje
<simcos@ippo.gov.mk>

Biljana LEKIK (Mrs.), Deputy Head of Department, State Office of Industrial Property (SOIP), Skopje
<biljanal@ippo.gov.mk>

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Marina KORNAUKHOVA (Ms.), Specialist, International Cooperation Department, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow
<marina_ko2003@mail.ru>

Irina NIKIFOROVA (Mrs.), Deputy Head of Division for Trademarks, Board on Patent Disputes,Federal Institute of Industrial Property (FIPS), Patents and Trademarks (ROSPATENT), Moscow

Liubov KIRIY (Mrs.), Head of Division of Theory and Practise of Intellectual Property Protection, Federal Institute of Industrial Property (FIPS), Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow
<lkiriy@rupto.ru>

FINLANDE/FINLAND

Hilkka NIEMIVUO (Mrs.), Deputy Head, Trademarks Division, National Board of Patents and Registration, Helsinki
<hilkka.niemivuo@prh.fi>

Elina POHJA (Mrs.), Lawyer, National Board of Patents and Registration, Helsinki
<elina.pohja@prh.fi>

FRANCE

Marianne CANTET (Mlle), chargée de mission, Institut National de la Propriété Industrielle (INPI), Paris
<mariannecantet@inpi.fr>

Christine BONIN (Mlle), chargée de mission, Institut National de la Propriété Industrielle (INPI), Paris
<cbonin@inpi.fr>

GABON

Malem TIDZANI, directeur général, Centre de propriété industrielle du Gabon (CEPIG), Libreville
<tidzanimalem@yahoo.fr>

Séverin EMANE MBA, directeur général de l'industrie, Ministère du commerce et du développement industriel, chargé du NEPAD, Libreville
<s_emane@yahoo.fr>

GÉORGIE/GEORGIA

Merab KVIMSADZE, Deputy Director General, National Intellectual Property Center (SAKPATENTI), Tbilisi
<kvimsadze@yahoo.com>

HONGRIE/HUNGARY

Gyula SOROSI, Deputy Head, Trademark, Model and Design Department, Hungarian Patent Office, Budapest
<gyula.sorosi@hpo.hu>

Veronika CSERBA (Mrs.), First Secretary, Permanent Mission, Geneva
<veronika.cserba@ties.itu.inl>

INDONÉSIE/INDONESIA

Emawati JUNUS (Mrs.), Director, Trademarks, Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights, Jakarta
<emawati@dgip.go.id>

Dewi KARTONEGORO (Ms.), Second Secretary, Permanent Mission, Geneva

IRAN

Hekmatollah GHORBANI, Legal Counsellor, Permanent Mission, Geneva

IRAQ

Jamal ABDULLAH, Intern, Permanent Mission, Geneva
<jamal-hn@yahoo.com>

IRLANDE/IRELAND

Anne COLEMAN-DUNNE (Ms.), Assistant Principal Officer, Department of Entreprise, Trade and Employment, Intellectual Property Directorate, Dublin
<anne_colemandunne@entemp.ie>

ITALIE/ITALY

Sante PAPARO, Director, Trademark Office, Ministry of Production Activities, Directorate General of Industrial Production, Italian Patent and Trademark Office, Rome

JAMAHIRIYA ARABE LIBYENNE/LIBYAN ARAB JAMAHIRIYA

Khamees IHDAYB, Head, Intellectual Property Division, National Bureau for Research and Development, Tripoli

Abdulhafid ABULAABA, Attorney, Intellectual Property Division, National Bureau for Research and Development, Tripoli

Nasser ALZAROUG, First Secretary, Permanent Mission, Geneva
<arns55555@hotmail.com>

JAMAÏQUE/JAMAICA

Symone BETTON (Ms.), First Secretary, Permanent Mission, Geneva
<mission.jamaica@ties.itu.int>

JAPON/JAPAN

Satoshi MORIYASU, Director, International Cooperation Office, International Affairs Division, General Affairs Department, Japan Patent Office (JPO), Tokyo

Hiroshi MORIYAMA, Deputy Director, International Affairs Division, General Administration Department, Japan Patent Office (JPO), Tokyo

Kuniaki MATSUNO, Deputy Director, Formality Examination Standards Office, Formality Examination Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Tokyo

Kaori NOTO (Ms.), Formality Examination Standards Office, Formality Examination Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Tokyo

Mizuki OGINO, Specialist for Trademark Planning, Trademark Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Tokyo

Shintaro TAKAHARA, First Secretary, Permanent Mission, Geneva

JORDANIE/JORDAN

Khaled ARABEYYAT, Director, Industrial Property Protection Directorate (IPPD), Ministry of Industry and Trade, Amman
<khaled.a@mit.gov.jo>

KAZAKHSTAN

Nurgaisha SAKHIPOVA (Mrs.), Chairman, Committee for Intellectual Property Rights, Ministry of Justice, Astana

KENYA

James OTIENO ODEK, Managing Director, Kenya Industrial Property Institute (KIPI), Ministry of Trade and Industry, Nairobi
<kipi@swiftkenya.com>
<otieno-odek@gt.co.ke>

Jean KIMANI (Miss), Counsellor, Permanent Mission, Geneva
<jeankimani@hotmail.com>

LETTONIE/LATVIA

Jānis ANCĪTIS, Counsellor to the Director, Patent Office of the Republic of Latvia, Riga
<j.ancitis@lrpv.lv>

LIBAN/LEBANON

Ghada SAFAR (Miss), Senior Legal Trade Specialist, Intellectual Property Consultant, Ministy of Economy and Trade, Beirut
<gsafar@economy.gov.lb>

LITUANIE/LITHUANIA

Digna ZINKEVIČIENÉ (Ms.), Head, Trademarks and Industrial Designs Division, State Patent Bureau, Vilnius
<d.zinkeviciene@vpb.lt>

LUXEMBOURG

Edmond SIMON, directeur, Bureau Benelux des marques, Bureau Benelux des dessins ou modèles, La Haye
<esimon@bmb-bbm.org>

MALAISIE/MALAYSIA

WAN AZNAINIZAM RASHID Yusri, Second Secretary, Permanent Mission, Geneva

MALTE/MALTA

Tony BONNICI, Second Secretary, Permanent Mission, Geneva
<tony.bonnici@gov.mt>

MAROC/MOROCCO

Karima FARAH (Mme), chef, Service des marques, Département noms commerciaux et marques, Office marocain de la propriété industrielle et commerciale (OMPIC), Casablanca
<karima.farah@ompic.org.ma>

M’hamed SIDI EL KHIR, conseiller, Mission permanente, Genève
<sidelkhir@caramail.com>

MEXIQUE/MEXICO

José Alberto MONJARAS OSORIO, Subdirector, Conservación de Derechos, Instituto Mexicano de la Propiedad Industrial (IMPI), México
<amonjaras@impi.gob.mx>

MONGOLIE/MONGOLIA

Namjil CHINBAT, Director General, Intellectual Property Office, Ulaanbaatar
<chinbat@ipom.mn>

NIGÉRIA/NIGERIA

Atiku Abubakar KIGO, Director, Commercial Law Department, Federal Ministry of Commerce, Abuja
<ip.nigeria@wanadoo.com>

Usman SARKI, Minister Counsellor, Permanent Mission, Geneva
<usmansarki1959@yahoo.com>

Maigari BUBA, First Secretary, Permanent Mission, Geneva
<mbuba@hotmail.com>

NORVÈGE/NORWAY

Solrun DOLVA (Mrs.), Head of Section, National Trademarks, Design and Trademark Department, Norwegian Patent Office, Oslo
<sdo@patentstyret.no>

Debbie RØNNING (Ms.), Senior Legal Advisor, Design and Trademark Department, Norwegian Patent Office, Oslo
<dro@patentstyret.no>

OUZBÉKISTAN/UZBEKISTAN

Akil A. AZIMOV, Director, State Patent Office of the Republic of Uzbekistan, State Committee for Science and Technology, Tashkent
<info@patent.uz>

PANAMA

Luz Celeste RÍOS DE DAVIS (Sra), Directora General, Registro de la Propiedad Industrial, Ministerio de Comercio e Industrias, Panamá
<ldedavis@mici.gob.pa>

PAYS-BAS/NETHERLANDS

Brigitte A. J. SPIEGELER (Mrs.), Senior Policy Advisor on Intellectual Property, Infrastructure and Innovation Department, Directorate-General for Innovation, Ministry of Economic Affairs, The Hague
<b.a.j.spiegeler@minez.nl>

POLOGNE/POLAND

Marta CZYZ (Mrs.), Director, Department of Trademarks and Geographical Indications, Patent Office of the Republic of Poland, Warsaw
<mczyz@uprp.pl>

Andrzej SZCZEPEK, Expert, Patent Office of the Republic of Poland, Warsaw
<asszczepek@uprp.pl>

PORTUGAL

António CAMPINOS, Trademark Director, National Insititute of Industrial Property (INPI), Lisbon
<acampinos@impi.pt>

José Sérgio DE CALHEIROS DA GAMA, Counsellor, Permanent Mission, Geneva
<mjgama@freesurf.ch>

QATAR

Ahmed Youssef AL-JEFAIRI, Head, Industrial Property, Ministry of Economy, Doha

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

Choon-moo LEE, Deputy Director, Trademark and Design Examination Policy Division, Korean Intellectual Property Office (KIPO), Taejon
<chumu@kipo.go.kr>

Doo-hyeong LEE (Advisor), Presiding Judge, Gwangju District Court, Gwangju
<leedh@scourt.go.kr>

Joo-ik PARK, First Secretary, Permanent Mission, Geneva
<hang7200@dreamwiz.com>

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Victoria BLIUC (Mrs.), Director, Trademark and Industrial Design Department, State Agency on Intellectual Property (AGEPI), Kishinev
<victoriana@agepi.md>

Eugen ROVENCO, Counsellor, Permanent Mission, Geneva
<eugen.rovenco@bluewin.ch>

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Karen Lisbeth RICARDO CORNIELLE (Sra.), Subdirectora General, Oficina Nacional de la Propiedad Industrial (ONAPI), Santo Domingo
<karenricardo@hotmail.com>

Magnolia ESPINOSA (Srta.), Secretaría de Estado de Industria y Comercio, Oficina Nacional de la Propiedad Industrial (ONAPI), Santo Domingo

Josefina AQUINO (Srta.), Consejera, Misión Permanente, Ginebra
<josefina.aquino@rep.dominicana.ch>

RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

JANG Chun Sik, Researcher, Department of International Organizations, Ministry of Foreign Affairs, Pyongyang

JONG Hyo Son, Examiner, Industrial Fine Art Division, State Administration for Quality Management, Pyongyang
<saqm@chesin.co>

JANG Il Hun, Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Kamil RAOUF, Director, International Department, Industrial Property Office, Prague
<kraouf@upv.cz>

ROUMANIE/ROMANIA

Cornelia Constanta MORARU (Mrs.), Head, Legal and International Cooperation Department, State Office for Inventions and Trademarks, Bucharest
<moraru.cornelia@osim.ro>

Elisabeta NICULESCU (Mrs.), Head, National Trademarks Bureau, State Office for Inventions and Trademarks,Bucharest
<office@osim.ro>

ROYAUME-UNI/UNITED KINGDOM

Mark BRYANT, Policy Advisor, The Patent Office, Newport
<mark.bryant@patent.gov.uk>

SERBIE-ET-MONTÉNÉGRO/SERBIA AND MONTENEGRO

Ivana MILOVANOVIC (Ms.), Third Secretary, Permanent Mission, Geneva

SLOVAQUIE/SLOVAKIA

Zdena HAJNALOVÁ (Mrs.), Director, Trademarks and Designs Department, Industrial Property Office, Banská Bystrica
<zhajnalova@indprop.gov.sk>

Júlia VETRÁKOVÁ (Mrs.), Head, Legislative and Legal Department, Industrial Property Office, Banská Bystrica
<jvetrakova@indprop.gov.sk>

SLOVÉNIE/SLOVENIA

Jernej LAVRENČIČ, Legal Adviser, Slovenian Intellectual Property Office, Ljubljana
<j.lavrencic@uil-sipo.si>

SOUDAN/SUDAN

Fawzia Hussein SALIH HUSSEIN (Ms.), Legal Advisor, Ministry of Justice, Khartoum

SUÈDE/SWEDEN

Per CARLSON, Judge, Court of Patents Appeal, Ministry of Justice, Stockholm

Magnus AHLGREN, Deputy Head, Designs and Trademark Division, Swedish Patent and Registration Office, Stockholm
<magnus.ahlgren@prv.se>

SUISSE/SWITZERLAND

Stefan FRAEFEL, conseiller juridique, Division des marques, Institut fédéral de la propriété intellectuelle (IFPI), Berne
<stefan.fraefel@ipi.ch>

Emmanuel PIAGET, conseiller juridique, Division des marques, Institut fédéral de la propriété intellectuelle (IFPI), Berne
<emmanuel.piaget@ipi.ch>

THAÏLANDE/THAILAND

Prapaporn KHUMPIRANONT (Mrs.), Commercial Registration Analyst, Department of Intellectual Property, Nonthaburi
<papaponch@hotmail.com>

TUNISIE/TUNISIA

Mokhtar HAMDI, responsable, Département de la propriété industielle, Institut national de la normalisation et de la propriété industrielle (INORPI), Ministère de l'industrie et de l'énergie, Tunis
<inorpi@ati.tu>

Elyes LAKHAL, secrétaire des affaires étrangères, Mission permanente, Genève
<elalakhal@bluewin.ch>

TURQUIE/TURKEY

Önder Erol ÜNSAL, Trademark Examiner, Turkish Patent Institute, Ankara
<onder.unsal@tpe.gov.tr>

Ismail FIDAN, Trademark Examiner, Turkish Patent Institute, Ankara
<ismail.fidan@tpe.gov.tr>

Yasar ÖZBEK, Legal Counsellor, Permanent Representation to the World Trade Organization (WTO), Geneva

UKRAINE

Lyudmyla TSYBENKO (Mrs.), Head, Legal Division, State Department of Intellectual Property, Ministry of Education and Science, Kyiv
<tsybenko@sdip.gov.ua>

Valentyna SHRAMKO (Miss), Head, Division of Legislation Development on Industrial Property, Ukrainian Industrial Property Institute, Kyiv
<shramko@ukrpatent.org>

VENEZUELA

Franck VALDERRAMA, First Secretary, Permanent Mission, Geneva

YÉMEN/YEMEN

Adel Affif AL-BAKILI, Minister Plenipotentiary, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

Anessie Michael BANDA-BOBO (Mrs.), Acting Registrar, Patents and Companies Registration Office, Ministry of Commerce, Trade and Industry, Lusaka
<bobo@zamnet.zm>

COMMUNAUTÉ EUROPÉENNE (CE)*/EUROPEAN COMMUNITY (EC)*

Susana PÉREZ FERRERAS (Mrs.), Administrator, Industrial Property, European Commission, Brussels
<susana.perez-ferreras@cec.eu.int>

Detlef SCHENNEN, Head, Industrial Property Matters Service, Office for Harmonization in the Internal Market (Trade Marks and Designs), Alicante
<detlef.schennen@oami.eu.int>

II. ORGANISATIONS INTERGOUVERNEMENTALES/ INTERGOVERNMENTAL ORGANIZATIONS

AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)

Mohi Eldin MABROUK, Head, Intellectual Property Section, Harare
<aripo@ecoweb.co.zw>

BUREAU BENELUX DES MARQUES (BBM)/BENELUX TRADEMARK OFFICE (BBM)

Edmond SIMON, directeur, Bureau Benelux des marques, Bureau Benelux des dessins ou modèles, La Haye

ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (OAPI)/AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Hassane YACOUBA KAFFA, chef de service, Yaoundé
<hassane.kaffa@oapi.wipo.net>

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* Sur une décision du Comité permanent, la Communauté européenne a obtenu le statut de membre sans droit de vote.

* Based on a decision of the Standing Committee, the European Community was accorded member status without a right to vote.

CENTRE SUD/SOUTH CENTRE

Ermias Tekeste BIADGLENG, Project Officer, Geneva
<biadgleng@southcentre.org>

III. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/ INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association américaine du droit de la propriété intellectuelle (AIPLA)/American Intellectual Property Law Association (AIPLA)
Graeme DINWOODIE, Chair, AIPLA Trademark Treaties and International Law Committee, Chicago, Illinois
<gdinwoodie@kentlaw.edu>

Association of European Trade Mark Owners (MARQUES)
Rudolf HAUGG, Geneva

Association communautaire du droit des marques (ECTA)/European Community Trade Mark Association (ECTA)
Jan WREDE, Member, Law Committee, Antwerp
<info@desimonepartners.com>
Sandrine PETERS (Mrs.), Legal Co-ordinator, Antwerp
<sandrine.peters@ecta.org>

Association des industries de marque (AIM)/European Brands Association (AIM)
Jean BANGERTER, Representative, Brussels
<bangerter.jean@urbanet.ch>

Association internationale pour la protection de la propriété industrielle (AIPPI)/International Association for the Protection of Industrial Property (AIPPI)
Marino PORZIO, Chairman, Special Committee Q177, Zurich
<mporzio@porzio.cl>

Association internationale pour les marques (INTA)/International Trademark Assocation (INTA)
Piin-Fen KOK (Ms.), Manager, External Relations, Asia-Pacific, New York
<pkok@inta.org>

Association japonaise pour les marques (JTA)/Japan Trademark Association (JTA)
Hideki TANAKA, Co-chair, International Activities Committee, Tokyo
<bqx10473@nifty.ne.jp>

Centre d'échange et de coopération pour l'Amérique Latine (CECAL)/Exchange and Cooperation Centre for Latin America (ECCLA)/Centro de Intercambios y Cooperación para América Latina (CICAL)

Lydia GARCETE-AQUINO (Mlle), Cluses
<garcete@yahoo.com>
Géraldine SUIRE (Mlle), consultante, Bourg-les-Valence
<g-suire@yahoo.fr>

Centre d'études internationales de la propriété industrielle (CEIPI)/Center for International Industrial Property Studies (CEIPI)

François CURCHOD, professeur, Genolier
<francois.curchod@vtxnet.ch>

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)

António L. DE SAMPAIO, conseil en propriété intellectuelle, directeur général, Cabinet J.E. Dias Costa Lda, Lisbonne
<diascosta@jediascosta.pt>
Gonçalo DE SAMPAIO, avocat, Cabinet J.E. Dias Costa Lda., Lisbonne
<diascosta@jediascosta.pt>

Fédération internationale des conseils en propriété industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI)

Andrew PARKES, Special Reporter Trademarks, CET (Studying and Working Commission)

IV. BUREAU/OFFICERS

Président/Chair:	Li-Feng SCHROCK (Allemagne/Germany)
Vice-présidents/Vice-Chairs:	James OTIENO-ODEK (Kenya) Luz Celeste RÍOS DE DAVIS (Mme/Mrs.) (Panama)
Secrétaire/Secretary:	Marcus HÖPPERGER

V. SECRÉTARIAT DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/ SECRETARIAT OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Ernesto RUBIO, sous-directeur général/Assistant Director General

Octavio ESPINOSA, directeur-conseiller, Bureau du sous-directeur général, Secteur des marques, des dessins et modèles industriels et des indications géographiques/Director-Advisor, Office of the Assistant Director General, Sector of Trademarks, Industrial Designs and Geographical Indications

Marcus HÖPPERGER, directeur par intérim, Division du droit des marques, des dessins et modèles industriels et des indications géographiques/Acting Director, Trademarks, Industrial Designs and Geographical Indications Law Division

Päivi LÄHDESMÄKI (Mlle/Miss), juriste principale, Division du droit des marques, des dessins et modèles industriels et des indications géographiques/Senior Legal Officer, Trademarks, Industrial Designs and Geographical Indications Law Division

Martha PARRA FRIEDLI (Mme/Mrs.), juriste principale, Division du droit des marques, des dessins et modèles industriels et des indications géographiques/Senior Legal Officer, Trademarks, Industrial Designs and Geographical Indications Law Division

Martin SENFTLEBEN, administrateur adjoint, Division du droit des marques, des dessins et modèles industriels et des indications géographiques/Associate Officer, Trademarks, Industrial Designs and Geographical Indications Law Division

[Fin de l'annexe II et du document
End of Annex II and of document]